

GENERAL AND PRIVATE LAWS,

AND

MEMORIALS AND RESOLUTIONS,

OF THE

TERRITORY OF DAKOTA,

OF THE FOURTH SESSION

OF THE

LEGISLATIVE ASSEMBLY,

COMMENCED AT YANETON, DECEMBER 5, 1864, AND
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AUTHENTICATION.

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

I HEREBY certify, that I have this day delivered to George W. Kingsbury, Public Printer, for Dakota Territory, true and correct copies of all the public and private laws, memorials and resolutions, passed and approved, during the fourth session of the Legislative Assembly of said Territory.

WITNESS my hand and seal, this sixteenth day of January, A. D., 1865.

{ L. S. }

JOHN HUTCHINSON,
Secretary

UNION AND DAKOTAIAN OFFICE, }
YANKTON, D. T., April 19, 1865. }

I HEREBY certify that the following Laws, Memorials, and Resolutions, are true and correct copies, as given me for publication by the Secretary of Dakota Territory, as set forth in the preceding authentication.

GEO. W. KINGSBURY,
Public Printer, Dakota Territory.

GENERAL AND PRIVATE LAWS.

GENERAL LAWS
OF THE
TERRITORY OF DAKOTA.

AMENDMENTS.

CHAPTER I.

AN ACT TO AMEND SECTION TWO, CHAPTER EIGH-
TEEN OF THE LAWS OF 1862.

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

Section 1. That section two, of chapter eighteen of the laws of 1862, be so amended, that "Spring Lake" is hereby declared Spring Lake de-
clared county
seat. the county seat of Todd county.

Sec. 2. All acts and parts of acts inconsistent with the pro- What acts re-
pealed.visions of this act are hereby repealed.

Sec. 3. This act to take effect from and after its passage and When to take
effect. approval by the governor.

APPROVED, January 11th, 1865.

CHAPTER II.

AN ACT TO AMEND SECTION TWO AND FOUR OF CHAPTER THIRTY-EIGHT, OF THE LAWS OF 1862-3.

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

What law amended.

Section 1. That section two of chapter thirty-eight, of the public laws of 1862-3, entitled "An act dividing the Territory of Dakota into council and representative districts, and apportion the councilmen and representative therein," approved Jan. 9, 1863; be amended so as to read as follows: The county of Union shall constitute the first council and representative district, and shall be entitled to a representation in the Legislative Assembly, of three members of the council and seven members of the house of representatives.

Union county to have certain representation.

Yankton county to have certain representation.

Sec. 2. And be it further enacted, that section four of the said act, mentioned in section one of this act, be so amended [as] to read as follows: The counties of Yankton and Jayne shall constitute the third council and representative district, and shall be entitled to a representation in the legislative assembly of four members of the council and five members of the house of representatives.

When to take effect.

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

APPROVED, Jan. 12th, 1865.

CHAPTER III.

AN ACT TO AMEND AN ACT, ENTITLED AN ACT FOR THE REGULATION AND SUPPORT OF COMMON SCHOOLS.

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

Territorial Superintendent to grant licenses to teach.

Section 1. That it shall be the duty of the territorial superintendent of common schools, in addition to the requirements

of section three of said act, to grant licenses to persons duly qualified to teach any common school in this territory.

Sec. 2. That it shall be the duty of the county superintendent of common schools, in addition to the duties now required of that officer, to divide his county into suitable school districts and subdivide the same when necessary, and to furnish the register of deeds for such county, with a written description of the boundaries of each district, which description must be filed with the register of deeds, before such district shall be entitled to proceed with its organization by the election of school district officers.

County Superintendent to divide and subdivide county into school districts.

Sec. 3. All acts and parts of acts, so far as they conflict with this act, are hereby repealed.

Acts repealed.

Sec. 4. This act shall take effect from and after its passage and approval.

When to take effect.

APPROVED, January 12th, 1865.

COUNTY COMMISSIONERS.

CHAPTER IV.

AN ACT REQUIRING THE COUNTY COMMISSIONERS TO MEET ON THE FIRST MONDAY OF JANUARY IN EACH YEAR AND FIXING THE TIME FOR TERRITORIAL, COUNTY AND PRECINCT OFFICERS TO QUALIFY.

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

Section 1. The board of county commissioners are hereby required in each and every county of this Territory, to meet

When to meet.

at the county seat on the first Monday of January in each year.

To qualify and give bonds.

Sec. 2. It shall be the duty of territorial, county, and precinct officers elected, to qualify and give bond according to law, on or before the first Monday of January in each year; *Provided*, That all such officers elected at the October election, 1864, shall qualify into office and give bonds on or before the first Monday in March, 1865.

When office considered vacant

Sec. 3. In case of a failure of any territorial, county or precinct officer to comply with the provisions of the second section of this act, then in that case, such office for which such person shall have been elected shall be considered vacant and the proper officers of the law shall immediately proceed to fill such vacancies by appointment, or by special election, according to law.

When to take effect.

Sec. 4. This act shall take effect from and after its passage.

APPROVED, January 12th, 1865.

COUNTY OFFICERS.

CHAPTER V.

AN ACT LEGALIZING THE ACTS OF CERTAIN COUNTY OFFICERS OF YANKTON COUNTY.

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

Official acts of County Commissioners legalized.

Section 1. That the official acts of Charles F. Picotte and Ole Sampson, county commissioners, William Miner, reg-

ister of deeds, and Chas F. Rossteuscher, sheriff, of Yankton county, be and are hereby declared legal.

Sec. 2. This act shall take effect and be in force from and ^{When to take effect.} after its passage and approval by the governor.

APPROVED, December 24th, 1864.

CHAPTER VI.

AN ACT PRESCRIBING THE MANNER OF CONTESTING THE ELECTION OF COUNTY OFFICERS.

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

Section 1. The election of any person duly elected to any <sup>County office—
how contested.</sup> county office may be contested by any elector of the county.

First, For mal-conduct, fraud, or corruption on the part of the judges or clerks of election in any precinct or of any of the board of canvassers, or on the part of any member of either of those boards.

Second, When the incumbent was not eligible to the office at the time of the election.

Third, When the incumbent has been duly convicted of any infamous crime before the election and the judgment has no been reversed, annulled, or set aside, nor the incumbent pardoned, at the time of the election.

Fourth, When the incumbent has given, or offered any elector, or any judge, clerk or canvasser of election, any bribe or reward in money, property or any thing of value, for the purpose of procuring his election.

Fifth, When illegal votes shall have been received, and legal votes rejected at the polls sufficient to change the result.

Sixth, For any error or mistake in any of the board of canvassers in counting the votes or in declaring the result of the election, if the error or mistake would effect the result.

Seventh, For any other cause (though not enumerated above) which shows that another was the person legally elected.

Meaning of term incumbent.

Sec. 2. The term "incumbent," in this chapter, means the person whom the canvassers declared elected.

What not sufficient to set aside an election.

Sec. 3. The matter contained in the first ground of contest above named, shall not be held sufficient to set aside an election, unless the mal-conduct, fraud, or corruption, be such as to procure or cause the incumbent to be declared duly elected when he has not received the necessary number of legal votes.

When misconduct of judge or clerk shall not set aside an election.

Sec. 4. When the misconduct complained of is on the part of the judges or clerks of election in any particular precinct, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that precinct would change the result as to that office.

How the court shall be constituted.

Sec. 5. The court for the trial of contests as provided for in this act, shall be constituted as follows: The judge of probate of the county in which the contest arises, shall be the presiding officer, and the contestant and the incumbent may each name an elector of the county, who shall be associated with the judge of probate as a court, who shall proceed to hear and determine the case as hereinafter provided; *Provided* That if either the contestant or incumbent fails to nominate an associate as provided in this section, or that such associate or both of them fail to act, the presiding officer shall appoint a disinterested elector for each person so failing to act; *Provided, further*, If the judge of probate be an interested party, or if he be absent or if the office of judge of probate be vacant, then the district attorney of the county shall so preside; and if the district attorney be a party interested or absent, then the chairman of the board of county commissioners shall act as presiding officer of such court, and the presiding officer shall administer to each of his associates an oath to impartially hear and determine the case at issue according to law and evidence.

Who shall be clerk of the court.

Sec. 6. The register of deeds shall be the clerk of the court hereby established, and shall keep all papers and record the proceedings of the same in a book kept for that purpose in a manner similar to the record of the proceedings in the district court; but when the register of deeds is a party interested, the presiding officer of the court shall appoint a suitable person to

act as clerk for the time being, who shall take the oath required by law to be taken by the register of deeds, and the appointment and oath shall be recorded.

Sec. 7. The contestant shall file in the office of the register of deeds, within twenty days after the day upon which the returns were canvassed by the board of canvassers of the county, a written statement of his intention to contest the election, setting forth the name of the contestant and that he is an elector of the county, the name of the incumbent, the office contested, the time of the election and the particular causes of the contest, which statement shall be verified by the affidavit of the contestant or some other elector of the county, that the causes set forth are true as he verily believe, but before the judge of probate, or district attorney, or chairman of the board of county commissioners (as the case may be) is required to take jurisdiction of the contest, the contestant must file with the register of deeds a bond in the penal sum of one hundred dollars, with surety, to be approved by said officer, conditioned, that the contestant shall pay all the costs of said contest in case the election be confirmed, or the statement be dismissed, or the prosecution fails.

Contestant to file written statement, verified by affidavit

Must file a bond before jurisdiction is taken.

Sec. 8. When the reception of illegal, or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the precinct where they voted or offered to vote, shall be set forth in the statement.

Name of person and precinct to be set forth.

Sec. 9. The officer assuming jurisdiction of the contest, as provided by section seven, shall then issue a precept, containing copy of the statement, filed in the office of the register of deeds, with a written requisition, that the incumbent file within five days after the service of such precept, in the office of the register of deeds, a written nomination of one of the associate judges of the court for the trial of said contest, which precept shall be directed to the sheriff, coroner or any constable of the county who shall serve the same by leaving a copy of the precept and of the requisition with the incumbent or at his residence or place of business, and make return of his doings within five days after receiving such precept and requisition.

Duty of officer assuming jurisdiction.

Sec. 10. As soon as the associate judges are nominated, the

Judge to fix a day for trial.

presiding judge shall fix a day for the trial, not more than thirty nor less than twenty days from the notice contemplated in this section, which notice, addressed to the usual officers of the law, shall contain the names of the contestant and the incumbent, and of the judges named by each party, a brief statement of the cause of the contest and the day set for the trial.

When notice shall be served.

Sec. 11. The notice shall be served on the incumbent, within five days, and on the two nominated judges within fifteen days from the day of its issue.

How testimony may be given.

Sec. 12. The testimony may be oral or by deposition, and depositions may be taken on four days notice, in the same manner, and for the same causes, as in an action in the district court.

Who may issue subpoenas.

Sec. 13. The judge of probate and the register of deeds, as well when interested as otherwise, may issue subpoenas for witnesses under the seal of their respective offices if there be a seal provided for the same.

Trial to proceed at time appointed.

Sec. 14. The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement are in the discretion of the court.

Proceedings under the control of court.

Sec. 15. The proceedings shall be under the control and direction of the court; but shall be assimilated to the proceedings in an action at law as far as practicable.

Statement not dismissed for want of form.

Sec. 16. The statement shall not be dismissed for want of form if the particular causes of the contest are alleged with such certainty as will sufficiently advise the incumbent of the grounds of contest. If any part of the causes are held insufficient they may be amended, but the incumbent will be entitled to an adjournment if he state on oath that he has matter of answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court may deem reasonable; but if all the causes are held insufficient and an amendment is asked, the adjournment shall be granted, on motion, and at the cost of the contestant.

Form of process same as in district court

Sec. 17. The style and form of process, the officers by whom served, and the manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court so far as the nature of the case permits. The

COUNTY OFFICERS.

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command to a witness may be, to appear at—on—to testify in relation to a contested election, wherein A B is contestant, and C D is incumbent.

Sec. 18. The trial of contested county elections shall take place at the county seat, unless adjourned to some other place within the county by the concurrence of the court and the parties, which may be done before the commencement of the trial.

where the trial is to be held.

Sec. 19. The court shall have all the powers incident to the district court which may be necessary to the right hearing, conduct and determination, of the matter, to compel the attendance of witnesses, to swear them and direct their examination, to punish for contempt in its presence, to adjourn from day to day, and to make any order concerning intermediate costs, and enforce it by attachment.

Powers of court

Sec. 20. The court may direct the attendance of the sheriff or a constable when deemed necessary.

Court may direct attendance of sheriff or constable.

Sec. 21. It shall be lawful to require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter, and if he was not a qualified voter in the county where he voted, then to require him to answer for whom he voted; and if the witness answer such questions no part of his testimony in that trial shall be used against him in any criminal action.

What required of witness.

Sec. 22. The court shall be governed, in the trial and determination of contested elections, by the usual rules of law and evidence, so far as applicable, except as herein otherwise expressed, and may dismiss the proceedings if all the causes of contest are insufficient and not amended, or for want of prosecution.

How the court is to be governed in the trial.

Sec. 23. The court shall pronounce judgment whether the incumbent or any other person was duly elected, and the person so declared elected will be entitled to his certificate upon qualification. If the judgment be against the incumbent and he has already received the certificate, the judgment annuls it. If the court find that no person was duly elected, the judgment shall be that the election be set aside.

Court to pronounce judgment.

Sec. 24. The judges and clerk shall be entitled to receive

Fees of judge
and clerk.

two dollars per day for the time occupied by trial.

Contestant and
incumbent lia-
ble for costs
made by them
respectively.

Sec. 25. The contestant and incumbent are liable to the officers and witnesses for the costs made by them respectively; but if the election be confirmed, or the statement be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs also.

Register of
deeds to issue
execution for
costs.

Sec. 26. The register of deeds is authorized to issue execution for costs to run against personal property, which costs shall be collected as costs in civil action before a justice of the peace.

Probate judge
to carry into
effect any order
of court.

Sec. 27. The probate judge shall have authority to carry into effect any order of the court after the adjournment thereof, by attachment or otherwise.

When certificate
of election to
be withheld.

Sec. 28. If notice of contesting the election of an [officer] is filed before the certificate of election is delivered to the incumbent, it shall be withheld until the determination of the court.

When to take
effect.

Sec. 29. This act shall take effect and be in force from and after its passage

APPROVED, January 3, 1865.

CHAPTER VII.

AN ACT INCREASING THE FEES OF CERTAIN COUNTY OFFICERS.

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

Fees of.

Section 1. That the county commissioners shall each receive two dollars per day for the time actually engaged as county commissioner, and the register of deeds shall receive two dollars per day for the time he is acting clerk of the board of county commissioners.

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

Sec. 3. This act shall take effect from and after its passage When to take effect. and approval by the governor.

APPROVED, January 7th, 1865.

COUNTY SEATS.

CHAPTER VIII.

AN ACT TO PROVIDE FOR THE LOCATION OF THE COUNTY SEAT OF UNION COUNTY.

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

Section 1. That a special election shall be held in the county of Union, in the Territory of Dakota, on the second Monday of April, A. D. 1865, at which election the legal voters of said county shall vote by ballot for the location of the county seat of said county; and the place having the highest number of votes shall be declared to be the permanent county seat of said county. Time of holding special elections.

Sec. 2. The board of county commissioners of said county shall, prior to said special election, set off and establish election precincts or districts, embracing the whole of said county, and shall appoint three judges of said election for each election precinct as is provided in case of a general election under the provisions of the existing election law. Duty of county commissioners.

Sec. 3. The register of deeds of said county shall make out and deliver to the sheriff of said county, immediately after Duty of register of deeds.

the appointment of said judges, a notice in writing thereof directed to the judges so appointed, and it shall be the duty of said sheriff within ten days after the receipt of the said notice, to serve the same upon each of the judges of said election.

Judges to appoint clerks.

Sec. 4. The judges of said election shall appoint clerks of election in the same manner as is provided by law in the case of election of civil officers.

Duty of register of deeds and of sheriff

Sec. 5. The register of deeds of said county shall make out and deliver notices of said special election to the sheriff of said county as is provided in the present election law in case of special elections, and the sheriff of said county shall post said notices in the several election precincts of said county in the same manner as is provided by law in case of special elections,

Register of deeds to notify legal voters.

Sec. 6. The register of deeds in his notices of said special election, shall notify the legal voters of said county in the several election precincts that at said special election they will vote by ballot for the location of the county seat of said county, and that they shall vote a printed or written ballot designating thereon the place of location of the county seat.

Judges to canvass vote.

Sec. 7. As soon as the poll of said special election shall be finally closed, the judges of the several election precincts shall immediately proceed to canvass the vote given at such election, and the canvass may be public and shall be continued without adjournment until completed, and said canvass shall be made in the same manner as is provided by law in case of special elections for civil officers.

Votes cast to be returned to register of deeds.

Sec. 8. That the vote cast for county seat in said county at said special election, shall be returned by the several judges of election in said county to the register of deeds of said county as is provided by law for the return of votes in other cases to the register of deeds, and canvassed by him as is provided for the canvass of votes by law and after said canvass he shall declare the place having the highest number of votes to be the county seat of said county.

Duty of register of deeds in case of a tie vote.

Sec. 9. If any two places should have the highest and an equal number of votes, then the register of deeds shall, within twenty days after the result of such election is known, give notice that within ten days from the time of giving such notice,

that an election will be held in said county, at which election the two places only having the highest and equal number of votes shall be voted for as the location of said county seat, after the result of which election the votes shall be canvassed as hereinbefore provided; and the place having the highest number of votes shall be declared to be the county seat of said county.

Sec. 10. All acts and parts of acts in conflict with the provisions of this act are hereby repealed. Conflicting acts repealed.

Sec. 11. This act shall take effect from and after its passage. When to take effect.

APPROVED, January 9th, 1865.

COUNTY SUPERINTENDENT.

CHAPTER IX.

AN ACT AUTHORIZING THE GOVERNOR TO APPOINT AND COMMISSION A COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION IN AND FOR THE COUNTY OF YANKTON.

WHEREAS, At the October election in 1864, Enos Stutsman was elected County Superintendent of public instruction in and for the county of Yankton, and

WHEREAS, The said Stutsman, so elected as aforesaid, is ineligible to said office, for that he was a member of the Legislative Assembly at the time of the passage of the act creating said office, therefore,

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

Governor to
appoint.

Section 1. That the governor of the Territory of Dakota be authorized, and it is hereby made his duty, to appoint and commission a county superintendent of public instruction, in and for the county of Yankton aforesaid ; and the said person, having been so appointed and commissioned, shall qualify and enter upon the duties of said office, in all respects, the same as now provided by law, and as hereafter may be enacted, applying to said office. And said person, so qualifying, shall hold and perform the duties of said office during the term for which said Statesman was elected.

Conflicting acts
repealed.

Sec. 2. All acts and parts of acts inconsistent with this act, shall be so construed as not to conflict with the provisions of this act.

When to take
effect.

Sec. 3. This act shall take effect from and after its passage.
APPROVED, December 30th, 1864.

DISTRICT COURT.

CHAPTER X.

AN ACT PROVIDING FOR A TERM OF THE DISTRICT COURT IN THE COUNTY OF UNION.

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

Section 1. That there shall be one term, in each year, of the district court held in the county of Union, in the first ju-

judicial district. Said court shall be held at the county seat of said county; said term shall commence on the third Monday in November in each year. Term of district court to be held in Union county;

Sec. 2. It shall be the duty of said court to appoint a clerk of said court in and for said county of Union. Court to appoint clerk.

Sec. 3. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed. Conflicting acts repealed.

Sec. 4. Nothing in this act shall be construed so as to prevent the holding of the district court, and the United States District Court, at Vermillion in Clay county, as provided by law. How construed.

Sec. 5. This act shall take effect from and after its passage. When to take effect.
APPROVED, January 11th, 1865.

CHAPTER XI.

AN ACT CHANGING THE TIME OF HOLDING THE DISTRICT COURT IN THE SECOND JUDICIAL DISTRICT.

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

Section 1. That section two of an act, entitled "An act changing the time of holding the United States District Court in the first and second judicial districts," approved January 15th, 1864, be amended to read as follows: That the counties of Yankton and Jayne shall constitute the second judicial district, and there shall be annually held therein two terms of the district court, at the town of Yankton, in the county of Yankton; the first term of each year to commence on the third Tuesday of April, and the second term of each year to commence on the third Tuesday of October; and all that portion of ceded land in this Territory, not embraced in any other judicial district, is hereby attached to said second district for judicial purposes. Time of holding court.

When to take
effect.

Sec. 2. This act shall take effect from and after its passage.
APPROVED, January 9th, 1865.

ELECTIONS

CHAPTER XII.

AN ACT CONCERNING VACANCIES AND SPECIAL ELECTIONS.

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

How an office
may become va-
cant.

Section 1. Every civil office shall be vacant upon the happening of either of the following events at any time before the expiration of the term of such office, to wit:

First, The resignation of the incumbent.

Second, His death.

Third, His removal from office.

Fourth, His refusal or neglect to take the oath of office, and also to give bond, when a bond is necessary, in the time prescribed by law.

Fifth, The decision of a competent tribunal declaring his election or appointment void, or his office vacant.

Sixth, His ceasing to be a resident of the Territory, district, county or precinct in which the duties of his office are to be exercised, or for which he may have been elected.

Seventh, A failure to elect at the proper election, or a forfeiture of office as provided by any law of this Territory.

Eighth, A conviction of an infamous crime, or of any public offense involving his oath of office.

Sec. 2. Resignations may be tendered as follows :

First, By councilmen and representatives in the legislative assembly, to the presiding officers of their respective houses, How resignation may be made. if in session, who shall immediately transmit information of the same to the governor. If not in session, to the governor, who shall take the proper measures for an election according to law.

Second, By the county commissioners to the register of deeds; and,

Third, By all other county and precinct officers to the board of county commissioners.

Sec. 3. All such vacancies, except in the offices of members of the legislative assembly shall be filled by appointment as follows: How vacancies may be filled. In the territorial offices by the governor; in county and precinct offices, by the board of county commissioners.

Sec. 4. If a vacancy occurs thirty days previous to an election day at which it may be filled, no appointment shall be made When no appointment shall be made. unless it be necessary to carry out said election, and the canvass of the same according to law; in that case an appointment may be made at any time previous to said election, to hold until after said election or until his successor is elected and qualified.

Sec. 5. Appointments under the provisions of this act, shall be made in writing and made to continue until the next general election, at which the vacancy can be filled, and until a successor is elected and qualified, to be filed with the secretary of the territory, or in the proper county offices respectively. Mode of appointment.

Sec. 6. Persons appointed to offices as herein provided, shall qualify in the same manner as is required of those elected, the time of which shall be prescribed in their appointment. Appointee to qualify.

Sec. 7. When a vacancy occurs of the entire board of county commissioners, the register of deeds shall immediately call a special election to fill such vacancy; notice of such election must be given and conducted according to law in reference to special elections. Register of deeds to call a special election

Sec. 8. *Provided further,* Should two of the members of said board of county commissioners become vacant by death, or resignation or otherwise, the judge of probate of the county is authorized, and it shall be his duty to immediately appoint re- Judge of probate to appoint

sponsible men to fill such vacancy, whose duty it shall be to qualify according to law as in the case of the election of county commissioners.

Register of deeds to notify judge of probate.

Sec. 9. It is hereby made the duty of the register of deeds, upon the vacancies occurring as set forth in section eight of this chapter to notify the judge of probate as soon as possible, of such vacancy, and upon such notice the judge shall appoint.

Conflicting acts repealed.

Sec. 10. All acts and parts of acts, conflicting with this act, are hereby repealed.

When to take effect.

Sec. 11. This act shall [take] effect from and after its passage.

APPROVED, December 31st, 1864.

JURORS.

CHAPTER XIII.

AN ACT IN RELATION TO SUMMONING GRAND AND PETIT JURORS.

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

When duty of judge to order a venire facias to issue.

Section 1. That whenever at any term of any territorial district court of this Territory, a grand or petit jury shall not have been selected and drawn by the county commissioners and clerk of said district court, as provided by law for drawing said grand and petit jurors, then the judge of such district court may in his discretion at any time before or during the session of such district court, order a *venire facias* to issue to the proper officers to summon the required number of lawful persons to

serve as grand or petit jurors at said term, returnable as the said judge in said venire shall direct.

Sec. 2. This act shall take effect from and after its pas- When to take effect.
sage.

APPROVED, January 11th, 1865.

MONEY

CHAPTER XIV.

AN ACT CONCERNING MONEY OF ACCOUNT AND FIX- ING A RATE OF INTEREST OF MONEY.

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

Section 1. The money of account in this territory shall be In what the money of account shall be, and how proceedings in court shall be held.
the dollar, cent and mill, and all accounts in the territorial of-
fices and all proceedings in courts shall be kept and had in con-
formity to this regulation.

Sec. 2. Nothing contained in the preceding section shall Not to vitiate.
vitate or affect any account, charge, or entry originally made
or any contract expressed in any other money of account, but
the same shall be reduced to dollars and parts of dollars in any
suit thereupon.

INTEREST OF MONEY.

Sec. 3. Any rate of interest agreed upon by parties in Rates of inter-
est.
contract, specifying the same in writing, shall be legal and
valid.

Sec. 4. When no rate of interest is agreed upon or specified Legal interest.

in a note or other contract, seven per cent per annum, shall be the legal rate.

Interest on judgments.

Sec. 5. All judgments that may be hereafter recovered in any court of this territory, shall, from and after the rendition of the same, draw interest at the rate of ten per cent per annum.

Interest on balanced accounts.

Sec. 6. All balanced accounts shall draw interest at the rate of ten per cent per annum on such balance until paid.

When to take effect.

Sec. 7. This act shall take effect and be in force from and after its passage and approval by the Governor.

APPROVED, Jan. 9th, 1865.

MORTGAGES

CHAPTER XV.

AN ACT PROVIDING FOR THE FORECLOSURE OF MORTGAGES.

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

How mortgage may be foreclosed.

Section 1. Every mortgage of real estate, containing there in a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and manner hereinafter specified.

What is requisite.

Sec. 2. To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure it shall be requisite:

First, That some default in a condition of such mortgage shall have accrued, by which the power to sell has become operative.

Second, That no suit or proceedings shall have been institu-

ted at law, to recover the debt then remaining secured by such mortgage or any part thereof, or if any suit or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein, has been returned unsatisfied in whole or in part; and

Third, That the mortgage containing such power of sale has been duly recorded, and if it shall have been assigned, that all the assignments thereon, shall have been recorded.

Sec. 3. In cases of mortgages given to secure the payment of money by installments, each of the enstallments mentioned in such mortgage, after the first shall be taken and deemed to be a separate and independent mortgage, and such mortgage for each of such instalments may be foreclosed in same manner and with the like effect, as if such separate mortgage were given for each of such subsequent instalment, and a redemption of any such sale, by the mortgagor, shall have the like effect as if the sale for such instalments has been made upon an independent prior mortgage. How to be construed.

Sec. 4. Notice that such mortgage will be foreclosed by sale of the mortgaged premises, or some part of them, shall be given, by publishing the same for six successive weeks, at least one in each week, in a newspaper of the county where premises intended to be sold, or some of them, are situated, if there be one; if not, then in the nearest paper published in the Territory. Notice

Sec. 5. Every notice shall specify :

First, The names of the mortgagor and mortgagee, and the assignee, if any; What notice shall specify.

Second, The date of the mortgage, and when recorded;

Third, The amount claimed to be due thereon at the date of the notice;

Fourth, A description of the mortgaged premises, conforming substantially with that contained in the mortgage; and,

Fifth, The time and place of sale.

Sec. 6. The sale shall be at public vendue, between the hours of nine o'clock in the forenoon and the setting of the sun, in the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person Manner and time of sale.

appointed for that purpose in the mortgage, or by the sheriff, [or] deputy sheriff of the county, to the highest bidder.

Postponed.

Sec. 7. Such sale may be postponed from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until such time to which the sale shall be postponed, at the expense of the party requesting such postponement.

Sold separately.

Sec. 8. If the mortgaged premises consist of distinct farms, tracts or lots, they shall be sold separately, and no more farms, tracts or lots shall be sold than shall be necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest and the cost and expenses allowed by law.

Mortgagee may purchase.

Sec. 9. The mortgagee, his assigns, or his or their legal representatives, may, fairly and in good faith, purchase the premises so advertised, or any part thereof, at such sale.

Duty of officer.

Sec. 10. Whenever any lands or tenements shall be sold by virtue of a power of sale contained in any mortgage, it shall be the duty of the officer, or other person making the sale, to give to the purchaser, or purchasers, a certificate in writing, under seal, setting forth a description of each tract or parcel of the premises sold, the sum paid therefor, and the time when the purchaser or purchasers will be entitled to a deed for the same, unless they shall be redeemed, as provided in this act; and such officer, shall, within ten days from the time of sale, file in the office where the mortgage is recorded, a duplicate of such certificate, signed by him; and such duplicate, certificate, or any copy certified by the register shall be taken and deemed evidence of the facts therein contained.

Right to redeem

Sec. 11. It shall be lawful for the mortgagor, his heirs, executors, administrators and assigns, whose lands or tenements shall be sold in conformity with the provisions of this act, within twelve months after such sale, to redeem such lands or tenements, by paying to the purchaser, his executors, administrators or assigns, if either of them reside in the county in which such sale took place, and if not, then to the officer who sold the same, together with the interest on the same, at the rate of ten per

cent. per annum, from the time of such sale, and such payment being made as aforesaid, the said sale and the certificate granted thereon, as aforesaid, shall be null and void, anything in this act contrary notwithstanding; and the bail of the sheriff shall be responsible for the faithful payment to the purchaser aforesaid, of all moneys received by him, or any of his deputies aforesaid. But no mortgagor shall be entitled to retain the possession of the mortgaged premises, after the sale thereof, as provided in this act.

Sec. 12. If such mortgaged premises, so sold as aforesaid, shall not be redeemed as aforesaid, it shall be the duty of the officer, or his successor in office, or other person who shall have sold the same, or his executors, administrators, or some other persons appointed by the district court for that purpose, to complete such sales, by executing a deed of the premises so sold to the original purchaser, or to the creditor who may have acquired the title of such original purchaser, or to the creditor who may have purchased such title from any other purchaser, or to the assignee, as the case may be, of the certificate of sale. When not redeemed.

Sec. 13. If after sale of any real estate, made as herein prescribed, there shall remain in the hands of the officer or other person making the sale, any surplus money, after satisfying the mortgage on which such real estate was sold, and payment of the cost and expenses of such foreclosure and sale, the surplus shall be paid over by such officer, or other person, on demand, to the mortgagor, his legal representatives or assigns. Surplus.

Sec. 14. Any party desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this act may procure: How evidence of sale may be perpetuated.

First, An affidavit of the publication of the notice of sale, and of any notice of postponement, to be made by the printer of the news paper in which the same was inserted, or by some person in his employ knowing the facts; and

Second, An affidavit of the fact of any sale pursuant to such notice, to be made by the person who acted as auctioneer at the sale, stating the time and place at which the same took place, the sum bid and the name of the purchaser;

Third, The affidavit specified in the last preceding section,

may be taken and certified by any officer authorized to administer oaths.

Affidavit to be recorded. Sec. 15. Such affidavits shall be recorded at length by the register of deeds of the county in which the premises are situated, in a book kept for the record of mortgages, and such original affidavits, the record thereof, and verified copies of such record, shall be presumptive evidence of the facts therein contained.

Note to be made by register of deeds. Sec. 16. A note referring to the page and book where the evidence of any sale having been made under a mortgage is recorded, shall be made by the register recording such evidence in the margin of the record of each mortgage, if such record be in his office.

Effect of record Sec. 17. A record of the affidavits aforesaid, and of the deed executed, on the sale of the premises, shall be sufficient to pass the title thereto, and the conveyance shall be an entire bar of all claim or equity or redemption of the mortgagor, his heirs and representatives, and all persons claiming under him or them, by virtue of any title subsequent to such mortgage, but no title accruing prior to the execution of such mortgage, shall be affected thereby.

Rights of subsequent mortgagor. Sec. 18. Any person to whom a subsequent mortgage may have been executed, shall be entitled to the same privilege of redemption of the mortgaged premises, that the mortgagor might have had, or of satisfying the prior mortgage and shall by such satisfaction acquire all the benefits to which such prior mortgage, was or might have been entitled.

When mortgaged premises are purchased by mortgagee. Sec. 19. When the mortgaged premises, or any part of them, shall have been purchased at such sale by the mortgagee, his legal representative, or his or their assigns, as herein before provided, the affidavits of the publication and affixing notice of sale, and of the circumstances of such sale shall be evidence of the sale, and of the foreclosure of the equity of redemption, as herein specified, without any conveyance being executed, in the same manner, and with the like effect, as a conveyance executed by the mortgagee upon such sale to a third person.

Fees of Sec. 20. The party foreclosing a mortgage by advertisement, shall be entitled to ten dollars costs besides fees of officers and disbursements out of the proceeds of sale.

Sec. 21. Real estate hereafter to be sold upon the execution, judgment, order or decree of any court of the Territory or upon the foreclosure by advertisement or otherwise of a mortgage, contract or liability, shall be held by the party purchasing the same subject to right of judgment, debtor or mortgagor, or any one claiming through or under him, or them, to redeem the same at any time within one year or such other time as may be prescribed by law from the day of such sale, upon paying to the purchaser, mortgage or judgment creditor, the sum or amount for which the same was sold or foreclosed, and interest thereon at the rate of ten per cent per annum. Other creditors of the original judgment, debtor, or mortgagor, may at any time within one year after such sale, redeem such premises, upon the same terms as the judgment debtor or mortgagor, by paying to the first or previous purchaser the amount of his debt and interest as aforesaid, and so on as one purchaser, mortgagee or creditor, shall purchase or redeem from another, provided that, the original debtor, his heirs or assigns shall have the period of one year for redemption upon each and every such sale, foreclosure, advance, or redemption after the same shall have been made, and notice thereof filed in the office of register of deeds in the county where such real estate shall be situated.

Real estate sold on execution, how held

Sec. 22. And further provided, that such judgment creditor, purchaser or mortgagee, may at any time, upon eight days notice, move the court or a judge thereof, in vacation for an order or injunction, to stay waste, and upon satisfactory proof, that the mortgagor or party in possession, is committing waste upon such premises, the court may enjoin or restrain such debtor, mortgagor or party in possession from committing the same.

Injunction.

Sec. 23. Bills for the foreclosure or satisfaction of mortgages, may be filed in the district court of the county, where the mortgaged premises, or some portion thereof are situated, and in case any defendant is not a resident of the county, process may be served on him in any other county within the territory; or if he be absent or concealed, an order for his appearance may be made, and proceedings thereon be had as are provided for in the case of absent or concealed defendants.

Bills for foreclosure to be filed.

Sec. 24. Whenever a bill shall be filed for the foreclosure or

**After bill filed,
power of court.** satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the costs of suit, but the district judge shall not by such decree order any lands to be sold within nine months after the filing of the bill of foreclosure. When a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall not only have power to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied, after a sale of the mortgaged premises in the case in which such balance is recoverable, at law, and for that purpose, may issue the necessary execution as in other cases against other property, of the mortgagor.

**No proceedings
after filing bill.** Sec. 25. After such bill be filed, while the same is pending, and after a decree is rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt, secured by the mortgage, or any part thereof, unless authorized by the court.

**When other
persons become
a party.** Sec. 26. If the mortgage debt be secured by the obligation or other evidence of debt of any person other than the mortgagor, the complainant may make such other person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied, after a sale of the mortgaged premises, as well against such other person, as the mortgagor, and may enforce such decree as in other cases.

**What complain-
ant shall state.** Sec. 27. Upon filing a bill for the foreclosure or satisfaction of the mortgage, the complainant shall state therein whether any proceedings have been had at law, for the recovery of the debt secured thereby, or any part thereof, has been collected or paid.

No proceedings. Sec. 28. If it appears that any judgment has been obtained in a suit at law, for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such a case unless an execution against the property of the defendant in such judgment, the sheriff or other proper officer, shall have returned that the execution is unsatisfied in whole or in part, and that

the defendant has no property whereon to satisfy such execution, except the mortgaged premises.

Sec. 29. All sales of mortgaged premises under a decree of Sale by a master in chancery chancery, shall be made by a master in chancery, or other person appointed by the court, in the county where the premises or some part of them are situated.

Sec. 30. Deeds shall thereupon be executed by such master Deeds to be executed, or other person appointed as aforesaid, which shall vest in the purchaser the same estate that would have vested in the mortgagee, if the equity of redemption had been foreclosed and no other or greater, and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and against all parties to the suit, in which the decree for such sale was made, and against their heirs respectively and all persons claiming under such heirs.

Sec. 31. The proceeds of every sale made under a decree in Proceeds of sale chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded, and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

Sec. 32. If such surplus or any part thereof, shall remain Disposition of surplus. in the said court, for the term of three months, without being applied for, the district Judge may direct the same to be put out at interest, subject to the order of the court for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of the court.

Sec. 33. Whenever a bill shall be filed for the satisfaction Other installments. or foreclosure of any mortgage upon which there shall be due any interest, or any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the bill shall be dismissed upon the defendants bringing into court, at any time before the decree of sale, the principal and interest due, with cost.

Sec. 34. If after a decree for sale entered against a defendant After a decree for sale. in such case, he shall bring into court the principal and interest due, with cost, the proceedings in the suit shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of

any portion or installment of the principal, or of any interest thereafter to grow due.

When court
may direct ref-
erence

Sec. 35. If the defendant shall not bring into court the amount due, with costs, or if for any other cause, a decree shall pass for the complainant, the court may direct a reference to a master to ascertain and report the situation of the mortgaged premises, or may determine the same, on oral or other testimony and if it shall appear that the same can be sold in parcels, without injury to the interest of the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage, with costs, and such decree shall remain as security for any subsequent default.

Further power
of court.

Sec. 36. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or installment of the principal, or of any interest due upon such mortgage, the court may upon the petition of the complainant, by a further order founded upon such first decree, direct a sale of so much of the mortgaged premises to be made under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition, and the subsequent proceedings thereon, and the same proceedings may be had as often as a default shall happen.

When sale of
the whole shall
be ordered.

Sec. 37. If, in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises accordingly.

How sale to be
applied.

Sec. 38. In such case, the proceeds of such sale, shall be applied as well to the interest, portion or installment of the principal due, as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sales, and if such residue do not bear interest, then the court may direct the same to be paid, with a rebate of the legal interest for the time during which such residue shall not be due and payable or the court may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest for the benefit of the complainant, to be paid to him as the installments or portions of the principal, or the interest, may become due, and the surplus for the benefit of the

defendant, his representatives, or assigns to be paid to them by the order of the court.

Sec. 39. Whenever it shall be deemed necessary, pending any suit or proceedings, the court may appoint a special master in chancery, such master to be sworn, and to give bond, if required, for the faithful performance of the duties assigned him, to have power to administer oaths in any proceedings before him, and to receive for his services such reasonable compensation as the court may allow.

When court may appoint a special master in chancery.

OF APPEALS TO THE SUPREME COURT.

Sec. 40. When any person being complainant or defendant, shall think himself aggrieved by the final order or decree of a judge of a district court, sitting as a court of chancery, such person may enter an appeal within two months, to the supreme court, from such decree or final order, and when any person being complainant or defendant shall think himself aggrieved by any interlocutory decree, or any order previous to a final order or decree, he may enter an appeal therefrom to the Supreme court within fifteen days from the time of entering such decree or making such order.

Appeal may be taken.

Sec. 41. The party appealing in either of the above specified cases, shall give bond to the adverse party, with good security, in such sum as the judge of the district court shall order, conditioned to pay, satisfy and perform the order or decree of the Supreme court, and all costs, in case the decree or final order or interlocutory decree or previous order as the case may be, of the district court, shall be affirmed, and if the final order or decree of the district court shall be affirmed the supreme court may award such damages against the applicant as they may think proper, not exceeding twenty-five per cent. on the amount of the money or other subject matter of such decree.

Party appealing to give bonds.

Sec. 42. If on the hearing of any such appeal, the supreme court shall annul, affirm, modify, or alter the order or decree appealed from, or make any other order in the cause as in justice under the law and rules of chancery proceedings may require, and may remit the cause to the district court, wherein the order or decree appealed from was made, for further pro-

Supreme court may remit cause to district court.

ceedings, or may give any other directions in the cause as the circumstances of the case may require.

Supreme court
may award
damages.

Sec. 43. The supreme court shall have power, in any case in which they are satisfied that an appeal has been taken from an interlocutory, or any other order or decree, except a final one, for the purpose of delay or any frivolous pretence, toward such damages to the adverse party, as they may under the circumstances deem proper, the criterion for which damages shall be prescribed by rule.

Conflicting acts
repealed.

Sec. 44. All acts and parts of acts conflicting with this act are hereby repealed:

When to take
effect.

Sec. 45. This act shall take effect from and after the passage.

APPROVED, Jan. 11, 1865.

PENAL CODE.

CHAPTER XVII:

AN ACT TO ESTABLISH A PENAL CODE.

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

PRELIMINARY PROVISIONS.

- Section 1. Title of Code.
 2. Its effect.
 3. "Crime," and "Public offense," defined.
 4. Crimes, how divided.
 5. Felony defined.
 6. Misdemeanor.

7. Objects of the Penal Code.
8. Conviction must precede punishment.
9. Jury are to find degree of crime.
10. Construction of the Penal Code.
11. Of Sections declaring crimes punishable.
12. Punishments, how determined.
13. Punishment of felonies.
14. Of misdemeanors.

Section 1. This act shall be known as the Penal Code of the Territory of Dakota. Title of act.

Sec. 2. No act or omission subsequent to the day upon which this Code shall take effect as a law, shall be deemed criminal or punishable, except as prescribed or authorized by this Code, or by some of the Statutes which it specifies as continuing in force, or such laws as do not conflict with the provisions of this Code. Any act or neglect committed prior to that day may be inquired of, prosecuted and punished in the same manner as if this Code had not been passed. What crimes punishable under this code.

Sec. 3. A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments: "Crime" and "public offense" defined.

1. Death;
2. Imprisonment;
3. Fine;
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust, or profit under this [territory] state.

Sec. 4. Crimes are divided into.

Crimes, how divided.

1. Felonies;
2. Misdemeanors.

Sec. 5. A felony is a crime which is, or may be, punishable with death, or by imprisonment in the territorial prison. Felony defined.

Sec. 6. Every other crime is a misdemeanor. Misdemeanor.

Sec. 7. This code specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; and defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each. The Objects of the penal code.

manner of prosecuting and convicting criminals is regulated by the code of criminal procedure.

Conviction must precede punishment.

Sec 8. The punishments prescribed by this code can be inflicted only upon a legal conviction in a court having jurisdiction.

Jury are to find degree of crime.

Sec. 9. Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, shall find the degree of the crime, of which he is guilty.

Construction of the penal code.

Sec. 10. The rule of the common law that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

Of sections declaring crimes punishable.

Sec. 11. The several sections of this code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

Punishments, how determined

Sec. 12. Whenever in this code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case shall be determined by the court authorized to pass sentence, within such limits as may be prescribed by this code.

Punishment of felonies.

Sec. 13. Except in cases where a different punishment is prescribed by this code or by some existing provision of law, every offense declared to be felony is punishable by a fine not exceeding one thousand dollars or by imprisonment in the territorial prison not exceeding two years, or by both such fine and imprisonment.

Of misdemeanors.

Sec. 14. Except in cases where a different punishment is prescribed by this code, or by some existing provisions of law every offense declared to be a misdemeanor, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

TITLE I.

OF THE PERSONS LIABLE TO PUNISHMENT FOR CRIME.

- Section 15. Who are liable to punishment.
 16. Who are capable of committing crimes.
 17. Intoxicated persons.
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 19. Insane persons, acquitted, how disposed of.
 20. Involuntary subjection.
 21. Subjection by duress.
 22. Subjection inferred from coverture.
 23. When not inferred.
 24. Inference may be rebutted,
 25. Exemption of public ministers.

Sec. 15. The following persons are liable to punishment Who are liable to punishment, under the laws of this territory.

1. All persons who commit, in whole or in part, any crime within this territory.
2. All who commit theft out of this territory, and bring, or are found with the property stolen, in this territory ;
3. All who, being out of this territory, abduct or kidnap, by force or fraud, any person contrary to the laws of the place where such act is committed, and bring, send or convey such person within the limits of this territory, and are afterwards found therein ;
4. And all who, being out of this territory, cause or aid, advise or encourage, another person, causing an injury to any person or property within this territory by means of any act or neglect which is declared criminal by this code, and who are afterwards found within this territory.

Sec. 16. All persons are capable of committing crimes, except those belonging to the following classes : Who are capable of committing crimes.

1. Children under the age of seven years ;
2. Children of the age of seven years, but under the age of fourteen years, in the absence of proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness ;
3. Idiots ;

4. Lunatics, insane persons, and all persons of unsound mind including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them, they were incapable of knowing its wrongfulness ;

5. Persons who committed the act, or made the omission charged under an ignorance or mistake of fact which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation ;

6. Persons who committed the act charged without being conscious thereof ;

7. Persons who committed the act, or made the omission charged while under involuntary subjection to the power of superiors.

Intoxicated persons.

Sec. 17. No act committed by a person while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.

Morbid criminal propensity.

Sec. 18. A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

Insane persons, acquitted, how disposed of.

Sec. 19. When a jury have returned a verdict acquitting a defendant upon the ground of insanity, the court may thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public safety, order him to be committed to the Territorial lunatic asylum, or to the care of such person or persons as the court may direct, till he become sane.

Involuntary subjection.

Sec. 20. The involuntary subjection to the power of a superior, which exonerates a person charged with a criminal act or omission from punishment therefor, arises either from ;

1. Duress ; or,
2. Coverture.

Subjection by duress.

Sec. 21. The duress which excuses a person who has committed a prohibited act or neglect from punishment, must be an actual compulsion by use of force.

Sec. 22. A subjection sufficient to excuse from punishment may be inferred in favor of a wife, from the fact of coverture, whenever she committed the act charged, in the presence and with the assent of her husband; except where such act is a participation in;

1. Treason;
2. Murder;
3. Manslaughter;
4. Maiming;
5. An attempt to kill;
6. Rape;
7. Abduction;
8. Abuse of children;
9. Seduction;
10. Abortion, either upon herself or another female;
11. Concealing the death of an infant, whether her own or that of another;
12. Fraudulently producing a false child, whether as her own, or that of another;
13. Bigamy;
14. Incest;
15. The crime against nature;
16. Indecent exposure;
17. Obscene exhibitions of books and prints;
18. Keeping a bawdy, or other disorderly house;
19. Mislacing a railway switch; or,
20. Obstructing a railway track.

Sec. 23. In case of the crimes enumerated in the last section, the wife is not excused from punishment by reason of her subjection to the power of her husband, unless the facts proved show a case of duress as defined in section twenty one.

Sec. 24. The inference of subjection arising from the fact of coverture may be rebutted by any facts showing that in committing the act charged the wife acted freely.

Sec. 25. Ambassadors and other public ministers from foreign governments accredited to the President or the government of the United States, and recognized by it according to the laws of the United States, with their secretaries, messengers, families and servants, are not liable to punishment in this ter-

Subjection in-
ferred from
coverture.

When not infer-
red.

Inference may
be rebutted.

Exemption of
public minis-
ters.

ritory, but are to be returned to their own country for trial and punishment.

TITLE. II.

OF PARTIES TO CRIMES.

Section 26. Classification of parties to crimes

27. Who are principals.

28. Who are accessories.

29. No accessories in misdemeanor.

30. Punishment of accessories.

Classification
of parties to
crimes.

Sec. 26. The parties to crimes are classified as ;

1. Principals ; and,

2. Accessories.

Who are princi-
pals.

Sec. 27. All persons concerned in the commission of crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, are principals.

Who are acces-
sories.

Sec. 28. All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction or punishment, are accessories.

No accessories
in misdemeanor

Sec. 29. In misdemeanor there are no accessories.

Punishment of
accessories.

Sec. 30. Except in cases where a different punishment is prescribed by law, an accessory to a felony is punishable by imprisonment in a territorial prison not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

TITLE III.

OF CRIMES AGAINST RELIGION AND CONSCIENCE.

Section 31. Blasphemy defined.

32. Words used in serious discussion.

33. Blasphemy a misdemeanor.

34. Profane swearing defined.

35. Punishment of profane swearing.

- Section 36. Summary conviction for profane swearing.
- 37. Penalties, how collected.
- 38. The Sabbath.
- 39. Sabbath breaking.
- 40. Day defined.
- 41. Sabbath breaking defined.
- 42. Servile labor.
- 43. Undue travel.
- 44. Persons observing another day as the Sabbath.
- 45. Public sports.
- 46. Trades, manufactures, and mechanical employments.
- 47. Public traffic.
- 48. Serving process.
- 49. Punishment of Sabbath breaking.
- 50. Forfeiture of commodities exposed for sale.
- 51. Proceedings to collect fines imposed by this chapter.
- 52. Remedy for maliciously serving process.
- 53. Compelling adoption of a form of belief.
- 54. Preventing performance of religious act.
- 55. Disturbing religious meetings.
- 56. Definition of the offense.

Sec. 31. Blasphemy consists in wantonly uttering or publishing words, casting contumelious reproach or profane ridicule upon God, Jesus Christ, the Holy Ghost, the Holy Scriptures or the Christian religion.

Blasphemy defined.

Sec. 32. If it appears beyond reasonable doubt that the words complained of were used in the the course of serious discussion, and with intent to make known or recommend opinions entertained by the accused, such words are not blasphemy.

Words used in serious discussion.

Sec. 33. Blasphemy is a misdemeanor.

Blasphemy a misdemeanor.

Sec. 34. Profane swearing consists in any use of the name of God, or Jesus Christ, or the Holy Ghost, either in imprecating divine vengeance upon the utterer, or any other person, or in light, trifling or irreverent speech.

Profane swearing defined.

Sec. 35. Every person guilty of profane swearing is punishable by a fine of one dollar for each offense.

Punishment of profane swearing

Sec. 36. Whenever any profane swearing is committed in

Summary conviction for profane swearing.

the presence and hearing of any justice of the peace, mayor, recorder or alderman of any city, while holding a court, or under any other circumstances such as in the opinion of the magistrate amount to a gross violation of public decency, such magistrate may, in his discretion, immediately convict the offender, without any other proof.

Penalties, how collected.

Sec. 37. If the offender does not forthwith pay the penalties incurred, with the costs, or give security for their payment within six days, he shall be committed by warrant to the county jail, for every offense or for any number of offenses whereof he was convicted at one and the same time, for not less than one day, nor more than three days; there to be confined in a room separate from all other prisoners.

The Sabbath.

Sec. 38. The first day of the week being by very general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless and serious interruptions of the repose and religious liberty of the community.

Sabbath breaking.

Sec. 39. Any violation of this prohibition is Sabbath breaking.

Day defined.

Sec. 40. Under the term "day," as employed in the phrase "first day of the week," in the eight sections following, is included all the time from midnight to midnight.

Sabbath breaking defined.

Sec. 41. The following are the acts forbidden to be done on the first day of the week, the doing any of which is Sabbath breaking:

1. Servile labor;
2. Undue travel;
3. Public sports,
4. Trades, manufactures, and mechanical employments;
5. Public traffic;
6. Serving process.

Servile labor.

Sec. 42. All manner of servile labor, on the first day of the week, is prohibited, excepting works of necessity or charity.

Undue travel.

Sec. 43. All traveling on the first day of the week is prohibited, excepting such as is performed upon foot or in carrying or in a conveyance carrying the United States mail, or such as is done in cases of charity or necessity, or in going to or returning from some funeral, place of worship, or religious assembly

within the distance of twenty miles, or in going for medical aid or for medicines and returning, or in visiting the sick and returning, or in going express by order of some public officer, in removing one's family or household furniture when such removal was commenced on some other day.

Sec. 44. It is a sufficient defense in proceedings for servile labor or undue travel on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor or travel upon that day, and that the labor or travel complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

Persons observing another day as the Sabbath.

Sec. 45. All shooting, sporting, horse racing, gaming or other public sports, upon the first day of the week, are prohibited.

Public sports.

Sec. 46. All trades, manufactures and mechanical employments upon the first day of the week are prohibited.

Trades, manufactures, and mechanical employments.

Sec. 47. All manner of public selling, or offering, or exposing for sale publicly, of any commodities upon the first day of the week is prohibited, except that meats, milk and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

Public traffic.

Sec. 48. All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime; or except where such service shall be specially authorized by law.

Serving process.

Sec. 49. Every person guilty of Sabbath breaking is punishable by a fine of one dollar for each offense.

Punishment of Sabbath breaking.

Sec. 50. All money collected from the fines imposed by the last section, shall be paid into the county treasury, as a fund for the support of common schools in said county.

Disposition of fines.

Sec. 51. The fines prescribed in this chapter for profane swearing and for Sabbath breaking, may be collected in the manner prescribed by law for the collection of debts; but no

Forfeiture of commodities exposed for sale.

property shall be exempt from execution which has been taken to satisfy any such fines and costs.

Remedy for maliciously serving process.

Sec. 52. Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

Compelling adoption of a form of belief.

Sec. 53. Any willful attempt by means of threats or violence, to compel any person to adopt, practice or profess any particular form of religious belief, is a misdemeanor.

Preventing performance of religious act.

Sec. 54. Every person who willfully prevents by threats or violence another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

Disturbing religious meeting.

Sec. 55. Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts or things hereinafter enumerated, is guilty of a misdemeanor.

Definition of the offense.

Sec. 56. The following are the acts deemed to constitute disturbance of a religious meeting :

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting ;

2. Exposing to sale or gift any ardent or distilled liquors, or keeping open any huckster shop within one mile of the place where any religious society or assembly shall be actually convened for religious worship, and in any other place than such as shall have been duly licensed and in which the person accused shall have usually resided or carried on business ;

3. Exhibiting within the like distance, any shows or plays without a license by the proper authority ;

4. Engaging in, or aiding or promoting, within the like distance, any racing of animals or gaming of any description ;

5. Obstructing in any manner, without authority of law, within the like distance, the free passage along any highway to the place of such meeting.

TITLE IV.

OF TREASON.

Section 57. Treason defined.

58. Levying war defined.

59. Resistance to a statute, when levying war.

60. Punishment.

Sec. 57. The following acts constitute treason against the Treason defined. people of this Territory.

1. Levying war against the people of this Territory, within the Territory; or,

2. A combination of two or more persons, by force to usurp the government of this Territory, or to overturn the same, evidenced by a forcible attempt made within this territory to accomplish such purpose; or,

3. Adhering to the enemies of this Territory while separately engaged in war with a foreign enemy in the cases prescribed in the Constitution of the United States, and giving to such enemies aid and comfort in this Territory or elsewhere.

Sec. 58. To constitute levying war against the people of Levying war defined. this Territory, an actual act of war must be committed. To conspire merely to levy war is not enough.

Sec. 59. Where persons rise in insurrection with intent to Resistance to a statute when levying war prevent in general by force and intimidation, the execution of a statute of this Territory, or to force its repeal, they are guilty of levying war. But an endeavor, although by numbers and force of arms to resist the execution of a law in a single instance, and for a private purpose, is not levying war.

Sec. 60. Every person convicted of treason shall suffer death Punishment. for the same.

TITLE V.

OF CRIMES AGAINST THE ELECTIVE FRANCHISE.

Section 61. Bribery, menace, and other corrupt practices, at elections.

62. Betting upon elections.

63. Unlawful offers to procure offices for election

- Section 64. Communicating such offers.
65. Furnishing money for elections, except for specified purposes.
 66. Defrauding an elector in his vote.
 67. Obstructing electors in attending elections.
 68. Voting more than once.
 69. Procuring illegal votes.
 70. Importing voters who are unqualified.
 71. Illegal voting by inhabitants of another territory or state.
 72. Illegal voting by inhabitants of this territory.
 73. Illegal voting by resident of different election district.
 74. Illegal voting by unpardoned convict.
 75. Procuring name to be registered improperly.
 76. Personating registered voters.
 77. False statements upon applying for registry.
 78. What is deemed a false statement.
 79. Disturbance of public meetings.
 80. Preventing public meetings.
 81. Preventing electors from attending public meetings.
 82. Preventing electors from voting.
 83. Disobedience to lawful command of Judges.
 84. Riotous conduct, or violence, which impedes elections.
 85. Summary arrest thereof.
 86. Such arrest no bar to a subsequent prosecution.
 87. Destroying ballots or ballot-boxes.
 88. Keeping false poll lists.
 89. Misconduct of judges.
 90. Falsely canvassing votes, or certifying result of election.
 91. Election defined.
 92. Irregularities in election no defense for violations of this chapter.
 93. Rights of persons lawfully interfering in elections declared.
 94. Submission of questions to the people.
 95. Good faith in offering to vote, a defense for alleged illegal voting.

Sec. 61. Every person who by bribery, menace or any other corrupt means, either directly, or indirectly, attempts to influence any elector of this Territory in giving his vote, or to deter him from giving the same, or to disturb or hinder him in the free exercise of the right of suffrage at any election, is guilty of a misdemeanor.

Bribery, menace and other corrupt practices, at elections.

Sec. 62. Every person who makes, offers, or accepts any bet or wager upon the result of any election or upon the success or failure of any person or candidate, or upon the number of votes to be cast either in the aggregate, or for any particular candidate, or upon the vote to be cast by any person or persons; or upon the decision to be made by any inspector, or canvasser, of any question arising in the course of an election, or upon any event whatever depending upon the conduct or result of an election, is guilty of a misdemeanor.

Betting upon elections.

Sec. 63. Every person who, being a candidate at any election, offers, or agrees to appoint or procure the appointment of any particular person or persons to office, as an inducement or consideration to any person to vote for, or procure or aid in procuring the election of such candidate, is guilty of misdemeanor.

Unlawful offers to procure offices for election.

Sec. 64. Every person who, not being a candidate, communicates any offer made in violation of the last section, to any person, with intent to induce him to vote for or to procure or aid in procuring the election of the candidate making the offer, is guilty of misdemeanor.

Communicating such offers.

Sec. 65. Every person, who with intent to promote the election, either of himself or of any other person, or candidate, either,

Furnishing money for elections, except for specified purposes.

1. Furnishes, or engages to pay or deliver any money or property, for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls; except for the conveyance of voters who are sick, poor, or infirm; or

2. Furnishes, or engages to pay or deliver any money or property, for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and

of printing and circulating ballots, handbills and other papers previous to such election, is guilty of misdemeanor.

Defrauding an elector in his vote.

Sec. 66. Every person who fraudulently alters the ballot of any elector, or substitutes one ballot for another, or furnishes any elector with a ballot containing more than the proper number of names, or who intentionally practices any fraud upon any elector to induce him to deposit a ballot as his vote and to have the same thrown out and not counted, or otherwise to defraud him of his vote, is guilty of misdemeanor.

Obstructing electors in attending elections.

Sec. 67. Every person who willfully and without lawful authority obstructs, hinders, or delays any elector on his way to any poll where an election shall be held, is guilty of a misdemeanor.

Voting more than once.

Sec. 68. Every person who votes more than once at the same election, or who offers to vote after having once voted, either in the same or in another election district, is guilty of a misdemeanor.

Procuring illegal votes.

Sec. 69. Every person who procures or counsels another to give or offer his vote at any election, knowing that such person is not qualified to vote at the place where such vote is given or offered, is guilty of a misdemeanor.

Importing voters who are unqualified.

Sec. 70. Every person who procures or counsels another to enter any town, ward, or election district for the purpose of giving his vote at an election, knowing that such person is not entitled so to vote, is guilty of a misdemeanor.

Illegal voting by inhabitants of another Territory or State.

Sec. 71. Every person not a lawful and actual citizen of this territory, who not being entitled to vote within the same, votes or offers to vote at any election in this territory, is guilty of a misdemeanor.

Illegal voting by inhabitants of this Territory.

Sec. 72. Every inhabitant of this territory, who not being entitled to vote, knowingly votes or offers to vote at an election, is guilty of a misdemeanor.

Illegal voting by resident of different election district.

Sec. 73. Every person who, at any election, knowingly votes or offers to vote in any election district in which he does not reside, or in which he is not authorized by law to vote, is guilty of a misdemeanor.

Illegal voting by unpardoned convict.

Sec. 74. Every person who having been convicted of any bribery or felony, thereafter offers to vote at any election with-

out having been pardoned and restored to all the rights of a citizen, is guilty of a misdemeanor.

Sec. 75. Every person who causes his name to be registered as that of an elector, upon any registry of voters authorized by law to be kept in any town, city or election district of this territory, knowing that he is not a qualified voter within the territorial limits covered by such registry, is punishable by imprisonment in the territorial prison not less than one year.

Procuring name to be registered improperly.

Sec. 76. Every person who, within any city, town or election district in this territory in which a registry of qualified voters is by law authorized to be kept, falsely personates a registered voter, and in such personating offers to vote at any election, is punishable by imprisonment in the territorial prison not less than one year.

Personating registered voters

Sec. 77. Every person who, at the time of requesting his name to be registered as that of a qualified voter, upon any registry of voters authorized by law to be kept in any city, town, or election district of this territory, or at the time of offering his vote at any election knowingly makes any false statement or employs any false representation or false pretence or token, to procure his name to be registered or his vote to be received, is guilty of a misdemeanor.

False statements upon applying for registry.

Sec. 78. A false statement, representation or token, made or used in the presence and to the knowledge of a person requesting his name to be registered, or offering his vote, is to be deemed made by himself, if it appears that it was made or used in support of his claim to be registered or to vote, that he knew it to be false, and suffered it to pass uncontradicted.

What is deemed a false statement.

Sec. 79. Every person who willfully disturbs or breaks up any public meeting of electors and others, lawfully being held for the purpose of considering public ~~questions~~ is guilty of a misdemeanor.

Disturbance of public meetings

Sec. 80. Every person who, by threats, intimidations, or unlawful violence willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor.

Preventing public meetings.

Sec. 81. Every person who makes use of any force or violence, or of any threat to do any unlawful act, as a means of

Preventing electors from attending public meetings.

preventing an elector from attending any public meeting lawfully held for the purpose of considering any public questions, is guilty of a misdemeanor.

Preventing electors from voting.

Sec. 82. Every person who willfully, by unlawful arrest, by force and violence, or by threats or intimidations, prevents an elector from voting at an election, or employs either of such means to hinder him from voting or to cause him to vote for any person or candidate, is guilty of a misdemeanor.

Disobedience to lawful commands of judges

Sec. 83. Every person who willfully disobeys a lawful command of a judge or board of judges of any election, given in the execution of their duty as such, at an election, is guilty of a misdemeanor.

Riotous conduct or violence, which impedes elections.

Sec. 84. Every person who is guilty of any riotous conduct, or who causes any disturbance or breach of the peace, or uses any disorderly violence, or threats of violence whereby any election is impeded or hindered, or whereby the lawful proceedings of the judges or canvassers at such election, in the discharge of their duty, are interfered with, is guilty of a misdemeanor.

Summary arrest thereof.

Sec. 85. Whenever at an election any person refuses to obey the lawful command of the board of judges, or by any disorderly conduct in their presence interrupts or disturbs their proceedings, they may make an order directing the sheriff, or any constable of the county, or one or more special constables to be appointed by them, to take the person so offending into custody, and detain him until the final canvass of the votes shall be completed. But such order shall not prohibit the person taken into custody from voting at the election.

Subjection by officers.

Sec. 86. The fact that any person, offending against the provisions of the preceding section, was taken into custody and detained, as therein authorized, forms no defense to a prosecution for the offense committed, under any provisions of this code.

Such arrest no bar to a subsequent prosecution.

Sec. 87. Every person who willfully breaks or destroys, on the day of any election, or before the canvass is completed, any ballot-box used or intended to be used at such election, or defaces, injures, destroys or conceals, any ballot which has been deposited in any ballot-box at an election, and has not already

been counted, or canvassed, or any poll list used or intended to be used at such election, is guilty of a felony. Destroying ballots and ballot boxes.

Sec. 88. Every clerk of the poll at any election, who willfully keeps a false poll list, or knowingly inserts in his poll list any false statement, is guilty of a misdemeanor. Keeping false poll lists.

Sec. 89. Every judge of an election who willfully excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election, or who willfully receives a vote from any person who has been duly challenged, in relation to his right to vote at such election, without exacting from such person such oath or other proof of qualification as may be required by law, or who willfully omits to challenge any person offering to vote whom he knows or suspects not to be duly entitled to vote, and who has not been challenged by any other person, is guilty of a misdemeanor. Misconduct of judges.

Sec. 90. Every judge of any election, member of any board of canvassers, messenger or other officer authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election, who willfully makes any false canvass of such votes, or makes, signs, publishes or delivers any false return of such election, knowing the same to be false, or willfully defaces, destroys or conceals any statement or certificate entrusted to his care, is guilty of a misdemeanor. Falsely canvassing votes, or certifying result of election.

Sec. 91. The word "election," as used in this chapter, designates only elections had within this territory for the purpose of enabling electors, as such, to choose some public officer or officers under the laws of this territory, or of the United States. Election defined

Sec. 92. Irregularities or defects in the mode of noticing, convening, holding or conducting an election authorized by law, form no defense to a prosecution for a violation of the provisions of this chapter. Irregularities in election no defense for violation of this chapter.

Sec. 93. But nothing in this chapter shall be construed to authorize the punishment of any persons who, by authority of law, may interfere to prevent or regulate an election which has been unlawfully noticed or convened, or is being, or is about to be, unlawfully conducted. Rights.

Sec. 94. Every act which by the provisions of this chapter

Submission of questions to the people. is made criminal when committed with reference to the election of a candidate, is equally criminal when committed with reference to the determination of a question submitted to electors to be decided by votes cast at an election.

Good faith in offering to vote a defense for alleged illegal voting. Sec. 95. Upon any prosecution for procuring, offering or casting an illegal vote, the accused may give in evidence any facts tending to show that he honestly believed upon good reason that the vote complained of was a lawful one ; and the jury may take such facts into consideration in determining whether the acts complained of, were knowingly done or not.

TITLE VI.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE TERRITORY.

Section 96. Acting in a public office without having qualified.

97. Acts of officer *de facto*, not affected.

98. Giving or offering bribes.

99. Asking or receiving bribes.

100. Attempting to prevent officers from performing duty.

101. Resisting officers.

102. Taking excessive fees.

103. Taking reward for omitting or delaying official acts.

104. Taking fees for services not rendered.

105. Taking unlawful reward for services in extradition of fugitives.

106. Buying appointments to office.

107. Selling appointments to office.

108. Taking rewards for deputation.

109. Unlawful grant or deputation void, except as to official acts done before conviction.

110. Exercising functions of office, after successor has qualified.

111. Refusal to surrender books, &c., of office to successor upon demand.

112. Administrative officers.

Acting in a public office without having qualified.

Sec. 96. Every person who executes any of the functions of

a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his right to the office.

Sec. 97. The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

Acts of officer de facto, not affected.

Sec. 98. Every person who gives or offers any bribe to any executive officer of this Territory with intent to influence him in respect to any act, decision, vote, opinion, or other proceedings of such officer, is punishable by imprisonment in the Territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

Giving or offering bribes.

Sec. 99. Every executive officer or person elected or appointed to an executive office who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this Territory.

Asking or receiving bribes.

Sec. 100. Every person who attempts, by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor.

Attempting to prevent officers from performing duty.

Sec. 101. Every person who knowingly resists, by the use of force or violence, any executive officer, in the performance of his duty is guilty of a misdemeanor.

Resisting officers.

Sec. 102. Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Taking excessive fees.

Sec. 103. Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolu-

Taking reward for emitting or delaying official acts.

ment gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

Taking fees for service not rendered.

Sec. 104. Every executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

Taking unlawful reward for services in extradition of fugitives

Sec. 105. Every officer of this Territory who asks or receives any compensation, fee or reward of any kind for any service rendered or expense incurred in procuring from the Governor of this Territory a demand upon the executive authority of a state or territory of the United States, or of a foreign government, for the surrender of a fugitive from justice; or of any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this Territory or for detaining him therein, except upon an employment by the Governor of this Territory, and upon an account duly audited and paid out of the Territorial treasury, is guilty of a misdemeanor.

Buying appointments to office.

Sec. 106. Every person who gives or agrees, or offers to give any gratuity or reward in consideration that himself or any other person shall be appointed to any public office, or shall be permitted to, or to exercise, perform or discharge the prerogatives or duties of any office, is punishable by imprisonment in the county jail not less than six months nor more than two years or by a fine of not less than two hundred dollars or more than one thousand dollars, or both.

Selling appointments to office

Sec. 107. Every person who, directly or indirectly, asks or receives or promises to receive any gratuity or reward or any promise of a gratuity or reward, for appointing another person or procuring for another person an appointment to any public office or any clerkship, deputation or other subordinate position in any public office, is punishable by imprisonment in the county jail not less than six months nor more than two years, or by a fine not less than two hundred dollars nor more than one thousand dollars, or both.

Taking rewards for deputation.

Sec. 108. Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise, perform or discharge any of the

prerogatives or duties of his office, is punishable by imprisonment in the county jail not than six months nor less more than two years, and by a fine of not less than two hundred dollars or more than one thousand dollars ; and in addition thereto he forfeits his office.

Sec. 109. Every grant or deputation made contrary to the provisions of the two preceding sections is void ; but official acts done before a conviction for any offense prohibited by those sections, shall not be deemed invalid, in consequence of the invalidity of such grant or deputation.

Unlawful grant or deputation void, except as to official acts done before conviction.

Sec. 110. Every person who, having been an executive officer, willfully exercises any of the functions of his office after his term of office has expired and a successor has been duly elected or appointed, and has qualified in his place, and he has notice thereof, is guilty of a misdemeanor.

Exercising functions of office, after successor has qualified.

Sec. 111. Every person who, having been an executive officer of this Territory, wrongfully refuses to surrender the official seal or any of the books and papers appertaining to his office, to his successor who has been duly elected or appointed, and has duly qualified, and has demanded the surrender of the books and papers of such office, is guilty of a misdemeanor.

Refusal to surrender books, &c., of office to successor upon demand.

Sec. 112. The various provisions of this chapter which relate to executive officers apply in relation to administrative officers in the same manner as if administrative and executive officers were both mentioned together.

Administrative officers

TITLE VII.

OF CRIMES AGAINST THE LEGISLATIVE POWER.

- Section 113. Preventing the meeting or organization of either branch of the legislature.
114. Disturbing the legislature while in session.
115. Compelling adjournment.
116. Intimidating a member of the legislature.
117. Compelling either house to perform or omit any official act.
118. Altering draft of bill.
119. Altering engrossed copy.
120. Giving bribes to members of the legislature.

Section 121. Receiving bribes by members of legislature.

122. Witnesses refusing to attend before the legislature or legislative committees.

123. Refusing to testify.

124. Members of the legislature liable to forfeiture of office.

Preventing the meeting of legislature.

Sec. 113. Every person who willfully and by force or fraud prevents the legislature of this Territory or either of the houses composing it, or any of the members thereof, from meeting or organizing, is punishable by imprisonment in the Territorial prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or both.

Disturbing the Legislature while in session.

Sec. 114. Every person who willfully disturbs the legislature of this Territory or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

Compelling adjournment.

Sec. 115. Every person who willfully and by force or fraud compels or attempts to compel the legislature of this Territory, or either of the houses composing it, to adjourn or disperse, is punishable by imprisonment in the Territorial prison not less than five nor more than ten years, or by fine of not less than five hundred dollars, nor more than two thousand dollars, or both.

Intimidating a member of the legislature.

Sec. 116. Every person who willfully, by intimidation or otherwise, prevents any member of the legislature of this Territory, from attending any session of the house of which he is a member, or of any committee thereof, or from giving his vote upon any question which may come before such house, or from performing any other official act, is guilty of a misdemeanor.

Compelling either house to perform or omit any official act.

Sec. 117. Every person who willfully compels or attempts to compel either of the houses composing the legislature of this Territory to pass, amend or reject any bill, or resolution, or to grant or refuse any petition, or to perform or omit to perform any other official act, is punishable by imprisonment in the Territorial prison not less than five nor more than ten years, or by

a fine of not less than five hundred dollars nor more than two thousand dollars, or both.

Sec. 118 Every person who fraudulently alters the draft of ^{Altering draft of bill.} any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house is guilty of a felony.

Sec. 119. Every person who fraudulently alters the engross- ^{Altering en- grossed copy.} ed copy or enrollment of any bill which has been passed by the legislature of this Territory, with intent to procure it to be approved by the governor or certified by the secretary of the Territory, or printed or published by the printer of the Statutes in language different from that in which it was passed by the legislature, is guilty of felony.

Sec. 120. Every person who gives or offers to give a bribe ^{Giving bribes to members of the legislature.} to any member of the legislature, or attempt directly, or indirectly, by menace, deceit, suppression of truth or any other corrupt means to influence a member in giving or withholding his vote, or in not attending the house of which he is a member, or any committee thereof, is punishable by imprisonment in the territorial prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

Sec. 121. Every member of either of the houses composing the legislature of this Territory, who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives or offers or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in the Territorial prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

Sec. 122. Every person who, being duly summoned to at- ^{Witnesses re- fusing to attend before the legis- lature or legis- lative commit- tees.} tend as a witness before either house of the legislature or any committee thereof, authorized to summon witnesses, refuses

or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor.

Refusing to testify.

Sec. 123. Every person who being present before either house of the legislature or any committee thereof authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

Members of the legislature liable to forfeiture of office.

Sec. 124. The conviction of a member of the legislature of either of the crimes defined in this chapter, involves as a consequence, in addition to the punishment prescribed by this Code, a forfeiture of his office; and disqualifies him from ever afterwards holding any office under this Territory.

TITLE VIII.

OF CRIMES AGAINST PUBLIC JUSTICE.

CHAPTER I.

BRIBERY AND CORRUPTION.

- Section 125. Giving bribes to judges, jurors, referees, &c.
 126. Receiving bribes by judicial officers.
 127. Receiving bribes by jurors, referees, &c.
 128. Misconduct by jurors, arbitrators and referees.
 129. Judicial officers, jurors, referees, &c., accepting gifts from parties.
 130. Gifts defined.
 131. Improper attempts to influence jurors, referees or arbitrators.
 132. Drawing jurors fraudulently.
 133. Misconduct by officers having charge of juries.

Giving bribes to judges, jurors, referees, &c.

Sec. 125. Every person who gives or offers to give a bribe, to any judicial officer, juror, referee, arbitrator, umpire or assessor, or to any person who may be authorized by law to hear

or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

Sec. 126. Every judicial officer of this territory who asks, receives, or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision shall be thereby influenced, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars or both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this territory.

Receiving
bribes by judicial
officers.

Sec. 127. Every juror, referee, arbitrator, umpire or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision, upon any matter or question which is or may be brought before him for decision shall be thereby influenced, is guilty of felony.

Receiving
bribes by jurors,
referees, &c.

Sec. 128. Every juror, or person drawn or summoned as a juror, or chosen arbitrator, or umpire, or appointed referee, who either:

Misconduct by
jurors, arbitra-
tors and refer-
ees.

1. Makes any promise or agreement to give a verdict for or against any party; or,

2. Willfully permits any communication to be made to him, or receives any book, paper, instrument, or information relating to any cause pending before him except according to the regular course of proceeding upon the trial of such cause,

Is guilty of a misdemeanor.

Sec. 129. Every judicial officer, juror, referee, arbitrator or umpire, who accepts any gift from any person, knowing him to be a party in interest or the attorney or counsel of any party in interest to any action or proceeding then pending or about to be brought before him, is guilty of a misdemeanor.

Judicial officers,
jurors, referees
&c., accepting
gifts from parties

Sec. 130. The word "gift" in the foregoing section shall

"Gifts" de-
fined.

not be taken to include property received by inheritance, by will or by gift in view of death.

Improper attempts to influence jurors, arbitrators, or referees.

Sec. 131. Every person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen an arbitrator or appointed a referee, in respect to his verdict, or decision of any cause or matter pending or about to be brought before him, either ;

1. By means of any communication oral or written had with him, except in the regular course of proceedings upon the trial of the cause ;

2. By means of any book, paper, or instrument exhibited otherwise than in the regular course of proceedings upon the trial of cause ;

3. By means of any threat or intimidation ;

4. By means of any assurance or promise of any pecuniary or other advantage ; or,

5. By publishing any statement, argument, or observation relating to the cause,

Is guilty of a misdemeanor.

Drawing Jurors fraudulently.

Sec. 132. Every person authorized by law to assist at the drawing of any jurors to attend any court, who willfully puts or consents to the putting upon any list of jurors as having been drawn, any name which shall not have been drawn for that purpose in the manner prescribed by law ; or, who omits to place on such list any name that shall have been drawn in the manner prescribed by law ; or, who signs or certifies any list of jurors as having been drawn which was not drawn according to law ; or, who is guilty of any other unfair, partial, or improper conduct in the drawing of any such list of jurors, is guilty of a misdemeanor.

Misconduct by officers having charge of juries.

Sec. 133. Every officer to whose charge any juror is committed by any court or magistrate, who negligently or willfully permits them, or any one of them, either :

1. To receive any communication from any person ;

2. To make any communication to any person ;

3. To obtain or receive any book or paper, or refreshment ;
or,

4. To leave the jury room without the leave of such court, or magistrate first obtained,
Is guilty of a misdemeanor.

CHAPTER II.

OF RESCUES.

Section 134. Retaking prisoners.

135. Retaking goods from custody of officer.

Sec. 134. Every person who by force or fraud rescues or attempts to rescue, or aids another person in rescuing or in ^{Rescuing prisoners.} attempting to rescue any prisoner from any officer or other person having him in lawful custody, is punishable as follows :

1. If such prisoner was in custody upon a charge of conviction of felony, by imprisonment in the territorial prison for not less than ten years ;

2. If such prisoner was in custody otherwise than upon a charge or conviction of felony, by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Sec. 135. Every person who willfully injures or destroys, ^{Retaking goods from custody of officer.} takes or attempts to take, or assists any other person in taking or attempting to take from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

CHAPTER III.

OF ESCAPES, AND AIDING THEREIN.

Section 136. Re-arrest of escaped prisoners.

137. Escape from territorial prison.

138. Attempt to escape from territorial prison.

139. Escape from other than territorial prison.

140. Attempt to escape from other than territorial prison.

141. Assisting prisoner to escape from prison.

Section 142. Carrying into prison things useful to aid an escape.

143. Concealing escaped prisoners.

144. Assisting prisoners to escape from officer.

145. "Prison" defined.

146. "Prisoner" defined.

Re-arrest of escaped prisoners Sec. 136. Every prisoner confined upon conviction for a criminal offense, who escapes from prison, may be pursued, retaken and imprisoned again notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he is retaken and he shall remain so imprisoned, until tried for such escape, or discharged on a failure to prosecute therefor.

Escape from territorial prison. Sec. 137. Every prisoner confined in the territorial prison for a term less than for life, who by force or fraud escapes therefrom, is punishable by imprisonment in such prison for a term not exceeding five years, to commence from the expiration of the original term of his imprisonment.

Attempt to escape from territorial prison. Sec. 138. Every prisoner confined in the territorial prison for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of felony.

Escape from other than territorial prison. Sec. 139. Every prisoner confined in any other prison than the territorial prison, who by force or fraud escapes therefrom, is punishable by imprisonment in the territorial prison not exceeding two years, or in a county jail not exceeding one year, to commence from the expiration of the original term of his imprisonment.

Attempt to escape from other than territorial prison. Sec. 140. Every prisoner confined in any other prison than the territorial prison, who attempts by force or fraud, although unsuccessfully, to escape therefrom, is punishable by imprisonment in a county jail not exceeding one year, to commence from the expiration of the original term of his imprisonment.

Assisting prisoner to escape from prison. Sec. 141. Every person who willfully, by any means whatever, assists any prisoner confined in any prison to escape therefrom, is punishable as follows :

1. If such prisoner was confined upon a charge or conviction of felony, by imprisonment in the territorial prison not exceeding ten years ;

2. If such prisoner was confined otherwise than upon a charge or conviction of felony, by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both.

Sec. 142. Every person who carries or sends into any prison, anything useful to aid any prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as follows:

Carrying into prison things useful to aid in an escape.

1. If such prisoner was confined upon any charge or conviction of felony, by imprisonment in the territorial prison not exceeding ten years;

2. If such prisoner was confined otherwise than upon a charge or conviction of felony, by imprisonment in a county jail not exceeding one year, or by a fine of five hundred dollars, or both.

Sec. 143. Every person who willfully and knowingly conceals any prisoner, who, having been confined in prison upon a charge or conviction of misdemeanor, has escaped therefrom, is guilty of misdemeanor.

Concealing escaped prisoners

Sec. 144. Every person who willfully assists any prisoner in escaping or attempting to escape from the custody of any officer or person having the lawful charge of such prisoner under any process of law or under any lawful arrest, is guilty of a misdemeanor.

Assisting prisoners to escape from officer.

Sec. 145. The term "prison" in this chapter includes territorial prisons, county jails and every place designated by law for the keeping of persons held in custody under process of law or under any lawful arrest.

"Prison" defined.

Sec. 146. The term "prisoner" in this chapter includes every person held in custody under process of law issued from a court of competent jurisdiction whether civil or criminal, or under any lawful arrest.

"Prisoner" defined.

CHAPTER IV.

FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

Section 147. Larceny, destruction, &c., of records by officers having them in custody.

Section 148. Larceny, destruction, &c., of records by other persons.

149. Offering false or forged instruments to be filed or recorded.

Larceny destruction, &c., of records by officers having them in custody

Sec. 147. Every clerk, register or other officer having the custody of any record, map or book, or of any paper or proceeding of any court of justice filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying or fraudulently removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the territorial prison not exceeding five years, and in addition thereto forfeits his office.

Larceny, destruction, &c., of records by other persons.

Sec. 148. Every person not an officer such as is mentioned in the last section, who is guilty of any of the acts specified in that section is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Offering forged or false instruments to be filed or recorded.

Sec. 149. Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this Territory, which instrument, if genuine, might be filed or registered or recorded under any law of this Territory or of the United States is guilty of felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

Section 150. Perjury defined.

151. "Oath" defined.

152. Oath of office.

153. Irregularities in the mode of administering oaths.

154. Incompetency of witness no defense for perjury.

155. Witness' knowledge of materiality of his testimony not necessary.

156. Making of deposition, &c., when deemed complete.

Section 157. Statement of that which one does not know to be true.

158. Punishment of perjury.

159. Summary committal of witnesses who have committed perjury.

160. Witnesses necessary to prove the perjury, may be bound over to appear.

161. Documents necessary to prove such perjury may be detained.

162. Subornation of perjury defined.

163. Punishment of subornation.

164. Convict of perjury declared incompetent as a witness.

Sec. 150. Every person who, having taken an oath that he will testify, declare, depose or certify truly before any competent tribunal, officer or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states any material matter which he knows to be false, is guilty of perjury. Perjury defined.

Sec. 151. The term "oath" as used in the last section, includes an affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law. Oath defined.

Sec. 152. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the previous sections. Oath of office.

Sec. 153. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner. Irregularities in the mode of administering oaths.

Sec. 154. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was required to give such testimony or make such deposition or certificate. Incompetency of witness no defense for perjury.

Sec. 155. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in which it was made. It is sufficient that it was material, and might have been used to affect such proceeding. Witness' knowledge of materiality of his testimony not necessary.

- Making of depositions, &c.** **Sec. 156.** The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person with intent that it be uttered or published as true.
- False statement** **Sec. 157.** An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.
- Punishment of perjury.** **Sec. 158.** Perjury is punishable by imprisonment in the territorial prison as follows :
1. When committed on the trial of an indictment for felony, by imprisonment not less than ten years;
 2. When committed on any other trial or proceeding in a court of justice, by imprisonment for not more than ten years.
 3. In all other cases by imprisonment not more than five years.
- Summary committal of witnesses.** **Sec. 159.** Whenever it appears probable to any court of record that any person who has testified in any action or proceeding in such court has committed perjury, such court may immediately commit such person by an order or process for that purpose to prison, or take a recognizance with sureties for his appearing and answering to an indictment for perjury.
- Witnesses may be bound over to appear.** **Sec. 160.** Such court shall thereupon bind over the witnesses to establish such perjury to appear at the proper court to testify before grand jury, and upon the trial in case an indictment is found for such perjury ; and shall also cause immediate notice of such commitment or recognizance, with the names of the witnesses so bound over, to be given to the district attorney of the county.
- Document may be retained.** **Sec. 161.** If, upon the hearing of such action or proceeding in which such perjury has probably been committed, any papers or documents produced by either party shall be deemed necessary to be used on the prosecution for such perjury, the court may by order detain such papers or documents from the party producing them, and direct them to be delivered to the district attorney.
- Subornation of perjury defined.** **Sec. 162.** Every person who willfully procures another person to commit any perjury is guilty of subornation of perjury.

Sec. 163. Every person guilty of subornation of perjury is punishable in the same manner as he would be if personally guilty of the perjury so procured. Punishment of subornation.

Sec. 164. No person who has been convicted of perjury, or of subornation of perjury, shall thereafter be received as a witness in any action, proceeding or matter whatever upon his own behalf; nor in any action or proceeding between adverse parties, against any person who shall object thereto, until the judgment against him has been reversed. But where such person has been actually received as a witness contrary to the provisions of this section, his incompetency shall not prejudice the rights, innocently acquired, of any other person claiming under the proceeding in which such person was so received. Convict of perjury declared incompetent as a witness.

CHAPTER VI.

FALSIFYING EVIDENCE.

Section 165. Offering false evidence.

166. Deceiving a witness.

167. Preparing false evidence.

168. Destroying evidence.

169. Preventing or dissuading witnesses from attending.

170. Bribing witnesses.

Sec. 165. Every person who, upon any trial, proceeding, inquiry or investigation whatever, authorized by law, offers in evidence, as genuine, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged, or fraudulently altered, is punishable in the same manner as the forging or false alteration of such instrument is made punishable by the provisions of this Code. Offering false evidence.

Sec. 166. Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor. Deceiving a witness.

Preparing false evidence. Sec. 167. Every person guilty of falsely preparing any book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced, as genuine upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of felony.

Destroying evidence. Sec. 168. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry or investigation whatever, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.

Preventing or dissuading witnesses from attending. Sec. 169. Every person who willfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending, pursuant to the command of the summons or subpoena, is guilty of a misdemeanor.

Bribing witnesses. Sec. 170. Every person who gives or offers, or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony, is guilty of a misdemeanor.

CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

- Section 171. Injury to records and embezzlement committed by ministerial officers.
172. Permitting escapes, and other unlawful acts committed by ministerial officers.
173. Officer refusing to receive prisoner into his custody.
174. Delaying to take person arrested for crime before a magistrate.
175. Making arrest, &c., without lawful authority.
176. Misconduct in executing a search warrant.
177. Refusing to aid officer in making an arrest.
178. Refusing to make an arrest.
179. Resisting execution of process, aiding escapes, &c., in county which has been proclaimed in insurrection.

- Section 180.** Obstructing public officer in the discharge of his duty.
- 181. Taking extra-judicial oaths.
 - 182. Administering extra-judicial oaths.
 - 183. Compounding crimes.
 - 184. Compounding prosecution.
 - 185. Attempting to intimidate judicial or ministerial officers, jurors, &c.
 - 186. Suppressing evidence.
 - 187. Buying lands in suit.
 - 188. Buying pretended titles.
 - 189. Mortgage of lands under adverse possession not prohibited.
 - 190. Common barratry defined.
 - 191. Declared a misdemeanor.
 - 192. What proof is required.
 - 193. Interest.
 - 194. Buying demands or suit by an attorney.
 - 195. Buying demands by a justice or constable, for suit before a justice.
 - 196. Lending money upon claims delivered for collection.
 - 197. Forfeiture of office.
 - 198. Receiving claims, in what cases allowable.
 - 199. Application of previous sections to persons prosecuting in person.
 - 200. Witness' privilege restricted.
 - 201. Criminal contempts.
 - 202. Renewing application to stay trial of an indictment, without leave.
 - 203. Grand juror acting after challenge has been allowed.
 - 204. Disclosure of depositions taken by a magistrate.
 - 205. Disclosure of depositions returned by grand jury, with presentment.
 - 206. Fraud in applying for insolvent's discharge.
 - 207. Racing near a court.
 - 208. Selling liquor in court houses, or prisons, or near election polls.
 - 209. Misconduct by attorneys.

- 210. Permitting attorney's name to be used.
- 211. In what cases lawful.
- 212. Fraudulent pretenses relative to birth of infant.
- 213. Substituting one child for another.
- 214. Importing foreign convicts.
- 215. Omission of duty by public officer.
- 216. Commission of prohibited act.
- 217. Disclosing fact of indictment having been found.
- 218. Grand juror disclosing what transpired before the grand jury.
- 219. Instituting suit in false name.
- 220. Maliciously procuring search warrant.
- 221. Unauthorized communications with convict in territorial prison.
- 222. Neglect to return names of constables.
- 223. False certificate by public officers.

Injury to records and embezzlement committed by ministerial officers.

Sec. 171. Every sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either :

1. Mutilates, destroys, conceals, erases,obliterates or falsifies any record or paper appertaining to his office ; or
2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property entrusted to him in virtue of his office.

Is guilty of felony.

Permitting escapes by same.

Sec. 172. Every sheriff, coroner, clerk of a court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either :

1. Allows any person lawfully held by him in custody to escape or go at large, except as may be permitted by law ; or,
 2. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not ; or,
 3. Commits any unlawful act tending to hinder justice,
- Is guilty of a misdemeanor.

Sec. 173. Every officer who, in violation of a duty imposed upon him by law as such officer to receive into his custody any person, as a prisoner, willfully neglects or refuses so to receive such person into his custody, is guilty of a misdemeanor.

Officer refusing to receive prisoner.

Sec. 174. Every public officer or other person having arrested any person upon any criminal charge, who willfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

Delaying to take person arrested before magistrate.

Sec. 175. Every public officer or person pretending to be a public officer, who under the pretence or color of any process or other legal authority, arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without due and legal process, is guilty of a misdemeanor.

Making arrest, &c., without lawful authority.

Sec. 176. Every peace officer, who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity is guilty of a misdemeanor.

Misconduct in executing search warrant.

Sec. 177. Every person, who, after having been lawfully commanded to aid any officer in arresting any person, or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer is guilty of a misdemeanor.

Refusing to aid officer.

Sec. 178. Every person, who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a misdemeanor.

Refusing to make an arrest.

Sec. 179. Every person, who, after proclamation issued by the governor declaring any county to be in a state of insurrection, resists or aids in resisting the execution of process in the county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting a force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the territorial prison for not less than two years.

Resisting execution of process, &c.

Sec. 180. Every person who willfully delays or obstructs any public officer in the discharge or attempt to discharge any duty of his office, is guilty of a misdemeanor.

Obstructing public officer in discharge of his duty.

Sec. 181. Every person who takes an oath before an officer

Taking extra-judicial oaths.

or person authorized to administer judicial oaths, except when such oath is required or authorized by law, or is required by the provisions of some contract as the basis of or in proof of a claim, or when the same has been agreed to be received by some person as proof of any fact, in the performance of any contract, obligation or duty, instead of other evidence, is guilty of a misdemeanor.

Administering same.

Sec. 182. Every officer or other person who administers an oath to another person, or who makes and delivers any certificate that another person has taken an oath, except when such oath is required by the provisions of some contract as a basis of or proof of a claim, or when the same has been agreed to be received by some person as proof of any fact in the performance of any contract, obligation or duty, instead of other evidence, is guilty of a misdemeanor.

Compounding prosecutions.

Sec. 183. Every person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime, or violation of statute, or to abstain from any prosecution therefor, or to withhold any evidence thereof, is punishable as follows:

1. By imprisonment in the territorial prison, not exceeding five years, or in a county jail, not exceeding one year, where the crime compounded is one punishable either by death or by imprisonment in the territorial prison for life;

2. By imprisonment in the Territorial prison, not exceeding three years, or in a county jail, not exceeding six months, where the crime compounded was punishable by imprisonment in the Territorial prison for any other term than for life;

3. By imprisonment in a county jail, not exceeding one year, or by fine, not exceeding two hundred and fifty dollars, or by both such fine and imprisonment, where the crime or violation of statute compounded is a crime punishable by imprisonment in a county jail or by fine, or is a misdemeanor, or violation of statute for which a pecuniary or other penalty or forfeiture is prescribed.

Sec. 184. Every person who takes any money or property ^{Compounding prosecutions.} of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, discontinue or delay any prosecution then pending for any crime or violation of statute, or to withhold any evidence, in aid thereof, is guilty of a misdemeanor.

Sec 185. Every person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial or ministerial officer, or to any juror, referee, arbitrator, umpire or assessor, or other person authorized by law to hear or determine any controversy, with intent to induce him either to do any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, is guilty of a misdemeanor. ^{Attempting to intimidate officers, jurors, &c.}

Sec. 186. Every person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent ^{Suppressing evidence.} to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other matter or thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent prevent any person having in his possession any book, paper, or other matter or thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor.

Sec. 187. Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands, or tenements are the subject of controversy, by suit in any court, knowing the pendency of such suit and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor. ^{Buying lands in suit.}

Sec. 188. Every person who buys or sells, or in any manner procures, or makes or takes any promise or covenant to convey any pretended right or title to any lands or tenements, unless the grantor thereof or the person making such promise or covenant has been in possession or he and those by whom he claims have been in possession of the same or of the rever- ^{Buying pretended titles.}

sion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such grant, conveyance, sale, promise or covenant made, is guilty of a misdemeanor.

Mortgage of lands, when not prohibited.

Sec. 189. The two last sections shall not be construed to prevent any person having a just title to lands, upon which there shall be an adverse possession, from executing a mortgage upon such lands.

Common barratry defined.

Sec. 190. Common barratry is the practice of exciting groundless judicial proceedings.

Declared a misdemeanor.

Sec. 191. Common barratry is a misdemeanor.

What proof is required.

Sec. 192. No person can be convicted of common barratry, except upon proof that he has excited suits or proceedings at law, in at least three instances, and with a corrupt or malicious intent to vex and annoy.

Interest.

Sec. 193. Upon prosecution for common barratry, the fact that the accused was himself a party in interest or upon the record to any proceedings at law, complained of, is not a defense.

Buying demands or suit by an attorney.

Sec. 194. Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon is guilty of a misdemeanor.

Buying demands by justice or constable.

Sec. 195. Every justice of the peace and every constable who, directly or indirectly, buys or is interested in buying any evidence of debt or thing in action for the purpose of commencing any suit thereon before a justice, is guilty of a misdemeanor.

Lending money upon claims delivered for collection.

Sec. 196. Every attorney, justice of the peace or constable, who, directly or indirectly, lends or advances any money or property, or agrees for or procures any loan or advance, to any person as a consideration for or inducement towards committing any evidence of debt or thing in action to such attorney, justice, constable, or any other person, for collection, is guilty of a misdemeanor.

Forfeiture of office.

Sec. 197. Every person convicted of a violation of either of the three preceding sections, in addition to the punishment, by

fine and imprisonment, prescribed therefor by this Code, forfeits his office.

Sec. 198. Nothing in the four preceding sections shall be construed to prohibit the receiving in payment of any evidence of debt or thing in action for any estate, real or personal, or for any services of any attorney actually rendered, or for a debt antecedently contracted; or the buying or receiving any evidence of debt or thing in action for the purpose of remittance, and without any intent to violate the preceding section.

Receiving claims in what cases allowable.

Sec. 199. The provisions of sections 194, 196, and 198, relative to the buying of claims by an attorney, with intent to prosecute them, or to the lending or advancing of money by an attorney in consideration of a claim being delivered for collection, shall apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting a suit or demand in person.

Application of previous sections to persons prosecuting in person.

Sec. 200. No person shall be excused from testifying in any civil action, to any facts showing that an evidence of debt or thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon any criminal prosecution.

Witnesses' privilege restricted.

Sec. 201. Every person guilty of any contempt of court of either of the following kinds, is guilty of a misdemeanor.

Criminal contempts.

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority;

2. Behavior of the like character, committed in the presence of any referee or referees, while actually sitting for the trial of a cause, or upon any inquest or other proceeding authorized by law;

3. Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court;

4. Willful disobedience of any process or order lawfully issued by any court;

5. Resistance willfully offered by any person to the lawful order or process of any court ;

6. The contumacious and unlawful refusal of any person to be sworn as a witness ; or, when so sworn, the like refusal to answer any material question ;

7. The publication of a false or grossly inaccurate report of the proceedings of any court. But no person can be punished, as for a contempt, in publishing a true, full, and fair report of any trial, argument, decision, or proceeding had in court ;

Renewing appli-
cation to stay
trial of an in-
dictment, with-
out leave.

Sec. 202. Every attorney or counselor-at-law who, knowing that an application has been made for an order staying the trial of an indictment to a judge, authorized to grant the same, and has been denied, without leave reserved to renew it, makes an application to another judge to stay the same trial, is guilty of a misdemeanor.

Grand juror act-
ing after chal-
lenge has been
allowed.

Sec. 203. Every grand juror who, with knowledge that a challenge, interposed against him by a defendant, has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

Disclosure of
depositions.

Sec. 204. Every magistrate or clerk of any magistrate who willfully permits any deposition taken on an information or examination of a defendant before such magistrate, and remaining in the custody of such magistrate or clerk, to be inspected by any person, except a judge of a court having jurisdiction of the offense, the attorney general, the district attorney of the county and his assistants, and the defendant and his counsel, is guilty of a misdemeanor.

Disclosure of
depositions re-
turned by grand
jury.

Sec. 205. Every clerk of any court who willfully permits any deposition returned by any grand jury with a presentment made by them, and filed with such clerk, to be inspected by any person, except the court, the deputies or assistants of such clerk and the district attorney and his assistants, until after the arrest of the defendant, is guilty of a misdemeanor.

Fraud in apply-
ing for insol-
vent's discharge

Sec. 206. Every person who, having been called upon, by the lawful order of any court, to make a true exhibit of his real and personal effects, either ;

1. Willfully conceals any of his estate or effects, or any books or writing relative thereto; or

2. Willfully omits to disclose to the court any debts or demands which he has collected, or any transfer of his property which he had made after being ordered to make an exhibit thereof, is guilty of a misdemeanor.

Sec. 207. Every person concerned in any racing, running, ^{Racing near a court.} or other trial of speed between any horses or other animals, within one half mile of the place where any court is actually sitting, is guilty of a misdemeanor.

Sec. 208. Every person who sells any spirituous or intoxicating liquor within, or brings with intent to sell, or offer or expose for sale therein, any such liquor into, either : ^{Selling liquor in court houses, &c.}

1. Any building established as a court house for the holding of courts of record while any session of such court is being hold therein, except in such part of such building not appropriated to the use of courts or of juries attending them, in which such sale has been authorized by a resolution of the board of county commissioners or the county ; or,

2. Any building established as a jail or prison ; or

3. Any building or shed, outhouse, porch, yard or curtilage appertaining to any building which, or any part of which, is at the time occupied or used for holding the polls at an election of any public officer of this territory, or for canvassing votes cast at such election ;

Is guilty of a misdemeanor.

Sec. 209. Every attorney who, whether as attorney or as ^{Misconduct by attorneys.} counselor, either :

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain ; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by this Code, he forfeits to the party injured treble damages, to be recovered in a civil action.

Permitting attorney's name to be used.

Sec. 210. If any attorney knowingly permits any person, not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by the next section, such attorney, and every person who shall so use his name, is guilty of a misdemeanor.

In what cases lawful.

Sec. 211. Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers or municipal corporation, on behalf of another party, the attorney-general, or district attorney, or attorney of such public officer or board or corporation may permit any proceeding therein to be taken in his name by an attorney to be chosen by the party in interest.

Fraudulent pretenses relative to birth of child

Sec. 212. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the territorial prison not exceeding ten years.

Substituting one child for another.

Sec. 213. Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the territorial prison not exceeding seven years.

Importing convicts.

Sec. 214. Every owner, master or commander of any vessel arriving from a port without this Territory, who knowingly lands or permits to land at any port, city or place within this territory, any passenger or hand who is a foreign convict of any crime which, if committed in this territory would be punishable therein, without giving notice thereof to the mayor of such city, or other principal municipal officer of such port or place, is guilty of a misdemeanor.

Omission of duty by public officer.

Sec. 215. Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public

trust or employment, every willful omission to perform such duty where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Sec. 216. Where the performance of an act is prohibited by Commission of prohibited act. any statute, and no penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor.

Sec. 217. Every grand juror, district attorney, clerk, judge, Disclosing fact of indictment. or other officer, who, excepting by issuing or in executing a warrant to arrest the defendant, willfully discloses the fact of a presentment or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

Sec. 218. Every grand juror who, except when required by Grand juror disclosing what transpired before the grand jury. a court willfully discloses any evidence adduced before the grand jury or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them is guilty of a misdemeanor.

Sec. 219. Every person who maliciously institutes or prosecutes any action or legal proceeding, or makes or procures any arrest, in the name of a person who does not exist or has not consented that it be instituted or made, is guilty of a misdemeanor. Instituting suit in a false name.

Sec. 220. Every person who maliciously, and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor. Maliciously procuring search warrant.

Sec. 221. Every person who, not being authorized by law, or by a written permission from an inspector, or by the consent of the warden, communicates with any convict in the Territorial prison, or brings into or conveys out of the Territorial prison any letter or printing to or from any convict, is guilty of a misdemeanor. Unauthorized communications with convict.

Sec. 222. Every register of deeds who willfully refuses or neglects to canvass the election returns of his county, or neglects to make proper abstracts thereof, and forward the same to the proper officer, as is or may hereafter be provided by law, or fails to issue certificates of election to such persons lawfully entitled thereto, is punishable by fine not exceeding one hundred dollars for each refusal or neglect. Neglect to return name of constable.

False certifi-
cate.

Sec. 223. Every public officer who being authorized by law to make or give any certificate or other writing, knowingly makes and delivers as true any such certificate or writing containing any statement which he knows to be false, is guilty of a misdemeanor.

CHAPTER VIII.

CONSPIRACY.

Section 224. Criminal conspiracies defined.

225. Conspiracies against the peace of the territory

226. Overt act, when necessary

Criminal con-
spiracies de-
fined.

Sec. 224. If two or more persons conspire, either :

1. To commit any crime ; or,
 2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime ; or,
 3. Falsely to move or maintain any suit, action or proceeding ; or
 4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat or to obtaining money or property by false pretenses ; or,
 5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws,
- They are guilty of a misdemeanor.

Conspiracies
against the
peace of the
Territory.

Sec. 225. If two or more persons, being out of this Territory, conspire to commit any act against the peace of this Territory, the commission or attempted commission of which, within this Territory, would be treason against the Territory, they are punishable by imprisonment in the Territorial prison not exceeding ten years.

Overt act, when
necessary.

Sec. 226. No agreement except to commit a felony upon the person of another, or to commit arson or burglary amounts to a conspiracy, unless some act beside such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

TITLE IX.

OF CRIMES AGAINST THE PERSON.

Chapter I. Suicide.

- II. Homicide.
- III. Maiming.
- IV. Kidnapping
- V. Attempts to kill.
- VI. Robbery.
- VII. Assaults with intent to commit felony other than assaults with intent to kill.
- VIII. Duels and challenges.
- IX. Assault and battery.
- X. Libel.

CHAPTER I.

SUICIDE.

- Section 227. Suicide defined.
228. No forfeiture imposed for suicide.
229. Attempting suicide.
230. Aiding suicide.
231. Furnishing weapon or drug to commit suicide.
232. Aiding attempt at suicide.
233. Mental incapacity of person aided, no defense.
234. Punishment of aiding suicide.
235. Punishment of attempting suicide or aiding an attempt.

Sec. 227. Suicide is the intentional taking of one's own life.

Sec. 228. Although suicide is deemed a grave public wrong, yet from the impossibility of reaching the successful perpetrator, no forfeiture is imposed.

Sec. 229. But every person who with intent to take his own life, commits upon himself any act dangerous to human life, or which if committed upon or towards another person and fol-

Small text: Suicide defined

Small text: No forfeiture imposed for suicide.

lowed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide.

Aiding suicide. Sec. 230. Every person who willfully, in any manner, advises, encourages, abets or assists another person in taking his own life, is guilty of aiding suicide.

Furnishing weapon or drug. Sec. 231. Every person who willfully furnishes another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life, is guilty of aiding suicide, if such person thereafter employs such instrument or drug in taking his own life.

Aiding attempt at suicide Sec. 232. Every person who willfully aids another in attempting to take his own life, in any manner which by the preceding sections would have amounted to aiding suicide if the person assisted had actually taken his own life, is guilty of aiding an attempt at suicide.

Mental incapacity of person aided, no defense. Sec. 233. It is no defense to a prosecution for aiding suicide, or aiding an attempt at suicide, that the person who committed or attempted to commit the suicide was not a person deemed capable of committing crime.

Punishment of aiding suicide. Sec. 234. Every person guilty of aiding suicide is punishable by imprisonment in the Territorial prison for not less than seven years.

Punishment of attempting suicide or aiding an attempt. Sec. 235. Every person guilty of attempting suicide, or of aiding an attempt at suicide, is punishable by imprisonment in the Territorial prison not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

CHAPTER II.

HOMICIDE.

Section 236. Homicide defined.

237. Different kinds of homicide.

238. What proof of death is required.

239. Petit treason abolished.

240. Effect of proof of a domestic or confidential relation.

- Section 241. Murder defined.
242. Design to effect death when inferred.
243. Premeditation.
244. Anger or intoxication no defense.
245. Act eminently dangerous, and evincing a depraved mind.
246. Duel fought out of this Territory.
247. Punishment of murder.
248. Manslaughter in the first degree defined.
249. Killing unborn quick child by injury to person of mother.
250. By administering drugs, &c.
251. Punishment of manslaughter in the first degree.
252. Manslaughter in the second degree defined.
253. Liability of owner of mischievous animal.
254. Liability of persons navigating vessels.
255. Liability of persons in charge of steamboats.
256. Liability of persons in charge of steam engines.
257. Liability of physicians.
258. Liability of persons making or keeping gunpowder, contrary to law.
259. Punishment of manslaughter in the second degree.
260. Excusable homicide defined.
261. Justifiable homicide by public officers.
262. Justifiable homicide by other persons.

Sec. 236. Homicide is the killing of one human being by another.

Homicide defined.

Sec. 237. Homicide is either :

1. Murder ;
 2. Manslaughter ;
 3. Excusable homicide ; or,
- Justifiable homicide.

Sec. 238. No person can be convicted of murder or manslaughter, or of aiding suicide, unless the death of the person alleged to have been killed, and the fact of killing by the accused, are each established as independent facts beyond a reasonable doubt.

Different kinds of homicide.

Petit treason abolished. Sec. 239. The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife as petit treason, are abolished, and these offenses are deemed homicides, punishable in the manner prescribed by this chapter.

Effect of proof of confidential or domestic relation. Sec. 240. Whenever the grade or punishment of homicide is made to depend upon its having been committed under circumstances evincing a depraved mind or unusual cruelty, or in a cruel maner, the jury may take into consideration the fact that any domestic or confidential relation existed between the accused and the person killed, in determining the moral quality of the acts proved.

Murder defined. Sec. 241. Homicide is murder in the following cases:

1. When perpetrated without authority of law, and with a premeditated design to effect the death of the person killed, or of any other human being ;

2. When perpetrated by any act imminently dangerous to others and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual ;

3. When perpetrated without any design to effect death, by a person engaged in the commission of any felony.

Design to effect death, when inferred. Sec. 242. A design to effect death is inferred from the fact of killing, unless the circumstances raise a reasonable doubt whether such design existed.

Premeditation. Sec. 243. A design to effect death sufficient to constitute murder, may be formed instantly before committing the act by which it is carried into execution.

Anger or intoxication no defense. Sec. 244. Homicide committed with a design to effect death is not the less murder because the perpetrator was in a state of anger or voluntary intoxication at the time.

Act eminently dangerous, &c. Sec. 245. Homicide perpetrated by an act eminently dangerous to others and evincing a depraved mind, regardless of human life, is not the less murder because there was no actual intent to injure others.

Duel out of this territory. Sec. 246. Every person who, by previous appointment within this territory, fights a duel without this territory, and in so doing inflicts a wound upon his antagonist or any other person, whereof the person injured dies, and every second engaged

in such duel, is guilty of murder, and may be indicted, tried and convicted in any county of the territory.

Sec. 247. Every person convicted of murder shall suffer death for the same. Punishment of murder.

Sec. 248. Homicide is manslaughter in the first degree in the following cases : Manslaughter in the first degree defined.

1. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor ;

2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner or by means of a dangerous weapon ; unless it is committed under such circumstances as constitute excusable or justifiable homicide ;

3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

Sec. 249. The willful killing of an unborn quick child by any injury committed upon the person of the mother of such child, and not prohibited in the next following section, is manslaughter in the first degree. Killing unborn quick child.

Sec. 250. Every person who administers to any woman pregnant with a quick child, or who prescribes for such woman, or advises or procures any such woman to take any medicine, drug or substance whatever, or who uses or employs any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, is guilty in case the death of the child or of the mother is thereby produced, of manslaughter in the first degree. By administering drugs, &c.

Sec. 251. Every person guilty of manslaughter in the first degree is punishable by imprisonment in the territorial prison for not less than four years Punishment of manslaughter in first degree.

Sec. 252. Every killing of one human being by the act, procurement or culpable negligence of another, which under the provisions of this chapter is not murder, nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree. Manslaughter in second degree defined.

Sec. 253. If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it Liability of owner of mischievous animal

without ordinary care, and such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances permitted, to avoid such animal, the owner is deemed guilty of manslaughter in the second degree.

Liability of persons navigating vessels.

Sec. 254. Every person navigating any vessel for gain, who willfully or negligently receives so many passengers or such a quantity of other lading on board such vessel, that by means thereof such vessel sinks or is upset or injured, and thereby any human being is drowned or otherwise killed, is guilty of manslaughter in the second degree.

Liability of persons having charge of steamboats.

Sec. 255. Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates or allows to be created, such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any person is killed, is deemed guilty of manslaughter in the second degree.

Liability of persons in charge of steam engines.

Sec. 256. Every engineer, or other person having charge of any steam boiler, steam engine or other apparatus for generating or employing steam, employed in any manufactory, railway or other mechanical works, who willfully or from ignorance or gross neglect creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

Liabilities of physicians.

Sec. 257. Every physician who, being in a state of intoxication, without a design to effect death, administers any poison drug or medicine, or does any other act as such physician, to another person, which produces the death of such other person is guilty of manslaughter in the second degree.

Keeping gunpowder contrary to law.

Sec. 258. Every person guilty of making or keeping gunpowder or saltpetre within any city or village, in any quantity or manner such as is prohibited by law or by any ordinance of said city or village, in consequence whereof any explosion occurs

whereby any human being is killed, is guilty of manslaughter in the second degree.

Sec. 259. Every person guilty of manslaughter in the second degree is punishable by imprisonment in the territorial prison not more than four years, and not less than two years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both fine and imprisonment.

Punishment of manslaughter in second degree.

Sec. 260. Homicide is excusable in the following cases :

Excusable homicide defined.

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent ;

2. When committed by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat ; provided that no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner.

Sec. 261. Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either

Justifiable homicide by public officers.

1. In obedience to any judgment of a competent court ; or

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty ; or,

3. When necessarily committed in retaking felons who have been rescued, or who have escaped, or when necessarily committed in arresting felons fleeing from justice.

Sec. 262. Homicide is also justifiable when committed by any person in either of the following cases :

Justifiable homicide by other persons.

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person is ; or,

2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress or servant, when there is a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished ; or

3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed ; or in lawfully suppressing any riot ; or in lawfully keeping and preserving the peace.

CHAPTER III.

MAIMING.

Section 263. Maiming another person defined.

264. Maiming one's self to escape performance of a duty.

265. Maiming one's self to obtain alms.

266. What injury may constitute maiming.

267. What disfigurement may constitute maiming.

268. Designing to maim, &c.

269. Premeditated design.

270. Subsequent recovery of injured person, when a defense.

271. Punishment.

Maiming another person defined.

Sec. 263. Every person who, with premeditated design to injure another, inflicts upon his person any injury which disfigures his personal appearance, or disables any member or organ of his body, or seriously diminishes his physical vigor, is guilty of maiming.

Maiming one's self.

Sec. 264. Every person who, with design to disable himself from performing any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled, is guilty of maiming.

Maiming one's self.

Sec. 265. Every person who inflicts upon himself any injury such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, to excite sympathy, or to obtain alms, or any charitable relief, is guilty of maiming.

What injury may constitute maiming.

Sec. 266. To constitute maiming it is immaterial by what means or instrument, or in what manner, the injury was inflicted.

What disfigurement may constitute maiming.

Sec. 267. To constitute maiming by disfigurement the injury must be such as is calculated, after healing, to attract observation.

A disfigurement which can only be discovered by close inspection does not constitute maiming.

Sec. 268. A design to injure, disfigure or disable, is inferred ^{Designing to maim, &c.} from the fact of inflicting an injury which is calculated to disfigure or disable, unless the circumstances raise a reasonable doubt whether such design existed.

Sec. 269. A premeditated design to injure, disfigure or disable, ^{Premeditated design.} sufficient to constitute maiming, may be formed instantly before inflicting the wound.

Sec. 270. Where it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, ^{Subsequent recovery.} so far recovered from the wound that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming shall be had ; but the accused may be convicted of assault and battery, with or without a special intent, according to the proof.

Sec. 271. Every person guilty of maiming is punishable by ^{Punishment} imprisonment in the territorial prison not exceeding seven years, or by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

CHAPTER IV.

KIDNAPPING.

Section 272. Kidnapping defined.

273. Effect of consent of injured person.

274. Selling services of person of color.

275. Removing from this Territory persons held to service in another State or Territory.

276. Penalty imposed on judicial officers.

Sec. 272. Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, ^{Kidnaping defined.} with intent, either :

1. To cause such other person to be secretly confined or imprisoned in this territory against his will ; or

2. To cause such other person to be sent out of this territory against his will ; or

3. To cause such person to be sold as a slave, or in any way held to service against his will, is punishable by imprisonment in the territorial prison not exceeding ten years.

Effect of consent of injured person.

Sec. 273. Upon any trial for a violation of the preceding section the consent of the person kidnapped or confined there-to shall not be a defense, unless it appear satisfactorily to the jury that such person was above the age of twelve years, and that such consent was not extorted by threats or by duress.

Selling services of persons of color.

Sec. 274. Every person who, within this territory or elsewhere, sells or in any manner transfers, for any term, the services or labor of any black, mulatto, or other person of color, who has been forcibly taken or inveigled, or kidnapped from this territory is punishable by imprisonment in the territorial prison not exceeding ten years.

Removing persons from this territory held to service in another.

Sec. 275. Every person claiming that he or another is entitled to the service of a person alleged to be held to labor or or service in a state or territory of the United States who, except as authorized by law, takes or removes or willfully does any act tending towards removing from this territory any such person, is guilty of felony, punishable by imprisonment in the territorial prison not exceeding ten years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved.

Penalty.

Sec. 276. Every judge or other public officer of this territory who grants or issues any warrant, certificate or other process in any proceeding for the removal from this territory of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of positive enactment, is guilty of a misdemeanor ; and in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action.

CHAPTER V.

ATTEMPTS TO KILL.

Section 277. Administering poison.

Section 278. Shooting and assault and battery with deadly weapons.

279. Other assaults with intent to kill.

Sec. 277. Every person who with intent to kill, administers ^{Administering} or causes or procures to be administered to another any poison ^{poison.} which is actually taken by such other, but by which death is not caused, is punishable by imprisonment in the territorial prison not less than ten years.

Sec. 278. Every person who shoots or attempts to shoot at ^{Shooting and} another, with any kind of fire arms, air gun or other means what- ^{assault and bat-} ever, with intent to kill any person, or who commits any as- ^{tery.} sult and battery upon another by means of any deadly weapon, and by such other means or force as was likely to produce death with intent to kill any other person, is punishable by imprisonment in the territorial prison not exceeding ten years.

Sec. 279. Every person who is guilty of an assault with in- ^{Other assaults.} tent to kill any person, the punishment for which is not pre- scribed by the foregoing section, is punishable by imprisonment in the territorial prison for a term not exceeding five years, or in a county jail not exceeding one year, or by a fine not ex- ceeding five hundred dollars, or by both such fine and impris- onment.

CHAPTER VI.

ROBBERY.

Section 280. Robbery defined.

281. How force or fear must be employed.

282. Degree of force immaterial.

283. What fear may be an element in robbery.

284. Value of property taken immaterial.

285. Taking of property secretly, not robbery.

286. Two degrees of robbery.

287. Punishment of robbery in the first degree.

288. Punishment of robbery in the second de-
gree.

Section 289. Punishment of robbery committed by two or more persons.

- Robbery defined** **Sec. 280.** Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.
- How force or fear must be employed.** **Sec. 281.** To constitute robbery the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape it does not constitute robbery.
- Degree of force immaterial.** **Sec. 282.** When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.
- What fear may be an element in robbery.** **Sec. 283.** The fear which constitutes robbery may be either ;
1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed, or of any relative, of his, or member of his family ; or,
 2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed, at the time of the robbery.
- Value of property taken immaterial.** **Sec. 284.** When property is taken under the circumstances required to constitute robbery, the fact that the property was of trifling value does not qualify the offense.
- Taking property secretly, not robbery.** **Sec. 285.** The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge.
- Two degrees of robbery.** **Sec. 286.** Robbery when accomplished by the use of force or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner it is robbery in the second degree.
- Punishment of robbery in first degree.** **Sec. 287.** Every person guilty of robbery in the first degree is punishable by imprisonment in the territorial prison not less than ten years.
- Punishment of robbery in second degree.** **Sec. 288.** Every person guilty of robbery in the second de-

gree is punishable by imprisonment in the territorial prison not exceeding ten years .

Sec. 289. Whenever two or more persons conjointly commit a robbery, or where the whole number of persons conjointly committing a robbery, and persons present and aiding such robbery amount to two or more, each and either of such persons is punishable by imprisonment for life.

Punishment of robbery when committed by two or more persons.

CHAPTER VII.

ASSAULTS WITH INTENT TO COMMIT FELONY OTHER THAN ASSAULTS WITH INTENT TO KILL.

- Section 290. Shooting and assault with deadly weapon.
- 291. Other assaults.
- 292. Administering stupefying drugs.

Sec. 290. Every person who shoots or attempts to shoot at another with any kind of fire-arms, air-gun, or other means whatever, or commits any assault or battery upon another by means of any deadly weapon or by such other means or force as was likely to produce death, with intent to commit any felony other than an assault with intent to kill, or in resisting the execution of any legal process, is punishable by imprisonment in the territorial prison not exceeding ten years.

Shooting and assault with deadly weapons

Sec. 291. Every person who is guilty of an assault with intent to commit any felony, except an assault with intent to kill, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Other assaults.

Sec. 292. Every person guilty of administering to another any chloroform, ether, laudanum or other intoxicating, narcotic or anesthetic agent, with intent thereby to enable or assist himself or any other person to commit any felony, is guilty of felony.

Administering stupefying drug

CHAPTER VIII.

DUELS AND CHALLENGES.

Section 293. Duel defined.

294. Punishment for fighting a duel.

295. Incapacity to hold office.

296. Punishment of seconds, aids, and surgeons.

297. Punishment for challenges.

298. Challenge defined.

299. Attempts to induce a challenge.

300. Posting for not fighting.

301. Leaving the Territory with intent to evade laws against dueling.

302. Where such person may be indicted and tried.

303. Witness privilege.

Duel defined. **Sec. 293.** A duel is any combat, with deadly weapons, fought between two persons by previous agreement or upon a previous challenge.

Punishment for fighting a duel. **Sec. 294.** Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the territorial prison not exceeding ten years.

Incapacity to hold office. **Sec. 295.** Every person convicted of fighting a duel is thereafter incapable of holding or being elected or appointed to any office, place or post of trust or emolument, civil or military, under this territory.

Punishment of seconds, aids, and surgeons. **Sec. 296.** Every person who is present at the time when any duel is fought, either as second, aid or surgeon, or who advises or gives any countenance to any duel, is punishable by imprisonment in the territorial prison not exceeding seven years.

Punishment for challenges. **Sec. 297.** Every person who challenges another to fight a duel; every person who accepts any such challenge; and every person who knowingly forwards, carries or delivers any such challenge, is punishable by imprisonment in the territorial prison not exceeding seven years.

Challenge defined. **Sec. 298.** Any words, spoken or written, or any signs, ut-

tered or made to any person, expressing or implying or intended to express or imply a desire, request, invitation or demand, to fight a duel, or to meet for the purpose of fighting a duel, are deemed a challenge.

Sec 299. Every person guilty of sending, uttering or making to another any words or signs whatever, with intent to provoke or induce such person to give or receive any challenge to fight a duel, is guilty of a misdemeanor. Attempts to induce a challenge

Sec. 300. Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or concerning another for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor. Posting for not fighting.

Sec. 301. Every person who leaves this territory with intent to elude any of the provisions of this chapter, and to commit any act out of this territory, such as is prohibited by this chapter, and who does any act, although out of this territory, which would be punishable by said provisions, if committed within this territory is punishable in the same manner as he would have been, in case such act had been committed within this territory. Leaving the territory with intent to evade laws against dueling.

Sec. 302. Such person may be indicted and tried in any county within this territory. Where such person may be indicted and tried.

Sec. 303. No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding. Witnesses' privilege.

CHAPTER IX.

ASSAULT AND BATTERY.

Section 304. Assault defined.

305. Battery defined.

306 Use of force or violence declared not unlawful in certain cases.

307. Punishment of assault or assault and battery.

308. Assaults with dangerous weapons, &c.

Assault defined. Sec. 304. An assault is any willful and unlawful attempt or offer, with force or violence, to do a corporal hurt to another.

Battery defined. Sec. 305. A battery is any willful and unlawful use of force or violence upon the person of another.

Sec. 306. To use or to attempt to offer to use force or violence upon or towards the person of another is not unlawful in the following cases :

1. When necessarily committed by a public officer in the performance of any legal duty ; or by any other person assisting him or acting by his direction ;

2. When necessarily committed by any person in arresting one who has committed any felony, and delivering him to a public officer competent to receive him in custody ;

3. When committed either by the party about to be injured or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlawful interference with real or personal property in his lawful possession ; provided the force or violence used is not more than sufficient to prevent such offense.

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master, or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar ; provided restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent, or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree ;

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from any carriage, railroad car, vessel or other vehicle, any passenger who refuses

to obey a lawful and reasonable regulation prescribed for the conduct of passengers; if such vehicle has first been stopped and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety;

6. When committed by any person in preventing an idiot, lunatic, insane person or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health; during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

Sec. 307. Assault or assault and battery is punishable by ^{Punishment.} imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both.

Sec 308. Every person who, with intent to do bodily harm, ^{Assaults with dangerous weapons, &c.} and without justifiable or excusable cause, commits any assault upon the person of another with any sharp or dangerous weapon, or who without such cause shoots or attempts to shoot at another with any kind of fire-arms, or air-gun or other means whatever, with intent to injure any person, although without intent to kill such person or to commit any felony, is punishable by imprisonment in the Territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year.

CHAPTER X.

LIBEL.

- Section 309. Libel defined.
310. Libel a misdemeanor.
311. Malice presumed.
312. Truth may be given in evidence.
313. Publication defined.
314. Liability of editors and others.
315. Publishing a true report of public official proceedings privileged.

Section 316. Extent of the privilege.

317. Other privileged communications.

318. Threatening to publish a libel.

Libel defined. Sec. 309. Any malicious injury to good name, other than by words orally spoken, is a libel.

Libel a misdemeanor. Sec. 310. Every person who wilfully, and with a malicious intent to injure another, publishes any libel is guilty of a misdemeanor.

Malice presumed. Sec. 311. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Truth may be given in evidence. Sec. 312. In all criminal prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted.

Publication defined. Sec. 313. To sustain a charge of publishing a libel it is not needful that the words complained of should have been read by any person. It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read by any other person than himself.

Liability of editors and others. Sec. 314. Each author, editor, and proprietor, of any book, newspaper or serial publication, and each member of any partnership or incorporated association, by which any book, newspaper, or serial publication is issued, is chargeable with the publication of any words contained in any part of said book, or number of such newspaper or serial.

Privilege. Sec. 315. No reporter, editor or proprietor of any newspaper, is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice, in making such report, which shall in no case be implied from the mere fact of publication.

Extent of privilege. Sec. 316. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

Sec. 317. A communication made to a person interested in the communication by one who was also interested or who stood in such a relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is called a privileged communication.

Other privileged communications.

Sec. 318. Every person who threatens to another to publish a libel concerning him or any parent, husband, wife or child of such person or member of his family, is guilty of a misdemeanor.

Threatening to publish a libel.

TITLE X.

OF CRIMES AGAINST THE PERSON, AND AGAINST PUBLIC DECENCY, AND GOOD MORALS.

Chapter I. Rape, abduction, carnal abuse of children and seduction.

II. Abandonment and neglect of children.

III. Abortions and concealing death of infant.

IV. Child stealing.

V. Bigamy, incest, and the crime against nature.

VI. Violating sepulture and the remains of the dead.

VII. Indecent exposures, obscene exhibitions, books and prints, and disorderly houses.

VIII. Lotteries.

IX. Gaming.

X. Pawnbrokers.

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

Section 319. Rape defined.

320. When physical ability must be proved.

321. Penetration sufficient.

Section 322. Rape in the first degree defined.

323. Rape in the second degree defined.

324. Punishment of rape in the first degree.

325. Punishment of rape in the second degree.

326. Compelling woman to marry.

327. Taking a woman with intent to compel her to marry or be defiled.

328. Seduction for the purposes of prostitution.

329. Abduction.

330. Seduction under promise of marriage.

331. Subsequent marriage a defense.

Rape defined. Sec. 319. Rape is an act of sexual intercourse accomplished with a female not the wife of the perpetrator, under either of the following circumstances :

1. Where the female is under the age of ten years;
2. Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent ;
3. Where she resists, but her resistance is overcome by force or violence ;
4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution ;
5. Where she is prevented from resisting by any intoxicating, narcotic or anesthetic agent administered by or with the privity of the accused ;
6. Where she is at the time unconscious of the nature of the act, and this is known to the accused.
7. Where she submits under a belief that the person committing the act is her husband ; and this belief is induced by artifice, pretense or concealment, practised by the accused, with intent to induce such belief.

When physical ability must be proved. Sec. 320. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged ; unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

Sec. 321. The essential guilt of rape consists in the outrage to the person and feeling of the female. Any sexual pen-

etration however slight, is sufficient to complete the crime. Penetration sufficient.

Sec. 322. Rape committed upon a female under the age of ten years, or incapable through lunacy or any other unsoundness of mind of giving legal consent, or accomplished by means of force overcoming her resistance, is rape in the first degree. Rape in first degree defined.

Sec. 323. In all other cases rape is of the second degree. Second degree defined.

Sec. 324. Rape in the first degree is punishable by imprisonment in the territorial prison not less than ten years. Punishment of rape in the first degree.

Sec. 325. Rape in the second degree is punishable by imprisonment in the territorial prison not less than five years. Punishment of rape in the second degree.

Sec. 326. Every person who takes any woman against her will, and by force, menace or duress compels her to marry him or to marry any other person, is punishable by imprisonment in the territorial prison not less than ten years. Compelling woman to marry

Sec. 327. Every person who takes any woman unlawfully against her will, with the intent to compel her by force, menace or duress to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the territorial prison not exceeding ten years. Taking a woman with intent to compel her to marry or to be defiled.

Sec. 328. Every person who inveigles or entices any unmarried female of previous chaste character under the age of twenty-five years, into any house of ill fame or of assignation, or elsewhere, for the purpose of prostitution; and every person who aids or assists in such abduction for such purpose, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. Seduction for purposes of prostitution.

Sec. 329. Every person who takes away any female under the age of fifteen years, from her father, mother, guardian or other person having the legal charge of her person, without their consent, either for the purpose of marriage, concubinage or prostitution is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. Abduction.

Seduction under promise of marriage. Sec. 330. Every person who, under promise of marriage, seduces and has illicit connection with any unmarried female of previous chaste character, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Subsequent marriage a defense Sec. 331. The subsequent marriage of the parties is a defense to a prosecution for a violation of the last section.

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

Section 332. Deserting child.

333. Omitting to provide child with necessaries.

Deserting child Sec. 332. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the territorial prison not exceeding seven years, or in a county jail not exceeding one year.

Omitting to provide child with necessaries. Sec. 333. Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor.

CHAPTER III.

ABORTIONS AND CONCEALING DEATH OF INFANT

Section 334. Administering drugs with intent to procure miscarriage.

335. Submitting to attempt to procure miscarriage.

336. Concealing still birth or the death of the infant.

Sec. 334. Every person who administers to any pregnant ^{Administering drugs.} woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the territorial prison not exceeding three years or in a county jail not exceeding one year.

Sec. 335. Every woman who solicits of any person any ^{Submitting to attempt.} medicine drug or substance whatever, and takes the same, or who submits to any operation or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Sec. 336. Every woman who endeavors either by herself or ^{Concealing still birth or death of infant.} by the aid of others to conceal the still birth of an issue of her body, which if born alive would be a bastard, or the death of any such issue under the age of two years, is punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding one thousand dollars, or both.

CHAPTER IV.

CHILD STEALING.

Section 337. Definition and punishment of child stealing.

Sec. 337. Every person who maliciously, forcibly or fraudulently takes or entices away any child under the age of twelve ^{Definition and punishment of child stealing.} years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the territorial prison not exceeding ten years or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER V.

BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

Section 338. Bigamy defined.

339. Exceptions.

340. Punishment of Bigamy.

341. Other unlawful marriages.

342. Incest.

343. Crime against nature.

344. Penetration sufficient.

Bigamy defined. Sec. 338. Every person who, having been married to another who remains living, marries any other person, except in the cases specified in the next section, is guilty of bigamy.

Exceptions. Sec. 339. The last section does not extend :

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years without being known to such person within that time to be living ; nor,

2. To any person by reason of any former marriage whose husband or wife by such marriage has absented himself or herself from his wife or her husband and has been continually remaining without the United States for the space of five years together ; nor,

3. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court, unless such marriage was dissolved upon the ground of adultery committed by such person ; nor,

4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

Punishment of bigamy. Sec. 340. Every person guilty of bigamy is punishable by imprisonment in the territorial prison not exceeding five years.

Other unlawful marriages. Sec. 341. Every person who knowingly marries the husband

or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, is punishable by imprisonment in the territorial prison not exceeding five years or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Sec. 342. Persons who, being within the degrees of consanguinity within which marriages are, by the laws of the territory, declared incestuous and void, intermarry with each other, or commit adultery or fornication with each other, are punishable by imprisonment in the territorial prison not exceeding ten years. ^{Incest.}

Sec. 343. Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the territorial prison not exceeding ten years. ^{Crime against nature.}

Sec. 344. Any sexual penetration, however slight, is sufficient to complete the crime against nature. ^{Penetration sufficient.}

CHAPTER VI.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

- Section 345. Right to direct disposal of one's own body after death.
346. Duty of burial.
347. Burial in other States.
348. Dissection, when allowed.
349. Unlawful dissection a misdemeanor.
350. Remains after dissection, must be buried.
351. Dead limb or member of a human body.
352. Who are charged with duty of burial.
353. Punishment for omitting to bury.
354. Who entitled to custody of body.
355. Unlawful removal of or interference with the bodies of the dead.
356. Purchasing corpses forbidden.
357. Unlawful interference with places of burial.
358. Removal from one burial place to another.

Section 359. Arresting or attaching a dead body

360. Disturbing funerals.

361. Defacing tombs, monuments, &c.

362. Unlawful dissection.

Disposal of
one's own body
after death.

Sec. 345. Every person has the right to direct the manner in which his body shall be disposed of after his death ; and to direct the manner in which any part of his body which becomes separated therefrom during his life time shall be disposed of. The provisions of this chapter do not apply where such person has given directions for the disposal of his body or any part thereof inconsistent with those provisions.

Duty of burial

Sec. 346. Except in the cases in which a right to dissect a dead body is expressly conferred by law, every dead body of a human being lying within this territory must be decently buried within a reasonable time after the death.

Burial in other
States.

Sec. 347. The last section does not affect the right to carry the dead body of a human being through this territory or to remove from this territory the body of a person dying within it, for the purpose of burying the same in another state, or territory.

Dissection
when allowed.

Sec. 348. The right to dissect the dead body of a human being exists in the following cases :

1. In the cases authorized by positive enactment of the Legislative assembly of this Territory ;

2. Whenever the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorizes such dissection for the purposes of the inquest.

3. Whenever any husband or next of kin of a deceased person, being charged by law with the duty of burial, authorizes such dissection for the purpose of ascertaining the cause of death.

Unlawful dis-
section a mis-
demeanor.

Sec. 349. Every person who makes or procures to be made any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

Sec. 350. In all cases in which a dissection has been made,

the provisions of this chapter, requiring the burial of a dead body, and punishing interference with or injuries to a dead body, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.

Remains after dissection.

Sec. 351. All provisions of this chapter requiring the burial of a dead body, or punishing interference with or injuries to a dead body, apply equally to any dead limb or member of a human body, separated therefrom during lifetime.

Dead limb or member of human body.

Sec. 352. The duty of burying the body of a deceased person devolves upon the persons hereinafter specified :

1. If the deceased were a married woman the duty of burial devolves upon her husband ;

2. If the deceased were not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age, and within this territory and possessed of sufficient means to defray the necessary expenses.

3. If the deceased left no husband, nor kindred, answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased if any such inquest is held, if none, then upon the persons charged with the support of the poor in the locality in which the death occurs ;

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified ; and if all omit to act, it devolves upon the tenant, or, if there is no tenant, upon the owner of the premises, or master, or, if there is no master, upon the owner of the vessel in which the death occurs or the body is found.

Sec. 353. Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omit to perform that duty within a reasonable time, is guilty of a misdemeanor ; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

Who are charged with duty of burial.

Who entitled to custody of a body.

Sec. 354. The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the cases in which an inquest is required by law to be held upon a dead body, by a coroner, such coroner is entitled to its custody until such inquest has been completed.

Unlawful removal of or interference with the bodies of the dead.

Sec. 355. Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it without authority of law, or from malice or wantonness, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Purchasing corpses forbidden.

Sec. 356. Every person who purchases, or who receives, except for the purpose of burial, any dead body of a human being knowing that the same has been removed contrary to the last section, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Unlawful interference with places of burial.

Sec. 357. Every person who opens any grave or other place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent, either :

1. To remove any dead body of a human being for the purpose of selling the same, or for the purpose of dissection ; or
2. To steal the coffin, or any part thereof, or anything attached thereto, or connected therewith, or the vestments or other articles buried with the same,

Is punishable by imprisonment in the territorial prison not exceeding two, or in a county jail not exceeding six months or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

Removal from one burial place to another.

Sec. 358. Whenever a cemetery or other place of burial is lawfully authorized to be removed from one place to another, the right and duty to disinter, remove and rebury the remains of bodies there lying buried, devolves upon the persons named

in section 352, in the order in which they are named, and, if they all fail to act, then upon the lawful custodians of the place of burial so removed. Every omission of such duty is punishable in the same manner as other omissions to perform the duty of making burial are made punishable by section 353.

Sec. 359. Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor. Arresting or attaching a dead body.

Sec. 360. Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for the purpose of any funeral; or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial, is guilty of a misdemeanor. Disturbing funerals.

Sec. 361. Every person who willfully defaces, breaks, destroys or removes any tomb, monument or grave stone erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub appertaining to the place of burial of a human being, without authority from the owner of the soil, and husband or wife, or if there be no husband or wife then from the next of kin of the deceased, is guilty of a misdemeanor. Defacing tombs, monuments, &c.

Sec. 362. Every person who violates any provision of any enactment of the Legislative assembly of this Territory, now in force or that hereafter may be enacted, not provided for in this Code relative to dissection, is guilty of a misdemeanor.

CHAPTER VII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS AND BAWDY AND OTHER DISORDERLY HOUSES.

Section 363. Indecent exposures, exhibitions, pictures, &c.

364. Seizure of indecent articles authorized.

365. Their character to be summarily determined.

366. Their destruction.

367. Keeping bawdy house.

368. Keeping disorderly house.

369. Letting building for unlawful purposes.

Sec. 363. Every person who, willfully and lewdly, either :

Indecent exposures, exhibitions, pictures, &c.

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby ; or,

2. Procures, counsels or assists any person so to expose himself, or to take any part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts ; or,

3. Writes or composes, stereotypes, prints, publishes, sells, distributes, or keeps for sale, or exhibits any obscene or indecent writing, paper or book, or designs or copies, draws or engraves, paints or otherwise prepares any obscene or indecent picture or print of any description, or moulds, cuts, casts, or otherwise makes any obscene or indecent figure, or form,

Is guilty of a misdemeanor.

Seizure of indecent articles authorized.

Sec. 364. Every person who is authorized or enjoined to arrest any person for a violation of subdivision 3 of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Their character to be summarily determined.

Sec. 365. The magistrate to whom any obscene or indecent writing, paper, book, picture, print or figure, is delivered pursuant to the foregoing section, shall, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print or figure, and if he finds it to be obscene or indecent he shall cause the same to be destroyed, or to be delivered to the district attorney of the county in which the accused is liable to indictment or to be held to bail, as the interests of justice in his judgment require. But

not more than two copies of any one writing, paper, book, picture, print or figure, shall be delivered to the district attorney.

Sec. 366. Upon the conviction of the accused such district attorney shall cause any writing, paper, book, picture, print or figure, in respect whereof the accused stands convicted and which remains in the possession or under the control of such district attorney, to be destroyed. Their destruction.

Sec. 367. Every person who keeps any bawdy house, house of ill-fame, of assignation, or of prostitution, or any other house or place for persons to visit for unlawful sexual intercourse or for any other lewd obscene or indecent purpose, is guilty of a misdemeanor. Keeping bawdy house.

Sec. 368. Every person who keeps any disorderly house, or any house of public resort by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, is guilty of a misdemeanor. Keeping disorderly house.

Sec. 369. Every person who lets any building or portion of any building knowing that it is intended to be used for any purpose declared punishable by this chapter, or who otherwise permits any building or portion of a building to be so used, is guilty of a misdemeanor. Letting building for unlawful purposes.

CHAPTER VIII.

LOTTERIES.

- Section 370. Lottery defined.
371. Lottery declared a public nuisance.
372. Setting up lotteries.
373. Selling lottery tickets.
374. Buying lottery tickets.
375. Advertising lotteries.
376. Offering property for disposal dependent upon the drawing of any lottery.
377. Lottery offices.
378. Advertising lottery offices.
379. Insuring lottery tickets, &c.,
380. Advertising offers to insure lottery tickets.

Section 381. Property offered for disposal in lotteries, forfeited.

382. Letting building for lottery purposes.

383. Lotteries out of this Territory.

384. Advertisements by persons out of the Territory.

Lottery defined. Sec. 370. A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised or agreed to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share of, or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance; whether called a lottery, a raffle, or a gift enterprise, or by whatever name the same may be known.

Lottery declared a public nuisance. Sec. 371. Every lottery is unlawful and a common and public nuisance.

Setting up lotteries. Sec. 372. Every person who contrives, prepares, sets up, proposes or draws any lottery, is punishable by a fine equal to double the amount of the whole sum or value for which such lottery was made; and if such amount cannot be ascertained, then by imprisonment in the territorial prison not exceeding two years, or by imprisonment in a county jail not exceeding one year, or by a fine of two thousand five hundred dollars, or by both such fine and imprisonment.

Selling lottery tickets. Sec. 373. Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person, any ticket, chance, share or interest, or any paper certificate or instrument, purporting or represented or understood to be, or represent any ticket, chance, share or interest in or depending upon the event of any lottery, is guilty of a misdemeanor.

Buying lottery tickets. Sec. 374. Every person who buys, or in any manner whatever accepts or receives for himself or another, any ticket, chance, share or interest, or any paper, certificate or instrument, purporting or represented or understood to be, or to represent any ticket, chance, share or interest in or depending upon the event of any lottery, forfeits ten dollars, to be recov-

ered by the county superintendent of public instruction, of the county in which the offense was committed, for the use of common schools in said county.

Sec. 375. Every person who, by writing or printing, by circulars or letters, or in any other way advertises or publishes any account of any lottery, stating when or where the same is to be or has been drawn, or what are the prizes or any of them therein, or the price of a ticket or of any share or interest, or where it may be obtained, or in any way aiding or assisting the same, or adapted to induce persons to adventure therein, is guilty of a misdemeanor. Advertising lot-
teries.

Sec. 376. Every person who offers for sale, distribution or disposition in any way, any real or personal property, or things in action, or any interest therein, to be determined by lot or chance that shall be dependent upon the drawing of any lottery within or out of this territory, and every person who sells, furnishes or procures, or causes to be sold, furnished or procured in any manner whatsoever, any chance or share, or any interest whatever, in any property offered for sale, distribution or disposition in violation of this section, or any ticket or other evidence of any chance, share or interest in such property, is guilty of a misdemeanor. Offering prop-
erty for dispo-
sal dependent
upon the draw-
ing of any lot-
tery.

Sec. 377. Every person who opens, sets up or keeps, by himself, or by any other person or persons, any office or other place for registering the numbers of any ticket in any lottery, or for making, receiving or registering any bets or wagers upon the drawing, determination or result of any lottery, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars. Lottery offices.

Sec. 378. Every person who by writing or printing, by circulars or letters, or in any other way, advertises or publishes any account of the opening, setting up or keeping of any office or other place for either of the purposes prohibited by the last section, is guilty of a misdemeanor. Advertising lot-
tery offices.

Sec. 379. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket, share or interest in any lottery, or for or against the drawing of any number, or ticket, or number of any ticket in any lot- Insuring lottery
tickets, &c.

tery; and every person who receives any valuable consideration upon any agreement to pay any sum, or to deliver any property or thing in action in the event that any ticket, share or interest in any lottery, or any number, or ticket, or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn on any particular day, or in any particular order; and every person who promises, agrees or offers to pay any sum of money or to deliver any property or thing in action, or to do, or forbear to do anything for the benefit of any other person, with or without consideration, upon any event whatever connected with any lottery, is guilty of a misdemeanor.

Advertising. Sec. 380. Every person who by writing or printing, by circulars or letters, or in any other way, advertises or publishes any offer, notice, or proposal for any violation of the last section, is guilty of a misdemeanor.

Property offered. Sec. 381. All property offered for sale, distribution or disposition, in violation of the provisions of this chapter, is forfeited to the people of this territory, as well before as after the determination of the chance on which the same was dependant. And it is the duty of the respective district attorneys, to demand, sue for and recover, in behalf of this Territory, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury, for the benefit of common schools.

Letting building Sec. 382. Every person who lets, or permits to be used any building or portion of any building, knowing that it is intended to be used for any of the purposes declared punishable by this chapter, is guilty of a misdemeanor.

Lotteries. Sec. 383. The provisions of this chapter apply in respect to lotteries drawn or to be drawn out of this Territory, whether authorized or not by the laws of the state where they are drawn or to be drawn, in same manner as to lotteries drawn or to be drawn within this territory.

Advertisements Sec. 384. The provisions of sections 375 and 378 are applicable wherever the advertisement was published, or the letter

or circular sent or delivered through or in this territory, notwithstanding the person causing or procuring the same to be published, sent or delivered, was out of this territory at the time of so doing.

CHAPTER IX.

GAMING.

Section 385. Keeping gambling apparatus in certain places.

386. Punishment.

387. Gambling apparatus declared a nuisance.

388. Winning at play by fraudulent means.

389. Exacting payment of money won at play.

390. Winning or losing upwards of twenty-five dollars.

391. Witness' privilege.

392. Keeping gambling establishments or letting places for gambling purposes.

393. Keeping gambling tables, promoting prohibited games, &c., prohibited.

394. Seizure of gambling implements authorized.

395. Such implements to be destroyed or delivered to district attorney.

396. Such implements to be destroyed upon conviction.

397. Persuading another person to visit gambling places.

398. Certain officers directed to prosecute offenses under this chapter.

399. Duty of masters to suppress gambling on board their vessels.

400. Racing of animals for a stake.

401. Racing near a court.

Sec. 385. It is unlawful to maintain or keep any table, cards, dice or any other article or apparatus whatever, useful or intended to be used in playing any game of cards or faro, or other game of chance, upon which money is usually wagered, at either of the following places : ^{Keeping gambling apparatus.}

1. Within any building, or the appurtenances or grounds connected with any building in which any court of justice usually holds its sessions ; or any building, any part of which is usually occupied by any religious corporation, or any incorporated benevolent, charitable, scientific or missionary society, or any incorporated academy, high school, college or other institution of learning, or any library company, or building and mutual loan company ;

2. Within any building or the appurtenances or grounds connected with any building, while votes are being received or canvassed therein at any election for any officer of this territory, or of the United States ; or while any public meeting is being held therein ;

3. Within the distance of one mile from any grounds upon which any training, review, drill or exercise of any military organization created or permitted by the laws of this territory is proceeding, or upon which any public fair, exhibition, exercise or meeting is being held or conducted, in the open air.

4. Within any vessel lying in, or navigating any of the waters of this territory ; or owned, or navigated by, or for account of any corporation created by the laws of this territory.

Sec. 386. Every person who knowingly violates the last section is guilty of a misdemeanor.

Punishment.

Gambling apparatus & nuisance.

Sec. 387. Every article or apparatus maintained or kept in violation of section 385, is a common and public nuisance.

Winning at play.

Sec. 388. Every person who, by any fraud, cheat or false pretense whatsoever, while playing at any game, or while bearing a share in any wagers played for, or while betting on the sides or hands of such as play, wins or acquires to himself, or to any other, any sum of money or other valuable thing, is guilty of a misdemeanor.

Exactng payment.

Sec. 389. Every person who exacts or receives from another, directly or indirectly, any valuable consideration, by reason of the same having been won by playing at cards, faro, or any other game at chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the consideration so exacted or received, to be recovered in a civil

action, by the county superintendent of public instruction of the county in which the offence was committed, for the benefit of common schools in said county.

Sec. 390. Every person who wins or loses at play or by betting, at any time, the sum or value of twenty five dollars or upwards, within the space of twenty-four hours, is punishable by a fine not less than five times the value or sum so lost or won, to be recovered in a civil action, by the person, and for the purpose mentioned in the preceding section.

Winning or losing.

Sec. 391. No person shall be excused from giving any testimony or evidence upon any investigation or proceeding for a violation of this chapter, upon the ground that such testimony would tend to convict him of a crime ; but such testimony or evidence shall not be received against him upon any criminal investigation or proceeding.

Witnesses' privilege

Sec. 392 Every person who keeps any building, or part of any building, or any vessel or float to be used or occupied for gambling, and every owner, agent or superintendent of any such place who knowingly lets the same or allows it to be used or occupied for gambling, is guilty of a misdemeanor.

Keeping gambling establishments, &c.

Sec. 393. Every person who, for gambling purposes, keeps or exhibits any gambling table, establishment, device or apparatus, or is guilty of dealing "faro" or banking for others to deal "faro" or acting as "look-out" or game-keeper for the game of "faro," or any other banking game where money or property is dependent upon the result, or who sells or vends what are commonly called lottery policies, or any writing, card, paper or document in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery, or indorses a book or any other document for the purpose of enabling others to sell or vend lottery policies, is deemed a common gambler, and is punishable as for a misdemeanor.

Keeping gambling tables, &c prohibited.

Sec. 394. Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this chapter is equally authorized and enjoined to seize any table, cards, dice or other article or apparatus, suitable to be used for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magis-

Seizure of gambling implements authorized.

trate before whom the person so arrested is required to be taken.

Such implements to be destroyed or delivered to district attorney.

Sec. 395. The magistrate to whom any thing suitable to be used for gambling purposes is delivered pursuant to the foregoing section, shall, upon the examination of the accused, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him, and whether it was actually employed by the accused in violation of the provisions of this chapter; and if he finds that it is of a character suitable to be used for gambling purposes, and that it has been used by the accused in violation of this chapter, he shall cause it to be destroyed or be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justice, in his judgment, require.

To be destroyed upon conviction

Sec. 396. Upon the conviction of the accused such district attorney shall cause any such thing suitable to be used for gambling purposes, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

Persuading another person to visit gambling places.

Sec. 397. Every person who persuades another to visit any building or part of a building, or any vessel or float used or occupied for the purpose of gambling, in consequence whereof such other person gambles therein, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, is liable to such other person in an amount equal to any money or property lost by him at play at such place, to be recovered in a civil action.

Duty of certain officers.

Sec. 398. It is the duty of all sheriffs, police officers, constables, and prosecuting or district attorneys to inform against and prosecute all persons whom they have credible reason to believe are offenders against the provisions of this chapter; and any omission so to do is punishable by a fine not exceeding five hundred dollars.

Duty of masters of vessels.

Sec. 399. If any commander, owner or lessee of any vessel or float, knowingly permits any gambling for money or property on board such vessel or float, and does not upon his knowledge of the fact, immediately prevent the same, he is punisha-

by a fine not exceeding five hundred dollars; and in addition thereto is liable to any party losing any money or property by means of any gambling permitted in violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

Sec. 400. All racing or trial of speed between horses or animals for any bet, stake or reward, except such as is allowed by special laws, is a common nuisance; and every person acting or aiding therein, or making or being interested in any such bet, stake or reward is guilty of a misdemeanor; and in addition to the penalty prescribed therefor he forfeits all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof.

CHAPTER X.

PAWNBROKERS.

Section 401. Pawnbroking without a license.

402. Refusing to exhibit stolen goods to owner.

403. Selling before time to redeem has expired, and refusing to disclose particulars of sale.

Sec. 401. Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above that allowed by law, except by authority of a license from a municipal corporation empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

Sec. 402. Every pawnbroker or person carrying on the business of a pawnbroker, and every junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, is guilty of a misdemeanor.

Sec. 403. Every pawnbroker who sells any article received by him in pledge, before the time to redeem the same has ex-

Misdemeanor. pired, and every pawnbroker who willfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge, and subsequently sold, is guilty of a misdemeanor.

TITLE XI.

OF OTHER INJURIES TO PERSONS.

- Section 404. Acts of intoxicated physicians.
 405. Willfully poisoning food, &c.
 406. Overloading passenger vessels.
 407. Mismanagement of steamboats.
 408. Mismanagement of steam boilers.
 409. Fictitious copartnership names.
 410. Counterfeiting trade marks.
 411. Keeping dies, &c., with intent to counterfeit trade marks.
 412. Selling goods which bear counterfeit trade marks.
 413. Colorable imitations of trade marks.
 414. Trade mark defined.
 415. Goods defined.
 416. Affixing defined.
 417. Refilling or selling stamped mineral water bottles, &c.
 418. Keeping such bottles with intent to refill or sell them.
 419. Search for bottles kept in violation of law, authorized.
 420. Defacing marks upon wrecked property.
 421. Defacing marks upon logs or lumber.
 422. Officer unlawfully detaining wrecked property.
 423. Fraud in affairs of limited partnership.
 424. Solemnizing unlawful marriages.
 425. Unlawful confinement of idiots, insane persons, &c.
 426. Taking usury.

Section 427. Reconfining persons discharged upon writ of deliverance.

428. Concealing persons entitled to writ of deliverance.

429. Assisting to secrete such persons.

Sec. 404. Every physician, who, being in a state of intoxication, administers any poison, drug or medicine, or does any other act as such physician, to another person, by which the life of such other is endangered, is guilty of a misdemeanor. Acts of intoxicated physicians.

Sec. 405. Every person who willfully mingles any poison with any food, drink or medicine, with intent that the same shall be taken by any human being to his injury, and every person who willfully poisons any spring, well or reservoir of water, is punishable by imprisonment in the territorial prison not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. Willfully poisoning food.

Sec. 406. Every person navigating any vessel for gain, who willfully or negligently receives so many passengers or such a quantity of other lading on board such vessel, that by means thereof such vessel sinks or is upset or injured, and thereby the life of any human being is endangered, is guilty of a misdemeanor. Overloading passenger vessel.

Sec. 407. Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed creates or allows to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a misdemeanor. Mismanagement of steamboats.

Sec 408. Every engineer or other person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, employed in any manufactory, railway or other mechanical works, who willfully or from ignorance or gross neglect, creates or allows to be created such an Of steam boilers.

undue quantity of steam as to burst or break the boiler or engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

Fictitious co-
partnership.

Sec. 409. Every person transacting business in the name of a person as a partner who is not interested in his firm, or transacting business under a firm name in which the designation "and company" or "& Co." is used without representing an actual partner, except in the cases in which the continued use of a copartnership name is authorized by law, is guilty of a misdemeanor.

Counterfeiting
trade marks.

Sec. 410. Every person who willfully forges, counterfeits or procures to be forged or counterfeited any trade mark usually affixed by any person to any goods of such person, with intent to pass off any goods to which such forged or counterfeit trade mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

Keeping dies,
&c.

Sec. 411. Every person who, with intent to defraud, has in his possession any die, plate or brand, or any imitation of the trade mark of any person, for the purpose of making any counterfeit or imitation of any description whatever of such trade mark, or of selling the same when made, or of affixing the same to any goods, and selling or offering the same for sale or disposal as the original goods of any other person; and every person who so uses or sells the same, or who fraudulently uses the genuine trade mark of another with intent to sell or offer for sale or disposal, any goods not the goods of the person to whom such trade mark properly belongs, as genuine and original, is guilty of a misdemeanor.

Selling goods
which bear
counterfeit
trade marks.

Sec. 412. Every person who sells or keeps for sale any goods upon which any counterfeited trade mark has been affixed, intended to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

Colorable imi-
tations.

Sec. 413. Every person who, with intent to defraud, affixes or causes to be affixed to any goods or to any bottle, case, box or other package containing any goods, any description of label stamp, brand, imprint, printed wrapper, label or mark, which designates such goods by any word or token which is wholly

or in part the same to the eye, or to the ear, as the word or any of the words or tokens used by any other person as his trade mark, and every person who knowingly sells, or keeps or offers for sale, any such bottle, case, box, other package, with any such label, stamp, brand, imprint, printed wrapper, ticket or mark affixed to or upon it, in case the person affixing or causing to be affixed such mark, or so selling, or exposing or offering for sale such bottle, case, box, or other package, was not the first to employ or use such words as his trade mark, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor is also liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action.

Sec. 414. The word "trade mark," as used in the sections preceding, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded or sold by him; other than any name, word or expression generally denoting any goods to be of some particular class or description. Trade marks defined.

Sec. 415. The word "goods," as used in the sections preceding, includes every kind of goods, wares, merchandise, compound or preparation, which may be lawfully kept or offered for sale. Goods defined.

Sec. 416. The offense of affixing a false trade mark to goods is equally complete within the meaning of sections 410, 412, and 415, whether such mark is affixed to the goods themselves, or to any box, bale, barrel, bottle, case, cask, wrapper, or other package or vessel, or any cover or stopper thereof, in which such goods are put up. Affixing defined.

Sec. 417. Whenever any person engaged in manufacturing, bottling, selling in bottles, soda, mineral waters, porter, ale, cider or small beer, has filed and published, in the manner authorized by law, a description of a name, mark, or label usually stamped by him in the bottles containing such beverage, every other person who, without the written consent of such manufacturer or dealer, refills with any beverage, whether genuine Refilling or selling, what.

or otherwise, with intent to sell the same, any bottles stamped with such name, mark, or label; and every person who sells, disposes of, purchases or traffics in such bottles, is liable to a penalty of fifty cents for each and every bottle so filled, sold, bought, disposed of, or trafficked in, for the first offense, and five dollars for each and every bottle so filled, bought, disposed of, or trafficked in, for every subsequent offense.

Keeping such bottles with intent to refill or sell them.

Sec. 418. Every person who keeps any bottles such as are designated in the last section, without the written consent of the manufacturer so to do, unless it appears that they were not kept with intent to refill or use or sell them in violation of the last section, is liable to the penalty therein prescribed.

Search.

Sec. 419. Whenever any manufacturer or dealer designated by section 417, or his agent, shall make oath or affirmation before any magistrate that he has reason to believe, and does believe, that any of his bottles stamped and registered as mentioned in said section are being unlawfully used by any person or persons selling or manufacturing mineral water or other beverages, or that any junk dealer, or vender of bottles, has any of such bottles secreted in any place, such magistrate shall thereupon issue a search warrant to discover and obtain the same under the provisions of the law upon search warrants, which are hereby declared to fully relate to the purposes of this chapter; and the magistrate may summarily bring or cause to be brought before him the person in whose possession the bottles are found, to examine into the circumstances of his possession, and if such magistrate on summary examination, finds that such person has been guilty of a violation of section 417, such magistrate shall proceed to impose the fine therein prescribed, and, if the same be not paid, to commit such person to prison for a term not exceeding fifteen days.

Defacing marks.

Sec. 420. Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership, is guilty of a misdemeanor.

Same.

Sec. 421. Every person who cuts out, alters or defaces any

mark made upon any log or lumber, whether such mark be recorded or not, or puts a false mark upon any log or lumber floating in any of the waters of this territory or lying upon land, is guilty of a misdemeanor.

Sec. 422. Every officer who, without authority of law detains ^{Unlawful detention.} any wrecked property or the proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement or extortion in the discharge of his duties, or who violates any provision of the statutes relating to salvage, is guilty of a misdemeanor.

Sec. 423. Every member of a limited partnership who is ^{Fraud.} guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor.

Sec. 424. Every minister or magistrate who solemnizes any ^{Solemnizing unlawful marriages.} marriage where either of the parties is known to him to be within the age of legal consent, or to be an idiot or an insane person, or any marriage to which within his knowledge any legal impediment exists, is guilty of a misdemeanor.

Sec. 425. Every overseer of the poor, constable, keeper of a ^{Unlawful confinement of certain persons.} jail or other person who confines any idiot, lunatic, or insane person, in any other manner or in any other place than is authorized by law, is guilty of a misdemeanor.

Sec. 426. Every person who directly or indirectly receives ^{Taking usury} any interest, discount, or consideration upon the loan or forbearance of any money, goods or things in action greater than is allowed by law, is guilty of a misdemeanor.

Sec. 427. Every person who either solely or as a member of ^{Recommitting persons.} a court, in the execution of a judgment, order or process, knowingly recommits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from imprisonment upon a writ of deliverance, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits to the party aggrieved, one thousand dollars to be recovered in a civil action.

Sec. 428. Every person having in his custody or power, or under his restraint a party who, by the provisions of the law ^{Concealing persons.} relating to habeas corpus, would be entitled to a writ of habeas corpus, or for whose relief such writ has been issued, who, with

Assisting to
secrete such
persons.

intent to elude the service of such writ, to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who without lawful excuse refuses to produce him, is guilty of a misdemeanor.

Sec. 429. Every person who knowingly assists in the violation of the last section is guilty of a misdemeanor.

TITLE XII.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

Section 430. "Public nuisance" defined.

431. Unequal damage.

432. Maintaining a nuisance a misdemeanor.

433. Keeping gunpowder unlawfully.

434. Throwing gas tar into public waters.

435. Violations of quarantine laws, by master of vessel.

436. Giving false information relative to vessels, or permitting persons to land before visit of health officers.

437. Landing from vessel before visit of health officers.

438. Going on board a vessel at quarantine grounds or entering quarantine grounds without leave.

439. Violating quarantine regulations.

440. Obstructing health officer in performance of his duty.

441. Willful violation of health laws.

442. Unlicensed piloting.

443. Coasting steamers excepted.

444. Acting as portwarden without authority.

445. Apothecary omitting to label drugs, or labeling them wrongly.

446. Apothecary selling poison without recording the sale.

447. Refusing to exhibit record.

448. Selling poison without label.

- Section 449.** Omitting to mark name upon package of hay.
450. Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.
451. Adulterating food, drugs, liquors, &c.
452. Disposing of tainted food.
453. Making or keeping slung shot.
454. Carrying upon the person, or using or attempting to use slung shot.
455. Carrying concealed weapons.
456. Negligence in respect to fires.
457. Refusing to assist in extinguishing fire in the woods.
458. Obstructing attempts to extinguish fires.
459. Maintaining ferry without authority of law.
460. Violating condition of recognizance to keep a ferry.
461. Engineer omitting to ring bell or sound whistle when locomotives crosses highways.
462. Intoxication of engineers, conductors, and drivers upon railroads.
463. Violation of duty by officers, agents or servants of railroad companies.
464. Duty of guarding ice cuttings.
465. How long such guarding must be maintained.
466. Violation of duty to maintain guards around ice cuttings a misdemeanor.
467. Obstructing navigation prohibited.
468. Exposing person effected with a contagious disease, in a public place.
469. Frauds practiced to effect the market price.
470. Publishing false statements in newspapers.
471. Eavesdropping.
472. Racing upon highways.

Sec. 430. A public nuisance is a crime against the order and economy of the territory; and consists in unlawfully doing any act or omitting to perform any duty required by the public good, which act or omission either : Public nuisance defined.

1. Annoys or injures the comfort, repose, health or safety of any considerable number of persons ; or,
2. Offends public decency ; or,

3. Unlawfully interferes with, obstructs, or tends to obstruct any lake, or any navigable river, bay, stream, canal or basin, or any public park, square, street or highway ; or,

4. In any way renders life, or the use of property uncomfortable.

Unequal damage Sec. 431. An act which affects a considerable number of persons, in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal.

Maintaining a nuisance or misdemeanor. Sec. 432. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

Keeping gunpowder. Sec. 433. Every person who makes or keeps gunpowder or saltpeter within any city or village, and every person who carries gunpowder through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or village, is guilty of a misdemeanor.

Throwing gas tar into public waters. Sec. 434. Every person who throws or deposits any gas tar, or refuse of any gas house or factory, into any public waters, river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a misdemeanor.

Violations of quarantine laws Sec. 435. Every master of a vessel subject to quarantine or visitation by the health officer, by the provisions of any law of this territory, now in force or that hereafter may be enacted, arrives in any port or at the boat landing of any city or town in this territory, who refuses or omits, either :

1. To proceed with and anchor or land his vessel at the place assigned for quarantine, at the time of his arrival ; or,

2. To submit his vessel, cargo and passengers, to the examination of the health officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought respectively to be subject ; or,

3. To remain with his vessel at quarantine during the period

assigned for her quarantine, and while at quarantine to comply with the directions and regulations prescribed by law, and with such as any of the officers of health, by virtue of the authority given them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers or crew, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

Sec. 436. Every master of a vessel hailed by a pilot or such officer as may be specified by law, who, either : Giving false information.

1. Gives false information to such pilot or other officer, relative to the condition of his vessel, crew or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required ; or,

2. Lands any person from his vessel, or permits any person, except a pilot or such officer specified by law, to come on board of his vessel, or unloads or tranships any portion of his cargo before his vessel has been visited and examined by the proper health officers ; or,

3. Approaches with his vessel nearer any city or town within this territory than the place of quarantine to which he may be directed, is punishable by imprisonment in the county jail of the county in which the offense was committed, not exceeding one year, or by a fine not exceeding two thousand dollars, or both such fine and imprisonment.

Sec. 437. Every person who being on board any vessel at the time of her arrival at any port within this territory, under the provisions of section 435, lands from such vessel, or unloads, or tranships, or assists in unloading or transshipping any portion of her cargo, before such vessel has been visited and examined by the health officers, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both. Landing from vessel before visit of health officers.

Sec. 438. Every person who goes on board of or has any communication, intercourse or dealing with any vessel at quarantine, or with any of the crew or passengers of such vessel, without the permission of the health officer, and every person who, without such authority enters the quarantine grounds or anchorage, is punishable by imprisonment in a county jail not ex- Other restrictions.

ceeding one year, or by a fine not exceeding two thousand dollars, or both ; and in addition thereto he may be detained at quarantine so long as the health officers shall direct, not exceeding twenty days. And in case such person shall be taken sick of any infectious, contagious or pestilential disease, during such twenty days he may be detained for such further time and at such place, as the health officer shall direct.

Violating quar-
antine regula-
tions.

Sec. 439. Every person who having been lawfully ordered by any health officer to be detained in quarantine, and not having been discharged, leaves the quarantine grounds or anchorage, or willfully violates any quarantine law or regulation, is guilty of a misdemeanor.

Obstructing
health officer.

Sec. 440. Every person who willfully opposes or obstructs any health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

Willful viola-
tion of health
laws.

Sec. 441. Every person who willfully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws, or by this Code ; and every person who willfully violates or refuses or omits to comply with any lawful order, direction, prohibition or regulation prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

Unlicensed
piloting.

Sec. 442. Every person not holding a license as pilot under the laws of this territory, or under the laws of either the States of Missouri, Kansas or Iowa, or of the territory of Nebraska, who pilots or offers to pilot any steamboat to or from any port within this territory, is guilty of a misdemeanor.

Exemptions.

Sec. 443. The last section applies only to vessels propelled by steam while engaged in conveying freight and passengers, or either, on the Missouri river.

Unlawful act.

Sec. 444. Every person who not being a portwarden, assumes or undertakes to act as such, under or by the provisions of any law of this territory, now in force or that may hereafter be enacted ; and every person who issues any certificate of a survey

on vessels, materials or goods damaged, with the intent to avoid the provisions of the law, is guilty of a misdemeanor.

Sec. 445. Every apothecary, or druggist, and every person Apothecary, when liable. employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who in putting up any drugs or medicines, willfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing any drugs or medicines or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor.

Sec. 446. Every apothecary or druggist, and every person employed as clerk or salesman, by any apothecary or druggist, Same. or otherwise carrying on business as a dealer in drugs or medicines, who sells or gives any poison or poisonous substance, without first recording in a book to be kept for that purpose, the name and residence of the person receiving such poison, together with the kind and quantity of such poison received excepting upon the written order or prescription of some practising physician whose name is attached to such order, is guilty of a misdemeanor.

Sec. 447. Every person whose duty it is by the last section to Refusing to exhibit record. keep any book for recording the sale or gift of poisons, and who willfully refuses to permit any person to inspect said book upon reasonable demand made during ordinary business hours, is punishable by fine not exceeding fifty dollars.

Sec. 448. Every person who sells, gives or disposes of any Selling poison without label. poison or poisonous substance, except upon the order or prescription of a regularly authorized practising physician, without attaching to the vial, box or parcel containing such poisonous substance, a label with the name of such person, the word "poison" and the name of such poison all written or printed thereon in plain and legible characters, is guilty of a misdemeanor.

Omitting to
mark name.

Sec. 449. Every person, who, in putting up or pressing any bundle or bale of hay for market, omits to put the number of pounds in each bundle or bale so put up for which he sells or offers to sell it for, is guilty of a misdemeanor.

Intent to in-
crease weight of
goods by extra-
neous sub-
stances.

Sec. 450. Every person, who, in putting up in any bag, bale, box, barrel or other package, any hops, cotton, hay or other goods usually sold in bags, bales, barrels or packages, by weight, puts in or conceals therein any thing whatever, for the purpose of increasing the weight of such bag, bale, box, barrel or package, is punishable by a fine of twenty-five dollars for each offense.

Adulterating
food, &c.

Sec. 451. Every person who adulterates or dilutes any article of food, drink, drug, medicine, strong, spirituous or malt liquor, or wine, or any article useful in compounding either of them, whether one useful for mankind or for animals, with a fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated or undiluted; and every person who fraudulently sells, or keeps or offers for sale the same as unadulterated or undiluted, knowing it to have been adulterated or diluted, is guilty of a misdemeanor.

Disposing of
tainted food.

Sec. 452. Every person who knowingly sells, or keeps, or offers for sale or otherwise disposes of any article of food, drink, drug or medicine knowing that the same has become tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank by any person or animal, is guilty of a misdemeanor.

Making or keep-
ing slung shot.

Sec. 453. Every person who manufactures or causes to be manufactured, or sells, or offers or keeps for sale; or gives or disposes of any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a misdemeanor.

Carrying or
using slung
slung shot.

Sec. 454. Every person who carries upon his person, whether concealed or not, or uses or attempts to use against another, any instrument or weapon of the kind usually known as slung shot or of any similar kind, is guilty of felony.

Concealed
weapons.

Sec. 455. Every person who carries concealed about his person any description of fire-arms, being loaded or partly loaded or any sharp or dangerous weapon such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.

Sec. 456. Every person who negligently sets fire to his own woods, or negligently suffers any fire upon his own land to extend beyond the limits thereof, is guilty of a misdemeanor.

Sec. 457. Every person who violates any provision of any law of this territory, now in force or that may hereafter be enacted, relating to prairie fires or setting fire out on the prairie, besides the penalties and damages imposed by such law, he shall be deemed guilty of a misdemeanor. Negligence in respect to fires.

Sec. 458. Every person who, at any burning of a building is guilty of any disobedience to lawful orders of any public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman or company of firemen, to extinguish the same, or of any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor. Refusing to assist.

Sec. 459. Every person who maintains any ferry for profit or hire upon any waters within this territory, without authority of law, is punishable by a fine not exceeding twenty-five dollars for each time of crossing or running such ferry.— Where such ferry is upon waters dividing two counties, the offender may be prosecuted in either. Obstructing attempts.

Sec. 460. Every person, who, having entered into a bond or obligation, as provided by his ferry charter, or any general law on the subject of ferries, to keep and attend a ferry, violates the condition of such bond or obligation, is guilty of a misdemeanor. Maintaining ferry unlawful-ly.

Sec. 461. Every person in charge, as engineer, of a locomotive engine, who omits to cause a bell to ring or a steam whistle to sound at the distance of at least eighty rods from the place where the track crosses, on the same level, any traveled public way, is punishable by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding sixty days. Violating condition of recognition.

Sec. 462. Every person who, while in charge, as engineer, of a locomotive engine or while acting as conductor or driver upon a railroad train or car, whether propelled by steam or drawn by horses, is intoxicated, is guilty of a misdemeanor. Engineer failing to ring bell, &c.

Intoxication of engineers and others. Sec. 463. Every engineer, conductor, brakeman, switch-tender or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent or servant by which human life or safety is endangered, the punishment for which is not otherwise prescribed, is guilty of a misdemeanor.

Duty of guarding ice cuttings. Sec. 464. All persons and incorporated companies cutting ice in or upon any waters within the boundaries of this territory, for the purpose of removing such ice for sale, shall surround the cuttings and openings made, with fences of bushes or other guards sufficient to warn all persons of such cuttings and openings.

How long maintained. Sec. 465. Such fences or guards must be erected at or before the time of commencing such cuttings or openings, and must be maintained until ice has again formed in such openings to the thickness of at least six inches.

Declared a misdemeanor. Sec. 466. Every person who violates the provisions of the last two sections, is guilty of a misdemeanor.

Obstrucing navigation prohibited. Sec. 467. Every person who in any manner obstructs the free navigation of any navigable water course within this territory, is guilty of a misdemeanor.

Exposing person affected with contagious disease. Sec. 468. Every person who willfully exposes himself or another person, being affected with any contagious disease, in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

Frauds practised to effect the market price. Sec. 469. Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

Publishing false statements in newspapers. Sec. 470. Every editor or proprietor of any newspaper who willfully publishes in such newspaper as true, any statement which he has not good reason to believe to be true, with intent to increase thereby the sales of copies of such paper, is guilty of a misdemeanor.

Sec. 471. Every person guilty of secretly loitering a b

any building, with intent to overhear discourse therein, and to repeat or publish the same to vex or annoy or injure others, is guilty of a misdemeanor. Eavesdropping.

Sec. 472. Every person driving any conveyance drawn by horses upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance or to prevent such other from passing his own, is guilty of a misdemeanor. Racing upon highways.

TITLE XIII.

OF CRIMES AGAINST THE PUBLIC PEACE.

Section 473. Disturbing lawful meetings.

474. "Riot" defined.

475. Punishment of riot.

476. "Rout" defined.

477. Unlawful assembly.

478. Assembly of persons disguised.

479. Punishment of rout and unlawful assembly.

480. Allowing masquerades to be held in places of public resort.

481. Remaining present at place of riot, &c., after warning to disperse.

482. Remaining present at place of a meeting, originally lawful, after it has adopted an unlawful purpose.

483. Refusing to obey a lawful command to assist in arresting rioter.

484. Combinations to resist execution of process.

485. Prize fights.

486. Challenges to engage in prize fights.

487. What is a challenge.

488. Leaving the territory to engage in prize fights.

489. Place of trial.

490. Special duty of peace officers with respect to prize fights.

491. Neglect of duty of peace officers, a misdemeanor.

Section 492. Forcible entry and detainer.

493. Returning to take possession of lands after being removed by legal process.

494. Unlawful intrusions upon lands of another.

495. Discharging fire arms in public places.

496. Witness' privilege.

Disturbing law-
ful meetings.

Sec. 473. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as are mentioned in sections 55, 79, and 359, of this Code, is guilty of a misdemeanor.

Riot defined.

Sec. 474. Any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot.

Punishment of
riot.

Sec. 475 Every person guilty of participating in any riot is punishable as follows :

1. If any murder, maiming, robbery, rape or arson, was committed in the course of such riot, such person is punishable in the same manner as a principal in such crime.

2. If the purpose of the riotous assembly was to resist the execution of any statute of this territory or of the United States, or to obstruct any public officer of this territory or of the United States in the performance of any legal duty, or in serving or executing any legal process, such person is punishable by imprisonment in the territorial prison not exceeding ten years and not less than two.

3. If such person carried, at the time of such riot, any species of fire-arms, or other deadly or dangerous weapon, or was disguised, he is punishable by imprisonment in a territorial prison not exceeding ten years and not less than two.

4. If such person directed, advised, encouraged, or solicited other persons, who participated in the riot, to acts of force or violence, he is punishable by imprisonment in the territorial prison for not less than three years.

5. In all other cases such person is punishable as for a misdemeanor.

Sec 476. Whenever three or more persons, acting together, ^{Rout defined.} make any attempt or do any act towards the commission of an act which would be riot if actually committed, such assembly is a rout.

Sec. 477. Whenever three or more persons assemble with ^{Unlawful assembly.} intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do no act towards the commission thereof, ; or whenever such persons assemble without authority of law, and in such a manner as is adapted to disturb the public peace, or excite public alarm, such assembly is an unlawful assembly.

Sec. 478. Every assembly of three or more persons having ^{Assembly of persons disguised.} their faces painted, discolored, colored or concealed, or being otherwise disguised in a manner adapted to prevent them from being identified, is an unlawful assembly.

Sec. 479. Every person who participates in any rout or ^{Punishment.} unlawful assembly, is guilty of a misdemeanor.

Sec. 480. Every person being a proprietor, manager or keeper of any theater, circus, or public garden, public hall or premises, or other place of public meeting, resort or amusement whatever, for admission to which any price or payment is demanded, who permits therein any masquerade, or masked ball, or any assemblage of persons masked, is guilty of a misdemeanor, punishable by imprisonment in the territorial prison not exceeding two years, or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars and not less than five hundred dollars or by both such fine and imprisonment. ^{Masquerades.}

Sec. 481. Every person remaining present at the place of ^{After warning to disperse.} any riot, rout or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Sec. 482. Where three or more persons assemble for a lawful ^{Remaining present after meeting has adopted unlaw-} purpose, and afterwards proceed to commit an act that would amount to riot if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, except public officers and persons assist-

ing them in attempting to disperse the same, is guilty of a misdemeanor.

Refusing to assist in arresting rioter.

Sec. 483. Every person present at any riot, and lawfully commanded to aid the magistrates or officers in arresting any rioter, who neglects or refuses to obey such command, is deemed one of the rioters, and punishable accordingly.

Combinations to resist execution of process.

Sec. 484. Every person who resists, or enters into a combination with any other person to resist the execution of any legal process, under circumstances not amounting to a riot, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

Prize fights.

Sec. 485. Every person who engages in, instigates, encourages or promotes, any ring or prize fight, or any other premeditated fight or contention, whether as principal, aid, second, umpire, surgeon, or otherwise, although no death or personal injury ensues, is guilty of a misdemeanor.

Challenge to engage in prize fights.

Sec. 486. Every person who challenges another to engage in any such fight as is specified in the last section; every person who accepts any such challenge; every person who knowingly forwards, carries or delivers any such challenge; and every person who bets, stakes or wagers any money or property upon the result of any such fight, or who undertakes to hold any money or property so betted, staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

What is a challenge.

Sec. 487. Any words spoken or written, or any signs uttered or made to any person, expressing or implying, or intended to express or imply a desire, request, invitation or demand to engage in any fight, such as is mentioned in section 485, are deemed a challenge within the meaning of the last section.

Leaving territory to engage in prize fights.

Sec. 488. Every person who leaves this territory with intent to elude any of the provisions of the last three sections, and to commit any act out of this territory, such as is prohibited by them, and who does any act which would be punishable under these provisions if committed within this territory, is punishable in the same manner as he would have been in case such act had been committed within this territory.

Sec. 489. Such person may be indicted and tried in any ^{Place of trial.} county within this territory.

Sec. 490. It is the duty of all sheriffs, constables, police- ^{Special duty of} men, and watchmen, who have reasonable grounds to believe ^{peace officers.} that any offense specified in section 485 is about to be committed within their jurisdiction, to make complaint under the provisions of this act to some magistrate within their jurisdiction.

Sec. 491. Every sheriff, constable, policeman or watchman, ^{Neglect of duty} who willfully neglects the duty prescribed by the last section, ^{a misdemeanor.} is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his office.

Sec. 492. Every person guilty of using, or procuring, en- ^{Forcible entry} couraging or assisting another to use, any force or violence in ^{and detainer.} entering upon or detaining any lands or other possessions of another, except in the cases and manner allowed by law, is guilty of a misdemeanor.

Sec. 493. Every person who has been removed from any ^{Returning to} lands by process of law, or who has removed from any lands ^{take possession} pursuant to the lawful adjudication or direction of any court, ^{of lands.} tribunal or officer, and who afterwards, without authority of law, returns to settle or reside upon such lands, is guilty of a misdemeanor.

Sec. 494. Every person who intrudes or squats upon any lot or ^{Unlawful intru-} piece of land within the bounds of any incorporated city or ^{sions.} village, without license or authority from the owner thereof, or who erects or occupies thereon any hut, hovel, shanty or other structure whatever without such license or authority; and every person who places, erects, or occupies within the bounds of any street or avenue of such city or village, any hut, hovel, shanty, or other structure whatever, is guilty of a misdemeanor.

Sec. 495. Every person who willfully discharges any spe- ^{Discharging} cies of fire-arms, air-gun or other weapon, or throws any other ^{fire arms.} missile in any public place, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a misdemeanor.

Witnesses' privilege.

Sec. 496. No person shall be excused from giving any evidence upon any investigation or prosecution for any of the offenses specified in this chapter, upon the ground that such testimony or evidence might tend to convict him of a crime. But such answer or evidence shall not be received against him upon any criminal proceeding or prosecution.

TITLE XIV.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THE TERRITORY.

- Section 497. Embezzlements and falsification of accounts by public officers.
498. Other violations of law.
499. Officer authorized to make any sale, lease or contract, becoming interested under it.
500. County clerks committing to publish statement required by law.
501. Obstructing officer in collecting revenue.
502. Selling goods by auction without filing the bond required by law.
503. Auctioneer accepting appointment as auctioneer in another territory or selling in another territory.
504. Auctioneer having two places of business.
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512. Weighmaster making false entry of weight.
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- Section 514. Willful injuries to the canals.
 515. Drawing off water from the canals.
 516. Canal officer accepting bribe to allow water to be drawn off from canals.
 517. Giving bribe to canal officer to obtain consent to drawing off water.
 518. Injuries to the salt works.
 519. Seizing military stores belonging to the territory.
 520. Making false statement in reference to taxes.

Sec. 497. Every public officer, and every deputy, or clerk of any such officer, and every other person receiving any moneys on behalf of, or for account of the people of this Territory, or of any department of the government of this territory, or of any bureau or fund created by law, and in which the people of this territory, are directly or indirectly interested, who either :

Embezzlements and falsification of accounts by public officers.

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money received by him as such officer, clerk or deputy, or otherwise, on behalf of the people of this territory or in which they are interested ; or,

2. Knowingly keeps any false account or makes any false entry or erasure in any account of or relating to any moneys so received by him, on behalf of the people of this territory, or in which they are interested ; or,

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account ; or,

4. Willfully omits or refuses to pay over to the people of this territory or their officer or agent authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same,

Is guilty of a felony.

Sec. 498. Every officer or other person mentioned in the last section who willfully disobeys any provisions of law regulating his official conduct, in cases other than those specified in that section, is guilty of a misdemeanor.

Other violation

- Officer authorized to do what.** Sec 499. Every public officer, being authorized to sell or lease any property, or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor.
- County clerk emitting to publish statement.** Sec. 500. Every register of deeds, judge of probate, district attorney, county commissioner, sheriff, coroner or county superintendent of public instruction, who willfully fails or refuses to perform the duties of his office according to law, is guilty of a misdemeanor.
- Obstructing officer in collecting revenue.** Sec. 501. Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes or other sums of money in which, or in any part of which the people of this territory are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.
- Selling goods by auction without filing bond.** Sec. 502. The provisions of section 500 shall also apply to county treasurers, justices of the peace and all other county and precinct officers.
- Auctioneer (accepting or selling in another territory.** Sec. 503. Every territorial auditor, territorial treasurer, superintendent of public instruction for this territory, or any other territorial officer, who willfully neglects or refuses to perform the duties of his office, as prescribed by law, is guilty of a misdemeanor.
- Auctioneer having two places of business.** Sec. 504. No auctioneer, in any town or county of this territory shall at one time have more than one place for carrying on the general business of an auctioneer.
- Selling at other than his regular place of business.** Sec. 505. No such auctioneer shall expose to sale by public auction any articles liable to auction duties at any other place than that so designated, except goods sold in original packages as imported pictures, household furniture, libraries, stationery and such bulky articles as have usually been sold in warehouses, or in the public streets or on the wharves.
- Punishment.** Sec. 507. A violation of either of the last two sections is punishable by a fine not exceeding two hundred and fifty dollars for each offense.
- Sec. 508. Every person carrying on, interested in or employ-

ed about, the business of selling property or goods by auction, ^{Selling without due advertisement.} who sells any goods or property in a damaged condition, which he offers a sound or in a good condition, is guilty of a misdemeanor.

Sec. 508. All sales of goods by public auction by a licensed auctioneer shall be made in the day-time between sunrise and sunset, unless otherwise authorized by the law under which he holds his license, excepting : ^{What sales must be made by day.}

1. Books, prints, pictures or stationary.

2. Goods sold in the original packages as imported, according to a printed catalogue, of which samples shall have been opened and exposed to public view at least one day previous to the sale. Every person who violates the provisions of this section is guilty of misdemeanor; and in addition to the punishment prescribed therefor by law, is forever disqualified after his conviction therefor, from being licensed to act as an auctioneer within this territory.

Sec. 509. Every auctioneer, and every partner or clerk of an auctioneer, and every person whatever in any way connected in business with an auctioneer, who willfully omits to render any semi-annual or other account, by law required to be rendered, at the time or in the manner prescribed by law, or who willfully omits to pay over any duties legally payable by him at the time and in the manner prescribed by law, is guilty of a misdemeanor. ^{Omitting to render account-}

Sec. 510. Every auctioneer, and every partner or clerk of any auctioneer, and every person whatever in any way connected in business with an auctioneer, who commits any fraud or deceit, or by any fraudulent means whatever seeks to evade or defeat the provisions of the laws of this territory relating to auctions, now in force, or that may hereafter be enacted, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable in treble damages to any party injured thereby. ^{Auctioneer committing fraud, &c.}

Sec. 511. Every person whose duty it may be to deliver to any collector of tolls upon any canal that hereafter may be constructed and owned by this territory, a bill of lading of any property transported upon any such canal, who knowingly de- ^{Canal collector}

livers a false bill of lading as true, or makes or signs a false bill of lading intending to be delivered as true, is punishable by imprisonment in the territorial prison not exceeding one year, or by a fine not exceeding five times the value of any property omitted in such bill, or both.

Weightmaster
making false
entry.

Sec. 512. Every weigh master upon any canal that may hereafter be constructed and owned by this territory, and every clerk of such weigh master, who knowingly makes a false entry of the weight of any boat, or cargo of any boat navigating such canal, or who knowingly makes a false certificate of the light weight of any boat, is guilty of a misdemeanor.

Canal officer
concealing
fraud.

Sec. 513. Every public officer or agent employed by the people of this territory in relation to any canal that may hereafter be constructed and owned by this territory, who knows or has good reason to believe that any fraud upon the revenues of the canals has been committed or attempted, and who omits to disclose the same, and enforce the penalties therefor, if within his power, is guilty of a misdemeanor.

Willful injuries
to the canals.

Sec. 514. Every person who, without authority of law willfully inflicts any injury upon any canal that may hereafter be constructed and owned by this territory, or disturbs or injures any of the boats, locks, bridges, buildings, machinery or other works or erections connected with any such canal, and in which the people of this territory have an interest, is guilty of felony.

Drawing off wa-
ter from canals

Sec. 515. Every person who draws water from any canal in this territory, constructed and owned as mentioned in the last section, or from any feeder or reservoir of any such canal, during the navigation season of such canal, and to the detriment or injury of the navigation thereof, without authority of law, is punishable by imprisonment in a county jail not more than one year, and by fine not more than one thousand dollars.

Accepting bribe

Sec. 516. Every public officer or agent employed by the people of this territory in relation to any canal, constructed and owned as mentioned in section 514, or contractor for canal repairs, or person having any charge of any such canal, or of any part thereof or of any lock, waste, feeder or other work belonging thereto, or being employed thereon, who asks, or

accepts or promises to accept any bribe as an inducement permitting water to be drawn from any such canal, feeder or reservoir in violation of the last section, is guilty of a misdemeanor.

Sec. 517. Every person who gives, or offers or promises to give to any officer or person mentioned in the last section, any bribe as an inducement to him to permit any water to be drawn from any canal, feeder or reservoir in violation of section 515, is guilty of a misdemeanor. Giving bribe.

Sec. 518. Every person who willfully burns, destroys, or injures any public building or improvement in this territory, is punishable by imprisonment in the territorial prison not exceeding five years. Injuries to salt works.

Sec. 519. Every person who enters any fort, magazine, arsenal, armory, arsenal yard or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the people of this territory and every person who enters any such place with intent so to do, is punishable by imprisonment in the territorial prison not exceeding ten years. Seizing military stores.

Sec. 520. Every person, who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states any material matter which he knows to be false, is guilty of a misdemeanor. Making false statement in reference to taxes.

CHAPTER I.

ARSON.

- Section 521. Arson defined.
- 522. Building defined.
- 523. Inhabited building defined.
- 524. Night time defined.
- 525. Burning defined.
- 526. Ownership of the building.
- 527. Variance in proof of ownership.
- 528. What constitutes malice.

Section 529. Intent to destroy the building requisite.

530. Contiguous buildings.

531. Degrees of arson.

532. First degree defined.

533. Appurtenances to building.

534. Burning in daytime, when arson in second degree.

535. Burning in night time, when arson in second degree.

536. Burning in daytime, when arson in third degree.

537. Burning in the night time, when arson in third degree.

538. Fourth degree defined.

539. Punishment of arson.

Arson defined. Sec. 521. Arson is the willful and malicious burning of a building, with intent to destroy it.

Building defined Sec. 522. Any house, edifice, structure, vessel or other erection, capable of affording shelter for human beings, or appurtenant to, or connected with an erection so adapted, is a "building" within the meaning of the last section.

Inhabited building defined. Sec. 523. Any building is deemed an "inhabited building" within the meaning of this chapter, any part of which has usually been occupied by any person lodging therein at night.

Night time defined. Sec. 524. The words "night time" in this chapter include the period between sunset and sunrise.

Burning defined Sec. 525. To constitute a burning within the meaning of section 521, it is not necessary that the building set on fire should be destroyed. It is sufficient that fire is applied so as to take effect upon the substance of the building.

Ownership Sec. 526. To constitute arson it is not necessary that another person than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in the possession of, or was actually occupying, such building, or any part thereof.

Variance in proof. Sec. 527. An omission to designate, or error in designating in an indictment for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears

that upon the whole description given of the building, it is sufficiently identified to enable the prisoner to prepare his defense.

Sec. 528. Malice sufficient to constitute arson, is inferred from proof that the prisoner committed an act of burning a building, and that some other person was rightfully in possession of, or actually occupying any part thereof. It is not necessary that the accused should have had actual knowledge of such possession or occupancy or should have intended to injure any person.

What constitutes malice.

Sec. 529. But the burning of a building under circumstances which shows beyond a reasonable doubt that there was no intent to destroy it, is not arson.

Intent to destroy requisite.

Sec. 530. Where any appurtenance to any building is so situated with reference to such building, or where any building is so situated with reference to another building that the burning of the one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing definition of arson, and as against any person actually participating in the original setting fire, as of the moment when the fire from the one shall communicate to and burn the other.

Contiguous buildings.

Degrees of arson

Sec. 531. Arson is distinguished into four degrees.

Sec. 532. Maliciously burning in the night time an inhabited building, in which there is at the time some human being is arson in the first degree.

First degree defined.

Sec. 533. No warehouse, barn, shed, or other outhouse, is a subject of arson in the first degree, unless it is immediately connected with, and forms part of, an inhabited building.

Appurtenances to buildings.

Sec. 534. Maliciously burning in the day time an inhabited building, in which there is at the time some human being, is arson in the second degree.

Burning in day time when arson in second degree.

Sec. 535. Maliciously burning in the night time a building, not an inhabited building, but adjoining to or within the curtilage of an inhabited building in which there is at the time some human being, so that such inhabited building is endangered, even though it be not in fact injured by such burning, is arson in the second degree.

In night time when arson in second degree.

Sec. 536. Maliciously burning in the day time a building,

In daytime,
when third
degree.

the burning of which in the night time would be arson in the second degree, is arson in the third degree.

In night time,
when arson in
third degree.

Section 537. Maliciously burning in the night time any building, not the subject of arson in the first or second degree, including any house for public worship, school house, or public building belonging to the people of this territory, or to any county, city, town or village, any building in which have usually been deposited the papers of any public officer, and any barn, mill or manufactory, is arson in the third degree.

Fourth degree
defined.

Sec. 538. Maliciously burning in the day time any building the burning of which in the night time would be arson in the second [third] degree, is arson in the fourth degree.

Punishment of
arson.

Sec. 539. Arson is punishable by imprisonment in the territorial prison, as follows:

1. Arson in the first degree, for any term not less than ten years ;
2. Arson in the second degree, not exceeding ten years and not less than seven years ;
3. Arson in the third degree, not exceeding seven years and not less than four years ;
4. Arson in the fourth degree, not exceeding four years and not less than one year ; or by imprisonment in a county jail not exceeding one year.

CHAPTER II.

BURGLARY AND HOUSE BREAKING.

Section 540. Burglary in the first degree defined.

541. Breaking into dwelling house in the day time burglary in the second degree.

542. Breaking inner door in night time, burglarly in second degree.

543. Such breaking by person lawfully in the house, burglarly in the second degree.

544. Breaking into dwelling house, when burglarly in third degree.

545. Other burglaries of the third degree.

Section 546. Breaking and entering dwelling, when burglary in fourth degree.

547. Breaking out of dwelling house, burglary in fourth degree.

548. Punishment of burglary.

549. Having possession of burglar's implements.

550. Entering building other than dwelling houses.

551. " Dwelling house " defined.

552. " Night time " defined.

Sec. 540. Every person who breaks into and enters in the night time the dwelling house of another, in which there is at the time some human being, with intent to commit some crime therein, either :

1. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window of such house, or the lock or bolt of such door, or the fastening of such window or shutter ; or,

2. By breaking in any other manner, being armed with any dangerous weapon, or being assisted or aided by one or more confederates, then actually present ; or,

3. By unlocking an outer door by means of false keys, or by picking the lock thereof,

Is guilty of burglary in the first degree.

Sec. 541. Every person who breaks into any dwelling house in the day time under such circumstances as would have constituted the crime of burglary in the first degree, if committed in the night time, is guilty of burglary in the second degree.

Sec. 542. Every person who, having entered the dwelling house of another in the night time, through an open outer door or window, or other aperture not made by such person, breaks any inner door, window, partition, or other part of such house, with intent to commit any crime, is guilty of burglary in the second degree.

Sec. 543. Every person who, being lawfully in any dwelling house, breaks in the night time any inner door of the same house, with intent to commit any crime, is guilty of burglary in the second degree.

When burglary
in third degree.

Sec. 544. Every person who breaks into any dwelling house in the night time, with intent to commit a crime, but under such circumstances as do not constitute the offense of burglary in the first degree, is guilty of burglary in the third degree.

Other burglaries
in third degree.

Sec. 545. Every person who breaks and enters, in the day or in the night time, either :

1. Any building within the curtilage of a dwelling house, but not forming a part thereof; or,

2. Any building or any part of any building, booth, tent, railroad car, vessel, or other structure or erection in which any property is kept, with intent to steal therein or to commit any felony,

Is guilty of burglary in the third degree.

When burglary
in fourth degree

Sec. 546. Every person who breaks and enters the dwelling house of another, by day or by night, in such manner as not to constitute any burglary specified in the preceding section, with intent to commit a crime, is guilty of burglary in the fourth degree.

Same.

Sec. 547. Every person who, having committed any crime in the dwelling house of another, breaks in the night time any outer door, window shutter, or other part of such house, to get out of the same, is guilty of burglary in the fourth degree.

Punishment.

Sec. 548. Burglary is punishable by imprisonment in the territorial prison as follows :

1. Burglary in the first degree, for any term not less than ten years;

2. Burglary in the second degree, not exceeding ten years, and not less than five;

3. Burglary in the third degree, not exceeding five years;

4. Burglary in the fourth degree, not exceeding three years :

Burglar's im-
plements.

Sec. 549. Every person who, under circumstances not amounting to any felony, has in his possession in the night time any dangerous, offensive weapon or instrument whatever, or any picklock, crow, key, bit, jack, jimmy, nippers, pick, betty or other implement of burglary, with intent to break and

enter any building or part of any building, booth, tent, railroad car, vessel or other structure or erection and to commit any felony therein, is guilty of a misdemeanor.

Sec. 550. Every person, who, under circumstances ^{not} Entering other buildings. amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, railroad car, vessel or other structure or erection with intent to commit any felony, larceny or malicious mischief, is guilty of a misdemeanor.

Sec. 551. The term "dwelling house," as used in this chap- Dwelling house defined. ter, includes every house or edifice any part of which has usually been occupied by any person lodging therein at night, and any structure joined to and immediately connected with such a house or edifice.

Sec. 552. The words "night time," in this chapter, include Night time defined. the period between sunset and sunrise.

CHAPTER III.

FORGERY AND COUNTERFEITING.

Section 553. Forgery of wills, conveyances, certificates of acknowledgment, &c.

554. Forgery of public securities.

555. Forgery of public and corporate seals.

556. Forgery of records and official returns.

557. Making false entries in records or returns.

558. False certificates of acknowledgment, or proof.

559. Making false bank note plates, &c.

560. What plate may be deemed an imitation of a genuine plate.

561. Uttering forged evidences of debt.

562. Having possession of certain forged evidences of debt with the intention of uttering them.

563. Having possession of other forged instruments.

564. Issuing spurious certificates of stock in corporations.

- Section 565. Re-issuing canceled certificates of stock.
566. Issuing false evidences of debt of corporation.
567. Counterfeiting coin to be circulated within this territory.
568. Counterfeiting coin to be exported.
569. Forging process of court, and other instruments.
570. Making false entries in accounts of certain public officers.
571. Forging passage tickets.
572. Forging United States stamps.
573. Making false entries in books of accounts of corporation.
574. Clerks and others making false entries in employer's books.
575. Having possession of counterfeit coin with intent to utter.
576. Punishment of forgery.
577. Uttering forged instrument, or coin, forgery in same degree as making it.
578. Exception, when such instrument or coin was received in good faith.
579. Fraudulently signing one's own name, as that of another.
580. Fraudulently indorsing one's own name.
581. Erasures and obliterations.
582. "Writing" and "written instruments" defined.
583. Fictitious names of officers of corporations.

Forgery of wills
&c.

Sec. 553. Every person who, with intent to defraud, forges, counterfeits or falsely alters :

1. Any will or codicil of real or personal property, or any deed or other instrument being or purporting to be the act of another, by which any right or interest in real property is or purports to be transferred, conveyed or in any way charged or affected; or,

2. Any certificate or indorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded or given in evidence, made or purporting to have

been made by any officer duly authorized to make such certificate or indorsement ; or,

3. Any certificate of the proof of any deed, will, codicil or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any court or officer duly authorized to make such certificate,

Is guilty of forgery in the first degree.

Sec. 554. Every person who, with intent to defraud, forges, Forgery of public securities. counterfeits or falsely alters :

1. Any certificate or other public security, issued or purporting to have been issued under the authority of this territory, by virtue of any law thereof, by which certificate or other public security, the payment of any money absolutely or upon any contingency is promised, or the receipt of any money or property acknowledged ; or,

2. Any certificate of any share, right or interest in any public stock created by virtue of any law of this territory, issued or purporting to have been issued by any public officer, or any other evidence of any debt or liability of the people of this territory, either absolute or contingent, issued or purporting to have been issued by any public officer ; or,

3. Any indorsement or other instrument transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest,

Is guilty of forgery in the first degree.

Sec. 555. Every person who, with intent to defraud, forges Of public and corporate seals. or counterfeits the great or privy seal of this territory, the seal of any public office authorized by law, the seal of any court of record, including judge of probate seals, or the seal of any corporation created by the laws of this territory or of any state, government or country, or any other public seal authorized or recognized by the laws of this territory, or of any other state, government or country, or who falsely makes, forges or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

Forgery of records and official returns.

Sec. 556. Every person who, with intent to defraud, falsely alters, destroys, corrupts or falsifies :

1. Any record of any will, codicil, conveyance or other instrument, the record of which is, by law, evidence ; or,

2. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity ; or,

3. The return of any officer, court or tribunal to any process of any court,

Is guilty of forgery in the second degree.

Making false entries.

Sec. 557. Every person who, with intent to defraud, falsely makes, forges or alters any entry in any book of records, or any instrument purporting to be any record or return, specified in the last section, is guilty of forgery in the second degree.

False certificates.

Sec. 558. If any officer authorized to take the acknowledgment or proof of any conveyance of real estate, or of any other instrument which by law may be recorded, knowingly and falsely certifies that any such conveyance or instrument was acknowledged by any party thereto, or was proved by any subscribing witness, when in truth such conveyance or instrument was not acknowledged or proved as certified, he is guilty of forgery in the second degree.

False bank note plates.

Sec. 559. Every person who makes or engraves, or causes or procures to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit or other evidence of debt, issued by any banking corporation or association, or individual banker, incorporated or carrying on business under the laws of this territory or of any other state, government or country, without the authority of such bank ; or has or keeps in his custody or possession any such plate, without the authority of such bank, with intent to use or permit the same to be used for the purpose of taking therefrom any impression, to be passed, sold or altered ; or has or keeps in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed for the purpose of being passed, sold or altered ; or makes or causes to be made, or has in his custody or possession, any plate upon which are engraved any figures, or words, which may be used

for the purpose of falsely altering any evidence of debt issued by any such bank, with the intent to use the same, or to permit them to be used for such purpose, is guilty of forgery in the second degree.

Sec. 560. Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument imitated, in either of the following cases : ^{Imitation of a genuine plate.}

1. When the engraving on such plate resembles and conforms to such parts of the genuine instrument as are engraved ; or,

2. When such plate is partly finished, and the part so finished resembles and conforms to similar parts of the genuine instrument.

Sec. 561. Every person who sells, exchanges or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft, or other evidence of debt, or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed ; or who offers any such note or other instrument for sale, exchange or delivery, for any consideration, with the like knowledge and intent ; or who receives any such note or other instrument upon a sale, exchange or delivery for any consideration, with the like knowledge and intent, is guilty of forgery in the second degree. ^{Forged evidences of debt.}

Sec. 562. Every person who, with intent to defraud, has in his possession any forged, altered or counterfeit negotiable note, bill, draft or other evidence of debt, issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this territory or of any other state, government or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is guilty of forgery in the second degree. ^{Having them in possession.}

Sec. 563. Every person who has in his possession any forged or counterfeited instrument, the forgery of which is hereinbefore declared to be punishable, other than such as are enumerated in the last section, knowing the same to be forged, counterfeited or falsely altered, with intent to injure or defraud ^{Other forged instruments.}

by uttering the same as true, or as false, or by causing the same to be so uttered, is guilty of forgery in the fourth degree.

Issuing spurious certificates.

Sec. 564. Every officer, and every agent of any corporation or joint stock association formed or existing under or by virtue of the laws of this territory, or of any other state, government or country, who, within this territory, willfully signs or procures to be signed, with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who willfully issues, sells or pledges or causes to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, whether of full paid shares or otherwise, or of any interest in its property or profits, or of any certificate or other evidence of such ownership, transfer or interest or any instrument purporting to be a certificate or other evidence of such ownership, transfer or interest, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or other managing body of such corporation or association having authority to issue the same, is guilty of forgery in the second degree.

Re-issuing cancelled certificates.

Sec. 565. Every officer, and every agent of any corporation or joint stock association formed or existing under or by virtue of the laws of this territory, or of any other state, government or country, who within this territory willfully reissues, sells or pledges, or causes to be reissued, sold or pledged, any surrendered or cancelled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, or of an interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree.

False evidences of debt.

Sec. 566. Every officer, and every agent of any corporation, municipal, or otherwise, or of any joint stock association formed or existing under or by virtue of the laws of this territory, or of any other state, government or country, who within this territory willfully signs or procures to be signed with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who willfully issues, sells or pledges, or causes to be issued,

sold or pledged any false or fraudulent bond or other evidence of debt against such corporation or association or any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or common council or other managing body or officers of such corporation having authority to issue the same, is guilty of forgery in the second degree.

Sec. 567. Every person, who counterfeits any gold or silver ^{Counterfeiting coin.} coin, whether of the United States or of any foreign government or country, with intent to sell, utter, use or circulate the same as genuine, within this territory, is guilty of forgery in the second degree.

Sec. 568. Every person who counterfeits any gold or silver ^{Same.} coin, whether of the United States or of any foreign country or government, with intent to export the same, or permit them to be exported to injure or defraud any foreign government, or the subjects thereof, is guilty of forgery in the third degree.

Sec. 569. Every person who, with intent to defraud, falsely ^{Forging process of court.} makes, alters, forges or counterfeits :

1. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate or officer ; or being, or purporting to be, any pleading, proceeding, bond or undertaking filed or entered in any court ; or being, or purporting to be, any certificate, order or allowance by any competent court or officer ; or being, or purporting to be, any license or authority authorized by any statute ; or

2. Any instrument in writing being or purporting to be, the act of another, by which any pecuniary demand or obligation is, or purports to be, created, increased, discharged or diminished, or by which any rights or property whatever, are or purport to be, transferred, conveyed, discharged, diminished, or in any manner affected, the punishment of which is not hereinbefore prescribed, by which false making, altering, forging or counterfeiting, any person may be affected, bound, or in any way injured in his person or property,

Is guilty of forgery in the third degree.

Sec. 570. Every person who, with intent to defraud, makes ^{Making false entries.}

any false entry or falsely alters any entry made in any book of accounts kept in the office of the auditor of this territory, or in the office of the treasurer of this territory, or of any county treasurer, by which any demand or obligation, claim right or interest, either against or in favor of the people of this territory, or any county or town, or any individual, is, or purports to be, discharged, diminished, increased, created, or in any manner affected, is guilty of forgery in the third degree.

Forging passage tickets.

Sec. 571. Every person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance; and every person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

Forging United States stamps.

Sec. 572. Every person who forges, counterfeits or alters any postage or revenue stamp of the United States, or who sells, or offers, or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

Making false entries.

Sec. 573. Every person who, with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this territory, or in any book of accounts kept by any such corporation or its officers, and delivered, or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim or credit is, or purports to be, discharged, diminished, increased, created, or in any manner, affected, is guilty of forgery in the third degree.

Same.

Sec. 574. Every person who, being a member or officer, or in the employment of any corporation, association or partnership, falsifies, alters, erases, obliterates or destroys any account or book of accounts or records belonging to such corporation, association or partnership, or appertaining to their business, or makes any false entries in such account or book, or keeps

any false account in such business, with intent to defraud his employers, or to conceal any embezzlement of their money or property, or any defalcation, or other misconduct, committed by any person in the management of their business, is guilty of forgery in the fourth degree.

Sec. 575. Every person who has in his possession any counterfeit of any gold or silver coin, whether of the United States or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate or export the same as true or as false, or by causing the same to be so uttered or passed, is guilty of forgery in the the fourth degree.

Sec. 576. Forgery is punishable by imprisonment in the territorial prison as follows : Punishment of forgery.

1. Forgery in the first degree, by imprisonment not less than ten years ;

2. Forgery in the second degree, not exceeding ten years, and not less than five ;

3. Forgery in the third degree, not exceeding five years ;

4. Forgery in the fourth degree, by imprisonment in the territorial prison not exceeding two years, or by imprisonment in a county jail not exceeding one year.

Sec. 577. Every person who, with intent to defraud, utters or publishes as true any forged, altered or counterfeited instrument, or any counterfeit gold or silver coin the forging, altering or counterfeiting of which is hereinbefore declared to be punishable, knowing such instrument or coin to be forged, altered or counterfeited, is guilty of forgery in the same degree as if he had forged, altered or counterfeited the instrument or coin so uttered, except as in the next section specified. Uttering forged instrument or coin.

Sec. 578. If it appears on the trial of the indictment, that the accused received such forged or counterfeited instrument or coin from another, in good faith, and for a good and valuable consideration, without any circumstances to justify a suspicion of its being forged or counterfeited, the jury may find the defendant guilty of forgery in the fourth degree. Exception.

Sec. 579. Every person who, with intent to defraud, makes

Fraudulently
signing one's
own name.

or subscribes any instrument in his own name, intended to create, increase, discharge, defeat or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and utters or passes such instrument, under the pretense that it is the act of another who bears the same name, is guilty of forgery in the same degree as if he had forged the instrument of a person bearing a different name from his own.

Fraudulently
indorsing one's
own name.

Sec. 580. Every person who, with intent to defraud, indorses any negotiable instrument in his own name, and utters or passes such instrument, under the fraudulent pretense that it is indorsed by another person who bears the same name, is guilty of forgery in the same degree as is he had forged the indorsement of a person bearing a different name from his own.

Erasures and
obliterations.

Sec. 581. The total or partial erasure, or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property is or is intended to be created, increased, discharged, diminished or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing.

Writing and
written instru-
ments defined.

Sec. 582. Every instrument partly printed and partly written, or wholly printed with a written signature thereto, and every signature of an individual, firm or corporation, or of any officer of such body, and every writing purporting to be such signature, is a writing or a written instrument, within the meaning of the provisions of this chapter.

Fictitious
names.

Sec. 583. The false making or forging of an evidence of debt purporting to have been issued by any corporation and bearing the pretended signature of any person as an agent or officer of such corporation, is forgery in the same degree as if such person was at the time an officer or agent of such corporation; notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

CHAPTER IV.

LARCENY.

- Section 584. Larceny defined.
585. Larceny of lost property.
586. Grand and petit larceny.
587. Grand larceny defined.
588. Petit larceny.
589. Punishment of grand larceny.
590. Punishment of petit larceny.
591. Of grand larceny committed in dwelling house or vessel.
592. Of grand larceny committed in the night time, from the person.
593. Larceny of written instrument.
594. Value of passage ticket.
595. Securities completed, but not yet issued, declared property.
596. Severing and removing a part of the realty, declared larceny.
597. Stealing wrecked goods, &c.
598. Receiving stolen property.
599. Fraudulent consumption of illuminating gas.
600. Larceny committed out of this territory.

Sec. 584. Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof. Larceny defined

Sec. 585. One who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made such effort to find the owner and restore the property to him as the circumstances render reasonable and just, is guilty of larceny. Larceny of lost property.

Sec. 586. Larceny is divided into two degrees; the first of which is termed grand larceny, the second petit larceny. Grand and petit larceny.

Grand larceny defined.

Sec. 587. Grand larceny is larceny committed in either of the following cases :

1. When the property taken is of value exceeding twenty-five dollars;

2. When such property, although not of value exceeding twenty-five dollars in value, is taken from the person of another.

Petit larceny.

Sec. 588. Larceny in other cases is petit larceny.

Punishment of grand larceny.

Sec. 589. Grand larceny is punishable by imprisonment in the territorial prison not exceeding five years.

Punishment of petit larceny.

Sec. 590. Petit larceny is punishable as a misdemeanor.

Of grand larceny.

Sec. 591. When it appears upon the trial of an indictment for grand larceny that the larceny alleged was committed in any dwelling house or vessel, the offender may be punished by imprisonment in the territorial prison not exceeding eight years.

Committed in night time from the person.

Sec. 592. When it appears upon such trial, that such larceny was committed by stealing in the night time, from the person of another, the offender may be punished by imprisonment in the territorial prison not exceeding ten years.

Larceny of written instrument.

Sec. 593. If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, of which in any contingency might be collected thereon, or the value of the property, the title to which is shown thereby, or the sum which might be recovered in the absence thereof, as the case may be, shall be deemed the value of the thing stolen.

Value of passage ticket.

Sec. 594. If the thing stolen is any ticket, or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or in any vessel or other public conveyance, the price at which tickets entitling a person to a like passage, are usually sold by the proprietors of such conveyance, shall be deemed the value of such ticket.

Securities.

Sec. 595. All the provisions of this chapter shall apply where the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, though the same

has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

Sec. 596. All the provisions of this chapter shall apply ^{Declared lar-} where the thing taken is any fixture or part of the realty, and ^{cenry.} is severed at the time of the taking, in the same manner as if such thing had been severed by another person at some previous time.

Sec. 597. Every person who takes away any goods from any ^{stealing wreck-} stranded or wrecked steamboat or other vessel, or any goods ^{ed goods.} floating on the water, or goods cast by the water upon the shore, or goods lodged upon drifts, snags or other obstructions in a water course, or goods found in any creek, or who knowingly becomes possessed of any such, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or the coroner of the county where the same were found, is guilty of a misdemeanor.

Sec. 598. Every person who buys or receives, in any man- ^{Receiving stol-} ner, upon any consideration, any personal property of any ^{en property.} value whatsoever, that has been stolen from any other, knowing the same to have been stolen, is punishable by imprisonment in the territorial prison not exceeding five years, or in the county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

Sec. 599. Every person who, with intent to defraud, makes ^{Fraudulent con-} or causes to be made and pipe or other instrument or contriv- ^{sumption of il-} ance, and connects the same, or causes it to be connected with ^{luminating gas.} any pipe laid for conducting illuminating gas, so as to conduct gas to a point where the same may be consumed without its passing through the meter providing for registering the quantity consumed, or in any other manner so as to evade paying therefor, and every person who with like intent injures or alters any gas meter, or obstructs its action, is guilty of a misdemeanor.

Sec. 600. Every person who steals the property of another ^{Larceny com-} in any other state or country, and brings the same into this ter- ^{mitted out of} ritory may be convicted and punished in the same manner as if ^{this territory.} such larceny had been committed in this territory; and such

larceny may be charged to have been committed in any town or city into or through which such stolen property has been brought.

CHAPTER V.

EMBEZZLEMENT.

Section 601. Embezzlement defined.

- 602. When officer, &c., of any association, guilty of embezzlement.
- 603. When carrier, or other person, having property for transportation for hire, guilty of embezzlement.
- 604. When trustee, banker, &c., &c., guilty of embezzlement.
- 605. When bailee guilty of embezzlement.
- 606. When clerk or servant guilty of embezzlement.
- 607. Distinct act of taking not necessary to constitute embezzlement.
- 608. Evidence of debt undelivered, may be subject of embezzlement.
- 609. Claim of title a ground of defense.
- 610. Intent to restore the property is no defense.
- 611. But actual restoration is a ground for mitigation of punishment.
- 612. Punishment for embezzlement.

Embezzlement defined.

Sec. 601. Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted.

When officer guilty of embezzlement.

Sec. 602. If any person, being an officer, director, trustee, clerk, servant or agent of any association, society or corporation (public or private,) fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control in virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

Sec. 603. If any carrier or other person having under his control personal property for the purpose of transportation for hire, fraudulently appropriates it to any use or purpose inconsistent with the safekeeping of such property and its transportation according to his trust, he is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not.

When carrier or other person guilty of embezzlement.

Sec. 604. If any person, being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator or collector, or being otherwise entrusted with or having in his control property for the use of any other person, or for any public or benevolent purpose, fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

When trustee, &c. guilty of embezzlement.

Sec. 605. If any person being entrusted with any property as bailee, or with any power of attorney for the sale or transfer thereof, fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, he is guilty of embezzlement, whether he has broken the package or otherwise determined the bailment or not.

When bailee guilty of embezzlement.

Sec. 606. If any clerk or servant of any private person or copartnership or corporation (except apprentices and persons within the age of eighteen years) fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of any other person which has come into his control or care by virtue of his employment as such clerk or servant, he is guilty of embezzlement.

When clerk or servant guilty of embezzlement.

Sec. 607. A distinct act of taking is not necessary to constitute embezzlement; but any fraudulent appropriation, conversion or use of the property, coming within the above prohibitions, is sufficient.

Distinct act of taking, not necessary to constitute embezzlement.

Sec. 608. Any evidence of debt, negotiable by delivery only, and actually executed, is equally the subject of embezzlement

Evidence of debt.

whether it has been delivered or issued as a valid instrument or not.

Claim of title. Sec. 609. Upon any indictment for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith even though such claim is untenable. But this provision shall not excuse the retention of the property of another to offset or pay demand held against him.

Intent to restore the property is no defense.

Sec. 610. The fact that the accused intended to restore the property embezzled, is no ground of defense, or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

Mitigation of punishment.

Sec. 611. Whenever it is made to appear that prior to any information laid before a magistrate, charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground of defense to the indictment, but it authorizes the court to mitigate punishment in its discretion.

Punishment.

Sec. 612. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled. And where the property embezzled is an evidence of debt or right in action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

CHAPTER VI.

EXTORTION.

Section 613. Extortion defined.

614. What threats may constitute extortion.

615. Punishment of extortion in certain cases.

616. Punishment of extortion committed under color of official right.

617. Obtaining signature by means of threats.

618. Sending threatening letters.

Section 619. Attempts to extort money, or property, by verbal threats.

Sec. 613. Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right. Extortion defined

Sec. 614. Fear, such as will constitute extortion, may be induced by a threat, either : What threats may constitute extortion.

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family ; or,

2. To accuse him or any relative of his or member of his family, of any crime ; or,

3. To expose, or impute to him, or them, any deformity or disgrace ; or,

4. To expose any secret affecting him or them.

Sec. 615. Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat such as is mentioned in the last section, is punishable by imprisonment in the territorial prison not exceeding five years. Punishment.

Sec. 616. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor. Same.

Sec. 617. Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property, or payment of the amount of such debt, demand, charge, or right of action were obtained. Obtaining signature.

Sec. 618. Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as Sending threatening letters.

is specified in section 614, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Attempts to extort money.

Sec. 619. Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section 614, to extort money or other property from another, is guilty of a misdemeanor.

CHAPTER VII.

FALSE PERSONATION, AND CHEATS.

Section 620. Falsely personating another.

621. Receiving property in false character.

622. Personating officers, firemen, and other persons.

623. Obtaining property by false pretenses.

624. Obtaining property for charitable purposes.

625. Obtaining negotiable evidence of debt by false pretenses.

626. Using false check or order for payment of money.

627. Mock auctions.

Falsely personating another.

Sec. 620. Every person who falsely personates another, and in such assumed character, either :

1. Marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other person ; or,

2. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety ; or,

3. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true ; or,

4. Does any other act, whereby if it were done by the person falsely personated, he might in any event become liable

any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person,

Is punishable by imprisonment in the territorial prison not exceeding ten years.

Sec. 621. Every person who falsely personates another, and ^{Falsely personating another.} in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

Sec. 622. Every person who falsely personates any public ^{Personating officers and others.} officer, civil or military; or any fireman, or any private individual having special authority by law to perform any act affecting the rights or interests of another, or assumes, without authority, any uniform or badge by which such are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, vexed, or annoyed, is guilty of a misdemeanor.

Sec. 623. Every person who, with intent to cheat or defraud another, designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment. ^{Obtaining property by false pretenses.}

Sec. 624. Every person who designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property for any alleged charitable or benevolent purpose whatever, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment. ^{For charitable purposes.}

False pretenses **Sec. 625.** If the false token by which any money or property is obtained in violation of sections 623 and 624 is a promissory note or other negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in the territorial prison not exceeding seven years, instead of by the punishments prescribed by those sections.

Using false check. **Sec. 626.** The use of a matured check, or other order for the payment of money, as a means of obtaining any signature, money or property, such as is specified in the last two sections, by a person who knows that a drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representation is made in respect thereto.

Mock auctions. **Sec. 627.** Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and in addition thereto he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this territory.

CHAPTER VIII.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

Section 628. Captain or other officer, willfully destroying vessel, &c.

629. Other persons willfully destroying vessel, &c.

630. Fitting out or lading any vessel, with intent to wreck the same.

631. Making false manifest, &c.

Sec. 628. Every captain or other officer or person in command or charge of any vessel, who within this territory willfully wrecks, sinks, or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk, or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the territorial prison for life. ^{Willfully destroying vessel.}

Sec. 629. Every person other than such as are embraced within the last section, who is guilty of any act therein prohibited, is punishable by imprisonment in the territorial prison not exceeding ten years and not less than three. ^{Same}

Sec. 630. Every person guilty of fitting out any vessel, or lading any cargo on board of any vessel, with intent to cause or permit the same to be wrecked, sunk or otherwise injured or destroyed, and thereby to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three. ^{Intent to wreck vessel.}

Sec. 631. Every person guilty of preparing, making or subscribing, any false or fraudulent manifest, invoice, bill of lading, boats register or protest, with intent to defraud another, is punishable by imprisonment in the territorial prison not exceeding three years, or by a fine not exceeding one thousand dollars or both. ^{Making false manifest.}

CHAPTER IX.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

Section 632. Destroying property insured.

633. Presenting false proofs of loss in support of claim upon policy of insurance.

Sec. 632. Every person who willfully burns, or in any other manner injures or destroys any property whatever which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of such person or of any other, is punishable by imprisonment in the territorial prison not exceeding seven years, and not less than four. ^{Destroying property insured.}

False proofs.

Sec. 633. Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes or subscribes any account, certificate, survey, affidavit, proof of loss, or other book, paper or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the territorial prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

CHAPTER X.

FALSE WEIGHTS AND MEASURES.

Section 634. Using false weights or measures.

635. Selling provisions by false weight or measure.

636. Keeping false weights.

637. False weights and measures authorized to be seized.

638. May be tested by committing magistrate, and destroy or deliver to district attorney.

639. Shall be destroyed after conviction of offender.

640. Stamping false weight or tare, on casks or packages.

Using false weights or measures.

Sec. 634. Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

Selling provisions by false weight or measures.

Sec. 635. When the property sold by false weight or measure consists of any description of provisions, the offense is felony.

Keeping false weights.

Sec. 636. Every person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, is guilty of a misdemeanor.

Sec. 637. Every person who is authorized or enjoined by ^{Authorized to be seized.} law to arrest another person for a violation of sections 634, 635 and 636, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Sec. 638. The magistrate to whom any weight or measure ^{May be tested by compounding magistrate, &c.} is delivered pursuant to the last section, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he shall cause it to be destroyed, or to be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require.

Sec. 639. Upon the conviction of the accused, such district ^{Shall be destroyed, when.} attorney shall cause any weight or measure in respect whereof *the accused stands convicted*, and which remains in the possession or under the control of such district attorney, to be destroyed.

Sec. 640. Every person who knowingly marks or stamps ^{Stamping false weight or tare on casks, &c.} false or short weight, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.

CHAPTER XI.

FRAUDULENT INSOLVENCIES BY INDIVIDUALS.

Section 641. Fraudulent conveyances.

642. Fraudulent removal of property to prevent levy.

643. Making assignments with preferences by insolvents prohibited.

644. Frauds in procuring discharge in insolvency.

Sec 641. Every person who, being a party to any conveyance or assignment of any real or personal property, or of any ^{Fraudulent conveyances.}

interest therein, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person being privy to or knowing of such conveyance, assignment or charge, who willfully puts the same in use as having been made in good faith, is guilty of a misdemeanor.

Fraudulent removal of property.

Sec. 642. Every person who removes any of his property out of any county, with intent to prevent the same from being levied upon by any execution or attachment, or who secretes, assigns, conveys or otherwise disposes of any of his property, with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and every person who receives any such property with such intent, is guilty of a misdemeanor.

Making assignments, when prohibited.

Sec. 643. Every person who, knowing that his property is insufficient for the payment of all his lawful debts, assigns, transfers or delivers any property for the benefit of any creditor, or creditors, upon any trust or condition, that any creditor shall receive a preference or priority over any other, except in the cases in which such preference is expressly allowed to be given by law, or with intent to create such preference or priority, is guilty of a misdemeanor.

Frauds.

Sec. 644. Every person who, upon making or prosecuting any application for a discharge as an insolvent debtor, under the provisions of any law now in force, or that may hereafter be enacted, either :

1. Fraudulently presents, or authorizes to be presented on his behalf, such application, in a case in which it is not authorized by law ; or,

2. Makes or presents to any court or officer, in support of such application, any petition, schedule, book, account, voucher, or other paper or document, knowing the same to contain any false statement ; or

3. Fraudulently makes and exhibits, or alters, obliterates or destroys any account or voucher relating to the condition of his affairs, or any entry or statement in such account or voucher ; or,

4. Practices any fraud upon any creditor, with intent to induce him to petition for, or consent to such discharge; or,

5. Conspires with or induces any person fraudulently to unite as creditor in any petition for such discharge, or to practice any fraud in aid thereof,

Is guilty of a misdemeanor.

CHAPTER XII.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

- Section 645. Frauds in subscriptions for stock of corporations.
646. Frauds in procuring organization of corporations, or increase of capital.
647. Unauthorized use of names in prospectuses &c.
648. Misconduct of directors of stock corporations.
649. Misconduct of directors of banking corporations.
650. Loans made in violation of last section, not invalid.
651. Sale or hypothecation of bank notes by officer, &c.
652. Officer of bank putting excessive number of its notes in circulation.
653. Officer or agent of banking corporation, making guarantee or indorsement, in its behalf, in certain cases.
654. Bank officer overdrawing his account.
655. Omitting to enter receipt of property of corporation in its books.
656. Destroying or falsifying books or papers of corporation.
657. Officer of corporation publishing false reports of its condition.
658. Officer of corporation refusing to permit an inspection of its books.

Section 659. Insolvencies of corporations deemed fraudulent, when.

660. Directors participating in fraudulent insolvency, how punishable.

661. Violation of duty of directors of moneyed corporations.

662. Officer of railroad company contracting debt in its behalf, exceeding its available means.

663. Debt contracted in violation of last section, not invalid.

664. Director of corporation presumed to have knowledge of its affairs.

665. Director present at meeting, when presumed to have assented to proceedings.

666. Director absent from meeting, when presumed to have assented to proceedings.

667. Foreign corporations.

668. Director defined.

Fraud in subscriptions for stock.

Sec. 645. Every person who signs the name of a fictitious person to any subscription for, or agreement to take stock in any corporation, existing or proposed; and every person who signs, to any subscription or agreement, the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Frauds in procuring organization of corporation.

Sec. 646. Every officer, agent or clerk, of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the territorial prison not exceeding ten years and not less than three.

Unauthorized use of names.

Sec. 647. Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of

another in any prospectus, circular or other advertisement or announcement of any corporation or joint stock association existing or intended to be formed, with intent to permit the same to be published and thereby to lead persons to believe that the person whose name is so subscribed as an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

Sec. 648. Every director of any stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either : ^{Misconduct of directors.}

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law ; or,

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature ; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in, and required to be paid, or with the intent of providing the means of making such payment ; or,

4. To receive or discount any note or other evidence of debt with the intent of enabling any stockholder to withdraw any part of the money paid in by him, or his stock ; or,

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock ; or,

6. To receive any such shares in payment or satisfaction of any debt due to such corporation ; or,

7. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds or other evidences of debt issued by such other corporation.

Is guilty of a misdemeanor.

Sec. 649. Every director of any corporation having banking powers, who concurs in any vote or act of the directors of ^{Same}

such corporation, or any of them, by which it is intended, either :

1. To make any loan, or discount, by which the whole amount of the loans and discounts of the corporation is made to exceed three times its capital stock then paid in and actually possessed ; or,

2. To make any loan or discount to any director of such corporation, or upon paper upon which any such director is responsible, to an amount exceeding in the aggregate one-third of the capital stock of such corporation, then paid in and actually possessed,

Is guilty of a misdemeanor.

When loans not
invalid.

Sec. 650. Nothing in the last section shall render any loan made by the directors of any such corporation, in violation thereof, invalid.

Sale, &c., of
bank notes.

Sec. 651. Every officer or agent of any corporation having banking powers, who sells, or causes or permits to be sold, any bank notes of such corporation, or pledges or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes, as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

Circulating ex-
cessive number
of bank notes.

Sec. 652. Every officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation, to an amount, which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

Officer making
guarantee or in-
dorsement.

Sec. 653. Every officer or agent of any banking corporation, who makes or delivers any guarantee or indorsement upon behalf of such corporation, whereby it may become liable upon any of its discounted notes, bills or obligations, in any sum be-

yond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.

Sec. 654. Every officer, agent, teller, clerk or servant of any bank, banking association or savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, notes or funds of such bank, is guilty of a misdemeanor.

Overdrawing
accounts.

Sec. 655. Every director, officer or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association, is guilty of a misdemeanor.

Omitting to en-
ter receipt.

Sec 656. Every director, officer, agent or member of any corporation or joint stock association, who with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars or by both such fine and imprisonment.

Destroying or
falsifying books
or papers of
corporation.

Sec. 657. Every director, officer or agent of any corporation or joint stock association, who knowingly concurs in making or publishes any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are mentioned in sections 646 and 647, is guilty of a misdemeanor.

Publishing false
reports.

Sec. 658. Every officer or agent of any corporation having or keeping an office within this territory, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to in-

Refusing to
permit an in-
spection of
books of corpor-
ation.

spect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

Insolvencies,
deemed fraudu-
lent when.

Sec. 659. Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

How punishable

Sec. 660. In every case of a fraudulent insolvency of a moneyed corporation, every director thereof who participated in such fraud, if no other punishment is prescribed therefor by this Code, or any of the acts which are specified as continuing in force, is guilty of a misdemeanor.

Violation of
duty.

Sec. 661. Every director of any moneyed corporation, who willfully does any act, as such director, which is expressly forbidden by law, or willfully omits to perform any duty expressly imposed upon him as such director, by law, the punishment for which act or omission is not otherwise prescribed by this Code, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor.

Contracting
debt, exceeding
available means

Sec. 662. Every officer, agent or stockholder of any railroad company who knowingly assents to or has any agency in contracting any debt, by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it, at the time such debt is contracted, including its bona fide and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor.

When not in-
valid.

Sec. 663. The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

Director pre-
sumed to have
knowledge of
what.

Sec. 664. Every director of a corporation, or joint stock association, is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors, is a violation of this chapter.

Sec. 665. Every director of a corporation, or joint stock association, who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

When director presumed to have assented to proceedings.

Sec. 666. Every director of a corporation, or joint stock association, although not present at a meeting of the directors, at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not, within that time, cause, or in writing require his dissent from such illegality to be entered in the minutes of the directors.

Same, when absent.

Sec. 667. It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another state, government or country, if it was one carrying on business, or keeping an officer therefor, within this territory.

Foreign corporations.

Sec. 668. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter, or known by law.

Director defined

CHAPTER XIII.

FRAUDS IN THE SALE OF PASSAGE TICKETS.

Section 669. Sale of passage tickets on vessels and railroads forbidden, except by agents specially authorized.

670. Sales by authorized agents restricted.

671. Unauthorized persons forbidden to sell certificates, receipts, &c., for the purpose of procuring tickets.

672. Punishment for violation of the preceding section.

Section 673. Conspiring to sell passage tickets in violation of law.

674. Conspirators may be indicted, notwithstanding object of conspiracy has been accomplished.

675. Offices kept for unlawful sale of passage ticket, declared disorderly houses.

676. Pursers, station masters, conductors, &c., allowed to sell tickets.

677 Delay in departure of vessels.

678. What must be stated in passage tickets.

679. Sale of tickets not filled out as required in last section, a misdemeanor.

680. Requisites of indictment.

681. Company defined.

682. Foreign railroad companies.

Passage tickets,
forbidden to be
sold by whom.

Sec. 669. No person except the persons designated in section 676 shall issue or sell or offer to sell, within this territory, any passage ticket, or any instrument giving or purporting to give any right, either, absolutely or upon any condition or contingency, to any passage or conveyance upon any vessel or railroad train, unless he is an authorized agent of the owners or consignees of such vessel, or of the company running such train; and no person is deemed an authorized agent of such owners, consignees or company, within the meaning of this chapter, unless he has been by them duly appointed by an authority in writing, and which designates the name of the company, line, vessel or railroad for which such person is authorized to act as agent, together with the street and number of the street, and the city, town or village in which his office shall be kept, for the sale of passage tickets.

Restrictions.

Sec. 670. No persons except the persons designated in section 676 shall, within this territory, ask, take or receive any money or valuable thing as a consideration for any passage or conveyance upon any vessel or railroad train, or for the procurement of any ticket, or instrument giving or purporting to give any right, either absolutely or upon any condition or contingency, to any passage or conveyance upon any vessel or railroad train, unless he is an authorized agent within the pro-

visions of the last section ; nor shall any person, as such agent, sell any such ticket or instrument, or ask, take or receive any consideration for any such passage or conveyance, excepting at the office designated in his appointment, nor until he has been authorized to act as such agent according to the provisions of the preceding section, nor for a sum exceeding the price charged at the time of such sale, by the company, owners or consignees of the vessel or railroad referred to in such ticket.— Nor shall any such ticket or instrument be issued or sold, which purports to entitle a person to a passage by any mode of conveyance, or to any place of destination, or by any route, vessel or train, other than the one bargained for.

Sec. 671. No person other than an agent appointed, as provided in section 669, shall sell, or offer to sell, or in any way attempt to dispose of any order, certificate, receipt or other instrument for the purpose, or under the pretense of procuring any ticket, or instrument mentioned in section 669, upon any company or line, vessel or railroad train therein mentioned.— And every such order sold or offered for sale by any agent, must be directed to the company, owners or consignees at their office.

Unlawfully procuring tickets.

Sec. 672. Every person guilty of a violation of any of the provisions of the preceding sections of this chapter, is punishable by imprisonment in the territorial prison not exceeding two years, or by imprisonment in a county jail not less than six months.

Punishment.

Sec. 673. All persons who conspire together to sell or attempt to sell, to any person, any passage ticket, or other instrument mentioned in section 669 and 671, in violation of those sections, and all persons, who, by means of any such conspiracy obtain, or attempt to obtain any money or other property, under the pretense of procuring or securing any passage or right of passage in violation of this chapter, are punishable by imprisonment in the territorial prison not exceeding five years.

Conspiring to sell passage tickets,

Sec. 674. Persons guilty of violating the last section, may be indicted and convicted for a conspiracy, notwithstanding the object of such conspiracy has been executed.

Conspirators may be indicted.

Certain offices
declared disor-
derly houses

Sec. 675. All offices kept for the purpose of selling passage tickets in violation of any of the provisions of this chapter, and all offices where any such sale is made, are deemed disorderly houses; and all persons keeping any such office, and all persons, associating together for the purpose of violating any of the provisions of this chapter, are punishable by imprisonment in a county jail for a period not exceeding six months, and not less than three months.

Who allowed to
sell tickets.

Sec. 676. The provisions of this chapter do not prevent the actual owners or consignees of any vessel, from selling passage tickets thereon; nor do they prevent the purser or clerk of any vessel or station master upon any railroad, or other ticket agent of any vessel or railroad, from selling in his office on board of such vessel, or in any station on such railroad, any passage tickets upon such vessel or railroad; nor do they prevent any conductor upon any railroad from selling any passage tickets upon the trains of such railroad.

Delay in depart-
ure of vessels.

Sec. 677. Whenever the departure of any vessel, for a passage on board of which, to a port without this territory, any ticket or instrument above mentioned has been sold, is delayed more than two days after the day of departure mentioned in such ticket, the person holding such ticket is entitled to his board and lodging in such vessel without any additional charge, from the second day after the day named for departure until the actual departure of such vessel; and is also entitled to receive from the owners or consignees of such vessel fifty cents per day for each day of such detention. And in case of refusal on the part of the owners, consignees or master of the vessel so detained, to comply with this section, the person holding such ticket is entitled to recover back from the owners or consignees the amount of passage paid by him, together with his damages for such detention, not exceeding fifty dollars.

Passage tickets

Sec. 678. Every ticket or instrument issued as evidence of a right of passage upon the Missouri river, from any port in this territory, to any port of any other state or territory, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for any such ticket or instrument, must

state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person or persons purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

Sec. 679. Every person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section is guilty of a misdemeanor. When not filled out declared a misdemeanor.

Sec. 680. No indictment or conviction under any provision of the preceding sections of this chapter, for the sale, attempted sale, issuing or delivering of any ticket, instrument, certificate, order or receipt is defective because such ticket, instrument, certificate, order or receipt is not made or filled out according to the requirements of the last section. Requisites of an indictment.

Sec. 681. The term "company," as used in this chapter, includes all corporations, whether created under the laws of this territory, or of those of any other state or nation. Company defined.

Sec. 682. The provisions of this chapter do not permit railroad companies incorporated in any other state to sell passage tickets under this chapter in this territory: nor do they permit the owners or agents of any vessel to sell tickets for or on behalf of any such railroad company, unless such agent be a resident of this territory. Foreign railroad companies.

CHAPTER XIV.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLES TO MERCHANDISE.

Section 683. Issuing fictitious bills of lading, &c.

684. Issuing fictitious warehouse receipts.

685. Erroneous bills of lading or receipts, issued in good faith, excepted.
686. Duplicate receipts must be marked "Duplicate."
687. Selling, hypothecating or pledging property received for transportation or storage.
688. Bill of lading or receipt issued by warehouseman, must be canceled on the delivery of the property.
689. Property demanded by process of law.

Bills of lading. Sec. 683. Every person being the master, owner or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier who delivers any bill of lading, receipt or other voucher, or by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express or transportation company, or other carrier, unless the same has been so shipped or delivered and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as express in such bill of lading, receipt or voucher, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Warehouse receipts. Sec. 684. Every person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Exceptions. Sec. 685. No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the

bill of lading, receipt or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue.

Sec. 686. Every person mentioned in sections 683 and 684, ^{Duplicate receipts.} who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Sec. 687. Every person mentioned in sections 683 and 684, ^{Selling goods received for transportation or storage.} who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Sec. 688. Every person, such as mentioned in section 684, ^{Bill of lading or receipt must be canceled, when.} who delivers to another any merchandise for which any bill of lading, receipt or voucher has been issued, unless such receipt or voucher bore upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Sec. 689. The last two sections do not apply where property ^{Property demanded by process of law.} is demanded by virtue of process of law.

CHAPTER XV.

MALICIOUS INJURIES TO RAILROADS, HIGHWAYS, BRIDGES AND
TELEGRAPHS.

Section 690. Injuries to railroads.

691. Cases where death ensues.

692. Injuries to highways, private ways and bridges.

693. Injuries to toll houses and turnpike gates.

694. Injuries to guide posts and mile boards.

695. Injuring telegraph line, or intercepting a message, a misdemeanor.

Injuries to railroads.

Sec. 690. Every person who maliciously, either :

1. Removes, displaces, injures or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any railroad ; or,

2. Places any obstruction upon the rails or track of any railroad, or of any branch, branchway or turnout connected with any railroad.

Is punishable by imprisonment in the territorial prison not exceeding four years, or in a county jail not less than six months.

Cases where death ensues.

Sec. 691. Whenever any offense specified in the last section results in the death of any human being, the offender is punishable by imprisonment in the territorial prison for not less than four years.

Injuries to highways, &c

Sec. 692. Every person who maliciously digs up, removes, displaces, breaks or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, is guilty of felony.

Toll houses and turnpike gates.

Sec. 693. Every person who maliciously injures or destroys any toll house or turnpike gate, is guilty of felony.

Sec. 694. Every person who removes or injures any mile board, mile stone or guide post, or any inscription on such, ^{Mile boards and guide posts.} erected upon any highway, is guilty of a misdemeanor.

Sec. 695. Every person who maliciously takes down, removes, ^{Declared a misdemeanor.} injures or obstructs any line of telegraph or any part thereof, or appurtenance or apparatus therewith connected, or severs any wire thereof, or fraudulently intercepts any message in its passage over such wire, is guilty of a misdemeanor.

TITLE XVI.

OF MALICIOUS MISCHIEF.

- Section 696 Malicious mischief, in general, defined.
- 697. Specifications in following section, not restrictive of last section.
 - 698. Poisoning cattle.
 - 699. Killing, maiming or torturing animals.
 - 700. Instigating fights between animals.
 - 701. Keeping houses, pits, &c., for fights between animals.
 - 702. Wounding or trapping birds, or destroying bird's nests in cemeteries.
 - 703. Burning buildings and other property not the subject of arson.
 - 704. Breaking or injuring property in houses of worship.
 - 705. Using gunpowder, &c., in destroying or injuring any building.
 - 706. Endangering human life by placing gunpowder, &c., near building.
 - 707. Malicious injuries to freeholds.
 - 708. Injuries to standing crops, &c.
 - 709. Removing, defacing or altering land marks.
 - 710. Interfering with piers, dams, &c.
 - 711. Destroying or injuring dams, &c.
 - 712. Removing or injuring piles used in river embankments, &c.
 - 713. Removing any water gage.

- Section 714. Masking or removing signal lights.
715. Injuring or destroying written instruments.
716. Destroying or de.aying election returns.
717. Opening or publishing sealed letters.
718. Disclosing contents of telegraph dispatch.
719. Concealing telegraph dispatch.
720. Injuring works of art or improvement in any city or village.
721. Destroying works of literature or art, or objects of curiosity in public libraries, museums, &c.
722. Breaking or obstructing gas or water pipes, or appurtenances.

Malicious mischief defined.

Sec. 696. Every person who, maliciously injures, defaces or destroys any real or personal property not his own, in cases other than such as are specified in the following sections, is guilty of a misdemeanor ; and in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof.

Following section not restrictive of last section.

Sec. 697. The specification of the acts enumerated in the following sections of this chapter, is not intended to restrict or qualify the interpretation of the last section.

Poisoning cattle.

Sec. 698. Every person who willfully administers poison to any animal, the property of another, and every person who maliciously exposes any poisonous substance with intent that the same shall be taken by any such animal, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

Killing, maiming or torturing animals.

Sec. 699. Every person who maliciously kills, maims or wounds any animal, the property of another, or who maliciously and cruelly beats; tortures or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

Sec. 700. Every person who maliciously, or for any bet, stake or reward, instigates, encourages or promotes any fight between animals, or instigates or encourages any animal to

attack, bite, wound or worry another, is guilty of a misdemeanor.

Sec. 701. Every person who keeps any house, pit or other place to be used in permitting any fight between animals or in any other violation of the last section, is guilty of a misdemeanor.

Keeping houses pits, &c, for fights between animals.

Sec. 702. Every person who, within any public cemetery or burying ground, wounds or traps any bird or destroys any bird's nest or removes any eggs or young birds from any nest; and every person who buys or sells, or offers or keeps for sale, any bird which has been killed or trapped in violation of this section, is punishable by a fine of five dollars for each offense, recoverable by a civil action in any justices court within the county where the offense is committed, brought in the name of any person making a complaint. Such fine shall be applied to the support of common schools of such county.

Wounding or trapping birds, &c.

Sec. 703. Every person who willfully burns any building not the subject of arson, any stack of grain of any kind, or of hay, any growing or standing grain, grass, trees or fence, not the property of such person, is punishable by imprisonment in the territorial prison not exceeding four years and not less than one year, or by imprisonment in a county jail not exceeding one year.

Burning buildings &c not the subject of arson

Sec. 704. Every person who willfully breaks, defaces or otherwise injures any house of worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of felony.

Breaking or injuring property in houses of worship.

Sec. 705. Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down or injures the whole or any part of any building, by means of which the life or safety of any human being is endangered, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three.

Using gunpowder, &c.

Sec. 706. Every person who places in, upon, under, against or near to any building, any gunpowder or other explosive substance, with intent to destroy, throw down or injure the

Endangering human life.

whole or any part thereof, under circumstances, that if such intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of felony.

Malicious injuries to freeholds

Sec. 707. Every person who willfully commits any trespass, by, either:

1. Cutting down or destroying any kind of wood or timber, standing or growing upon the lands of another; or,
2. Carrying away any kind of wood or timber that has been cut down, and is lying on such lands; or,
3. Maliciously severing from the freehold any produce thereof, or anything attached thereto; or,
4. Digging, taking or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner, or legal occupant thereof, any earth, soil or stone, being a part of the freehold, or severed therefrom at some previous time, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property; or,
5. Digging, taking or carrying away from any land in any incorporated city or town of this territory, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue, without the license of the mayor and common council, or other governing body of such city or town, or owner of the fee thereof, any earth, soil, or stone, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property,

Is guilty of a misdemeanor.

Standing crops, &c.

Sec. 708. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor

Removing, defacing or altering landmarks.

Sec. 709. Every person who either:

1. Maliciously removes any monuments of stone, wood or

other material, erected for the purpose of designating any point in the boundary of any lot or tract of land ; or,

2. Maliciously defaces or alters the marks upon any tree, post or other monument, made for the purpose of designating any point, course or line in any such boundary ; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks,

Is guilty of a misdemeanor.

Sec. 710. Every person who, without authority of law, in-^{Interfering with piers, &c.}terferes with any pier, booms or dams, lawfully erected or maintained upon any waters within this territory, or hoists any gate in or about said dams, is guilty of a misdemeanor.

Sec. 711. Every person who maliciously destroys any dam^{Destroying dam.} or structure erected to create hydraulic power, or any embankment necessary for the support thereof, or maliciously makes, or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a misdemeanor.

Sec. 712. Every person who maliciously draws up or re-^{Removing or injuring piles.}moves, or cuts or otherwise injures, any piles fixed in the ground and used for securing any bank or dam of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, dock, quay, jetty or lock, is punishable by imprisonment in the territorial prison not exceeding five years and not less than two, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Sec. 713. Every person who willfully removes any buoy^{Removing water gage.} placed in the Missouri river by any lawful authority, is guilty of a misdemeanor.

Sec. 714. Every person who unlawfully masks, alters or re-^{Masking or removing signal light.}moves any light or signal, or willfully exhibits any false light or signal, with intent to bring any locomotive or any railway car or train of cars into danger, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three years.

**Written instru-
ments.** Sec. 715. Every person who maliciously mutilates, tears, defaces, obliterates or destroys any written instrument being the property of another, the false making of which would be forgery, is punishable in the same manner as the forgery of such instrument is made punishable.

**Election re-
turns.** Sec. 716. Every messenger appointed by authority of law to receive and carry any report, certificate or certified copy of any statement relating to the result of any election, who willfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law; and every person who takes away from such messenger any such report, certificate or certified copy, with intent to prevent its delivery, or who willfully does any injury or other act such as is above specified, is punishable by imprisonment in the territorial prison not exceeding five years, and not less than two.

Scaled letters. Sec. 717. Every person who willfully opens or reads, or causes to be read any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed; and every person who without the like authority publishes any letter, knowing it to have been opened in violation of this section or any part, thereof, is guilty of a misdemeanor.

**Telegraph dis-
patch.** Sec. 718. Every person who discloses the contents of any telegraphic dispatch, or any part thereof, addressed to another person, without the permission of such person, to his loss, injury or disgrace, is guilty of a misdemeanor.

Same. Sec. 719. Every person having in his possession any telegraphic dispatch addressed to another, maliciously secretes, conceals or suppresses the same, is guilty of a misdemeanor.

**Injuring works
of art or im-
provement.** Sec. 720. Every person who willfully injures, disfigures or destroys, not being the owner thereof, any monument, work of art, or useful or ornamental improvement, within the limits of any village, town or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground, or on any street, sidewalk or public park or place, is guilty of a misdemeanor.

Sec. 721. Every person who maliciously cuts, tears, disfigures, soils, obliterates, breaks or destroys any book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen or other work of literature or art, or object of curiosity deposited in any public library, gallery, museum, collection, fair or exhibition, is punishable by imprisonment in the territorial prison for not exceeding three years, or in a county jail not exceeding one year.

Destroying works of literature or art, &c.

Sec. 722. Every person who willfully breaks, digs up or obstructs, any pipe or main for conducting gas or water, any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year.

Breaking or obstructing gas or water pipes.

TITLE XVII.

OF MISCELLANEOUS CRIMES.

Section 723. Commissioner of excise granting license wrongfully.

724. Selling liquor to Indians.

725. Being intoxicated in public places.

726. Selling liquor to habitual drunkards.

727. Selling liquor to paupers.

728. Selling liquor upon Sunday.

729. Violation of laws relative to navigation.

730. Attorneys forbidden to defend criminal prosecutions carried on by their partners.

731. Public prosecutors forbidden to aid in defense of prosecution, after leaving his office.

732. Attorneys may defend themselves.

733. Intimidating laborers.

734. Intimidating employers.

735. Voting unlawfully at an annual town meeting.

736. Acts not expressly forbidden.

Granting li-
cense unlawfully.

Sec. 723. Every officer or other person whose duty it is made by law to grant license to sell strong or spirituous liquors or wine, who grants any such license contrary to the provisions of chapter 23, of the laws of 1863-4, entitled An act concerning licenses, approved January 11, 1864, or any person who sells or gives away strong or spirituous liquors, or wine, in violation of the provisions of the act mentioned in this section in addition to the punishment provided by said act, shall be guilty of a misdemeanor.

Selling liquor
to Indians.

Sec. 724. Every person who sells or gives away strong or spirituous liquors, or wine, to any Indian in this territory, in violation of the provisions of the act mentioned in the last section, in addition to the punishment provided by said act, is guilty of misdemeanor.

Being intoxicated in public places.

Sec. 725. Every person being found intoxicated in any public place, is punishable, upon conviction before a justice of the peace, by a fine of ten dollars and costs of the proceedings, said fine when collected shall be for the use of common schools of the county in which the offense was committed.

Selling liquor
to habitual
drunkards.

Sec. 726. Every person found guilty of selling any strong or spirituous liquor, or wine to any person guilty of habitual drunkenness, or to a child under the age of eighteen years, after the seller has been requested by the parent, guardian, husband or wife of such person not to sell any strong or spirituous liquor, or wine, is punishable by a fine not exceeding fifty dollars and not less than twenty for each offense, which fine shall be for the benefit of common schools of the county in which the offense was committed.

Selling liquor to
paupers.

Sec. 727. Every person who sells or gives to any person, knowing him to be a pauper, or inmate of any poorhouse, or almshouse, any strong or spirituous liquor, or wine, without authority from the superintendent or physician of such poorhouse or almshouse, is punishable by a fine of twenty-five dollars.

Selling liquor
upon Sunday.

Sec. 728. Every innkeeper, or person licensed to sell liquors, who sells or gives away any strong or spirituous liquor, or wine upon Sunday, is guilty of a misdemeanor.

Relative to navigation.

Sec. 729. Every master or other person engaged in navigating any steamboat, who allows any liquors mentioned in the

last section, to be sold on his boat, on Sunday, while stopping at any wharf, landing, city or town in this territory, is guilty of a misdemeanor.

Sec. 730. Every attorney who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by any person as district attorney or other public prosecutor, with whom such person is directly or indirectly, connected as a partner ; or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor ; and in addition to the punishment prescribed therefor, he forfeits his license to practice.

Attorneys and their partners.

Sec. 731. Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as district attorney or other public prosecutor, afterwards directly or indirectly advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor ; and in addition to the punishment prescribed therefor, he forfeits his license to practice.

Public prosecutors.

Sec. 732. The two last sections do not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

Attorneys may define themselves.

Sec. 733. Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent any hired foreman, journeyman, apprentice, workman, laborer, servant or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or to induce such hired person to relinquish his work or employment, or to return any work he has in hand, before it is finished, is guilty of a misdemeanor.

Intimidating laborers.

Sec. 734. Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent another from

Intimidating employers.

employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants or other persons employed by him, or their rate of wages or time of service, is guilty of a misdemeanor.

Voting unlaw-
fully at town
meeting.

Sec. 735. Every person who votes at any annual town meeting, in a town in which he does not reside, or who offers to vote at any annual town meeting after having voted at an annual town meeting held in another town, within the same year, is guilty of a misdemeanor.

Acts not ex-
pressly forbid-
den.

Sec. 736. Every person who willfully and wrongfully commits any act which grossly injures the person or property of another or which grossly disturbs the public peace or health, or which openly outrages public decency and is injurious to public morals, although no punishment is expressly prescribed therefor by this code, is guilty of a misdemeanor.

TITLE XVIII.

GENERAL PROVISIONS.

Section 737. Acts made punishable by different provisions of this code.

738. Acts punishable under foreign law.

739. Foreign conviction or acquittal

740. Contempts, how punishable.

741. Mitigation of punishment in certain cases.

742. Aiding in misdemeanor.

743. Sending letter when deemed complete.

744. Omission to perform duty when punishable.

745. Attempts to commit crimes, when punishable.

746. Attempts to commit crimes, how punishable.

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748. Second offenses, how punished, after conviction of former offense.

749. Attempts to conceal death of child, how punished after conviction of former attempt.

- Section 750. Second offenses, how punished, after conviction of petit larceny, or of attempting to commit a state prison offense.
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759. Person of convict protected.
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785. Military punishments and punishment for contempt, and certain special proceedings preserved.

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788. When to take effect.

Acts made punishable.

Sec. 737. An act or omission which is made punishable in different ways by different provisions of this Code, may be punished under either of such provisions (except that in the cases specified in sections 748 to 751, inclusive, the punishment therein prescribed are substituted for those prescribed for a first offense,) but in no case can it be punished under more than one; and an acquittal or conviction and sentence under either one, bars a prosecution for the same act or omission under any other.

Acts punishable under foreign law.

Sec. 738. An act or omission declared punishable by this Code, is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in this Code.

Foreign conviction or acquittal.

Sec. 739. But whenever it appears upon the trial of an indictment that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of another state, government or country, founded upon the act or omission in respect to which he is upon trial, this is a sufficient defense.

Contempts, how punishable.

Sec. 740. A criminal act is not the less punishable as a crime, because it is also declared to be punishable as a contempt.

Mitigation of punishment.

Sec. 741. But where it is made to appear at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

Aiding in misdemeanor.

Sec. 742. Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who coun-

sels or aids another in the commission of such act, is guilty of a misdemeanor.

Sec. 743. In the various cases in which the sending of a letter is made criminal by this Code, the offense is deemed complete from the time when such letter is deposited in any post office or any other place, or delivered to any person with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it shall be received by the person to whom it is addressed.

Sec. 744. No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

Sec. 745. No person can be convicted of an attempt to commit a crime when it appears that the crime intended or attempted was perpetrated by such person in pursuance of such attempt.

Sec. 746. Every person who attempts to commit any crime, and in such attempt does any act towards the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provisions is made by law for the punishment of such attempt, as follows :

1. If the offense so attempted be punishable by imprisonment in the territorial prison for four years or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the territorial prison, or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction for the offense so attempted.

2. If the offense so attempted be punishable by imprisonment in the territorial prison for any time less than four years, the person guilty of such attempt is punishable by imprisonment in a county jail for not more than one year.

3. If the offense so attempted be punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted be punishable by imprisonment

and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment, and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

Restriction.

Sec. 747. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

Second offenses.

Sec. 748. Every person who, having been convicted of any offense punishable by imprisonment in the territorial prison, commits any crime after such conviction, is punishable therefor as follows :

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction an offender would be punishable by imprisonment in the territorial prison for any term exceeding five years, such person is punishable by imprisonment in the territorial prison for a term not less than ten years.

2. If such subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the territorial prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the territorial prison for a term not exceeding ten years.

3. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if committed, would be punishable by imprisonment in the territorial prison, then the person convicted of such subsequent offense is punishable by imprisonment in the territorial prison for a term not exceeding five years.

Attempts to
conceal death of
child.

Sec. 749. Every woman who, having been convicted of endeavoring to conceal the birth of any issue of her body which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death of issue

of her body, is punishable by imprisonment in the territorial prison not exceeding five years, and not less than two.

Sec. 750. Every person who having been convicted of petit larceny, or of any attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the territorial prison, commits any crime after such conviction, is punishable as follows:

1. If such subsequent offense is such that upon a first conviction, the offender would be punishable by imprisonment in the territorial prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life;

2. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the territorial prison for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed upon a conviction for such first offense.

3. If such subsequent conviction is for petit larceny or for any attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the territorial prison, then such person is punishable by imprisonment in such prison for a term not exceeding five years.

Sec. 751. Every person who has been convicted in any other state, government or country of an offense which, if committed within this territory, would be punishable by the laws of this territory by imprisonment in the territorial prison, is punishable for any subsequent crime committed within this territory, in the manner prescribed in the last three sections, and to the same extent as if such first conviction had taken place in a court of this territory.

Sec. 752. When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

Sec. 753. Whenever any person is declared punishable for a

crime by imprisonment in the territorial prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years, not less than such as are prescribed. But no person can in any case be sentenced to imprisonment in the territorial prison for any term less than one year.

Sentence, how to be limited.

Sec. 754. In cases where convicts sentenced to be imprisoned in the territorial prison for a longer period than one year, it is the duty of the court before which the conviction is had to limit the time of the sentence so that it will expire between the month of March and the month of November, unless the exact period of the sentence is fixed by law.

Juvenile offenders.

Sec. 755. Whenever any person under the age of sixteen years is convicted of an offense punishable by imprisonment in the territorial prison, the court before whom such conviction was had, may, in its discretion, sentence the person so convicted to imprisonment in the county jail of the county in which such conviction was had.

Fine may be added to imprisonment.

Sec. 756. Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars in addition to the imprisonment prescribed.

Civil rights of convict suspended.

Sec. 757. A sentence of imprisonment in the territorial prison for any term less than for life, suspends all the civil rights of the person so sentenced, and forfeits all public offices, and all private trusts, authority or power during the term of such imprisonment.

Civil death.

Sec. 758. A person sentenced to imprisonment in the territorial prison for life, is thereafter deemed civilly dead.

Person of convict protected.

Sec. 759. The person of a convict sentenced to imprisonment in the territorial prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

Sec. 760. No conviction of any person for crime works any forfeiture of any property, except in the cases of any outlawry for treason, and other cases in which a forfeiture is expressly imposed by law. ^{Forfeiture.}

Sec. 761. The various sections of this code which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination. ^{Witnesses testimony.}

Sec. 762. Wherever the terms mentioned in the following sections are employed in this code, they are deemed to be employed in the senses hereafter affixed to them, except where a different sense plainly appears. ^{Certain terms defined.}

Sec. 763. The term, "willfully," when applied to the intent which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage. ^{Willfully defined.}

Sec. 764. The terms "neglect," "negligence," "negligent" and "negligently," when so employed, import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns. ^{Neglect, negligence, &c.}

Sec. 765. The term "corruptly," when so employed, imports a wrongful design to acquire some pecuniary or other advantage to the person guilty of the act or omission referred to. ^{Corruptly defined.}

Sec. 766. The terms "malice" and "maliciously" when so employed, import a wish to vex, annoy or injure another person; established either by proof or presumption of law. ^{Malice and maliciously defined.}

Sec. 767. The term "knowingly," when so applied, imports only a knowledge that the facts exist which bring the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission. ^{Knowingly defined.}

Sec. 768. The term "bribe" signifies any money, goods, right in action, property, thing of value or advantage, present or ^{Bribe defined.}

prospective, or any promise or undertaking to give any, asked, given or accepted with a corrupt intent to influence, unlawfully the person to whom it is given, in his action, vote or opinion in any public or official capacity.

Vessel defined. Sec. 769. The word "vessel" when used with reference to shipping, includes ships of all kinds, steamboats, and steamships, canal boats, and every structure adapted to be navigated from place to place.

Peace officer defined. Sec. 770. The term "peace officer" signifies any sheriff, coroner, constable, policeman, watchman of an incorporation, city or town, and such other officer or officers whose duty it is made to enforce and preserve the public peace.

Magistrate defined. Sec. 771. The term "magistrate" signifies any justice of the peace, judge of probate, mayor of an incorporated city or town, and such other officer or officers whose duty it is made by law to examine and punish violation of the public peace.

Signature defined. Sec. 772. The term "signature" includes any name, mark or sign, written with intent to authenticate any instrument or writing.

Writing defined. Sec. 773. The term "writing" includes printing.

Real property defined. Sec. 774. The term "real property" includes every estate, interest and right in lands, tenements and hereditaments.

Personal property defined. Sec. 775. The term "personal property" includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments by which any pecuniary obligation, right or title to property, real or personal, is created, or acknowledged, transferred, increased, defeated, discharged or diminished.

Property defined. Sec. 776. The term "property" includes both real and personal property.

Person defined. Sec. 777. The word "person" includes corporations, as well as natural persons.

Same. Sec. 778. Where the term "person" is used in this Code to designate the party whose property may be the subject of any offense, it includes this territory, any other state, government or country which may lawfully own any property within this

territory and all public and private corporations, or joint associations, as well as individuals.

Sec. 779. The singular number includes the plural, and the plural the singular. Singular includes plural.

Sec. 780. Words used in the masculine gender, comprehend as well the feminine and neuter. Masculine word includes feminine.

Sec. 781. Words used in the present tense include the future, but exclude the past. Present tense

Sec. 782. Whenever, by any of the provisions of this Code an intent to defraud is required, in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate whatever. What intent to defraud is sufficient.

Sec. 783. The omission to specify or affirm in this Code any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein does not effect any right to recover or enforce the same. Civil remedies.

Sec. 784. The omission to specify or affirm in this Code any ground of forfeiture of a public office or other trust or special authority conferred by law, to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension. Proceedings to impeach.

Sec. 785. This Code does not affect any power conferred by law upon any court martial or other military authority or officer to impose or inflict punishment upon offenders ; nor any power conferred by law upon any public body, tribunal or officer, to impose or inflict punishment for a contempt ; nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians and vagrants. Military punishments.

Sec. 786. The practice and procedure as established by chapter 1, of the laws of 1862-63, entitled "An act to provide for a criminal code for the territory of Dakota," approved January 9th, 1863, so far as applicable to this code, shall remain in full force and effect. Laws continuing in force.

Conflicting acts repealed. Sec. 787. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

When to take effect. Sec. 788. This act shall take effect from and after its passage.

APPROVED, January 11, 1865.

PROBATE COURTS.

CHAPTER XVIII.

AN ACT ESTABLISHING PROBATE COURTS, DEFINING THE JURISDICTION THEREOF, AND PRESCRIBING THE PROCEEDINGS THEREIN.

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

Probate courts established. Section 1. That there is hereby established in each organized county in this territory, a probate court, with the jurisdiction conferred by this chapter.

To have exclusive jurisdiction, when. Sec. 2. The said probate courts have exclusive jurisdiction, in the first instance, in the county to take the proof of wills:

1. When the testator at or immediately before his death, was an inhabitant of the county, in whatever place he may have died.

2. When the testator, not being an inhabitant of the territory, shall have died in the county, having assets therein.

3. When the testator not being an inhabitant of this territory, shall have died out of the territory, not leaving assets therein, but when assets thereafter came into the county.

4. When real property devised by the testator is situated in the county, and no other probate court has gained jurisdiction under either of the preceding subdivisions of this section.

Sec. 3. The probate court has jurisdiction : also,

1. To take proof of a will relating to real property in the county when the testator shall have died out of this territory, not being an inhabitant thereof, and not having assets therein.

2. To grant and revoke letters testamentary and of administration.

3. To direct and control the conduct and settle the accounts of executors and administrators.

4. To enforce the payment of debts and legacies, and the distribution of the estates of intestates.

5. To order the sale, and dispose of the real property of deceased persons.

6. To appoint and remove guardians, to direct and control their conduct, and to settle their accounts.

7. To take the care and custody of the person and estate of a lunatic, or habitual drunkard, residing in the county, and to appoint and remove guardians.

8. To direct the admeasurement of dower.

9. To exercise the powers and duties conferred upon it by law.

Sec. 4. The jurisdiction acquired by any probate court over a matter or proceeding is exclusive of that of any other probate court, except where otherwise provided by law, and when a guardian is appointed or any other proceedings is commenced in the probate court of a particular county, all further proceedings in respect to the same must be continued in that court.

Further Jurisdiction.

Sec. 5. The probate court of each county must be held by the judge of probate of said county.

Jurisdiction exclusive after commencement of proceedings.

Sec. 6. The probate court is always open for the transaction of business within its jurisdiction, but it is the especial duty of

Probate Judge must hold court

the judge of probate to attend at his office, on the first Monday of January, March, May, July, September and November, and there hold a probate court.

PROCEEDINGS IN PROBATE COURT.

Section 7. Proceedings in probate court, and powers of judge.

8. Duties of judge of probate.
9. Judge of probate must keep certain books.
10. Judge must cause certain entries to be made.
11. Index attached to books.
12. Power of successor in office.
13. Probate judge cannot be counsel, when.
14. Costs awarded, how.
15. Orders for payment, how enforced.
16. Executive officer of probate court.
17. Probate judge has jurisdiction of justices of the peace.

Probate court,
when open.

Sec. 7. There are no pleading in the probate courts of this territory. The proceedings are those prescribed by statute.— The granting of letters of administration and testamentary may be known as the appointment of administrators and executors; the proceedings in these courts are upon the application of a party, verbal or written, and when verbal entered in the minutes of the court, and when written they are to be filed.— The powers of a judge of probate, except as otherwise provided by law are exercised by means of :

1. A citation of the party.
2. An affidavit, deposition, examination or statement, under oath, of a party or witness, or other legal and competent evidence.
3. A subpoena to a witness or other attachment to compel his attendance or commitment for refusals to testify.
4. Orders, judgment or decrees.
5. An execution, warrant, or other process to enforce them.

Sec. 8. The judge of probate must keep his office open at ^{Duties of judge of probate.} reasonable hours, suitable and convenient for the transaction of business, and for the deposit and safe keeping of the public books and papers under his charge. He must also provide suitable cases for books and papers in his office, the expense of which is a county charge; they belong to the county, and must be delivered by the judge of probate to his successor in office.

Sec. 9. The following books must be kept by the judge of ^{Must keep certain books.} probate:

1. A register in which must be entered a memorandum of all ^{Must cause certain entries to be made.} official business transactions by him or in his office appertaining to the estate of each person deceased, under the name of such person: that pertaining to the general guardian of an infant, under the name of such infant; that pertaining to an insane person, under his name.

2. A record of wills, in which he must record all wills proven before him, with a certificate of probate thereof; and of all wills proven elsewhere, upon which letters of administration are issued by him.

3. A record of appointment of administrators and executors, of general guardians of infants, of guardians of insane persons, of appointment of admeasures of dower, with all orders relating to the same, and the administrators.

Sec. 10. The judge of probate must cause to be entered in ^{Index attached thereto.} the register, mentioned in the first subdivision of the preceding section, a summary balance sheet of the accounts of administrators, and guardians, and trustees before him, with his orders and judgments relating to the same, a memorandum of execution issued thereon, with a note of satisfaction, when satisfied; also all orders relating to the sale of real estate, and the distribution thereof, all orders made by him in the discharge of his official duties.

Sec. 11. To each of such books there must be attached an ^{Power of successor in office.} index referring to the entries in alphabetical order, under the name of the person to whose estate or business they relate, and indicating the page in the book where the entry is made.

Sec. 12. The successor in office of any judge of probate has

power to complete any unfinished business commenced by his predecessor.

Probate Judge, cannot be council, when.

Sec. 13. A judge of probate cannot be counsel or attorney in any civil action for or against any executor, administrator, guardian, minor, trustees, or other persons over whom or whose accounts he would by law have jurisdiction whether such actions relate to the business of the estate or not.

Costs awarded, how.

Sec. 14. Costs may be awarded in favor of one party against another, to be paid personally out of the estate or funds, in any proceeding contested adversely before the judge of probate but such cost shall not exceed those allowed in the district court for a trial in an action at law; witnesses' fees and other disbursements equal to those allowed in the district courts, may also be allowed.

Orders for payment, how conferred.

Sec. 15. Orders for the payment of money may be enforced by execution or otherwise, in the same manner as judgment for the payment of money in the district courts; except in a probate court all process is issued by the judge of probate.

Executive officer of probate court.

Sec. 16. Executions, warrants, and other process issued by a judge of probate, must be executed by the sheriff or coroner of the county to which they are sent to be executed in the same manner, with the same powers, and responsibilities and fees as a process issued from the district court.

Probate Judge has jurisdiction of Justices of the Peace.

Sec. 17. The several Judges of Probate shall, in court or out of court, have civil and criminal jurisdiction of Justices of the Peace, and shall be entitled to the same fees as are allowed by law to Justices of the Peace.

WILLS.

- Section 18. Who may will property, &c.
19. Devise construed to convey all property, except when.
 20. If estate is acquired after will is made.
 21. Persons may bequeathe and dispose of personal property.
 22. Wills, how proved.
 23. Nuncupative will good only when.

- Section 24. Testamentary words must be recorded, when.
25. Devises, &c., to subscribing witness void, when.
26. If witness would have been entitled to share, if will was not established.
27. No will or part of will revoked, unless what.
28. Will may be deposited with probate judge. Receipt to be given.
29. Only to be delivered to order of testator.
30. Judge of probate to give notice of will to whom.
31. Other person, having possession of will, to deliver same to whom and when.
32. Duty of person named executor.
33. Person neglecting to perform duty.
34. If person fail or neglect to deliver will ; penalty.
35. Court to appoint time and place of proving will, &c.
36. If will not contested.
37. If subscribing witnesses reside out of the territory.
38. No will effectual, except when.
39. Of wills allowed in other parts.
40. When a copy of such will is presented.
41. If it appear that it ought to be allowed.
42. Court shall grant letters.
43. When child born after such will is made.
44. When testator omits to provide for children &c.
45. Share of such child, how made up.
46. When devisee or legatee die before testator.
47. Estate liable for debts, and judge may make reasonable allowance for support of widow, until when.
48. If testator designates property to be used in payment of debts.
49. If such provision not sufficient.
50. Estate devised liable for debts, except when.

Section 51. In such cases executors may retain property until debts settled.

52. devisees or legatees holding property liable for their share of debts.

53. If any person liable become insolvent or die.

54. Court may settle amount of the liabilities.

55. When wills are sufficient evidence in court.

56. Attested copy to be recorded.

57. Certain words mean what.

Who may will property.

Sec. 18. Every person of full age and sound mind, being seized in his own right of any lands or any right thereto, or entitled to any interest therein descendible to his heirs, may devise or dispose of the same by his last will and testament in writing; and all such estate not disposed of by will, shall descend as the estate of an intestate, being chargeable in both cases in the payment of all debts; and any married woman devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament in writing, and may alter or revoke the same in like manner that a person under no disability may do the same.

Devise, how construed.

Sec. 19. Every devise of land in any will hereafter made shall be construed to convey all the estate of the deviser therein which he could lawfully devise, unless it shall clearly appear by the will that the deviser intended to convey a less estate.

Estate acquired after will is made.

Sec. 20. Any estate, right, or interest in lands acquired by the testator after the making of his will, shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

Personal property.

Sec. 21. Every person of full age and sound mind may, by his last will and testament in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his rights thereto and interest therein; and all such estate not disposed of by the will, shall be administered as intestate estate.

Wills, how proved.

Sec. 22. No will made within this territory, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to

charge, or in any way affect the same, unless it be in writing and signed by the testator, or by some person in his presence and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

Sec 23. No nuncupative will shall be good when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect: nor unless such nuncupative will were made at the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more next before the making of such will, except when such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

Sec. 24. After six months shall have passed after speaking any pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken; nor shall letters testamentary or probate of any nuncupative will pass the seal of any probate court, until fourteen days at least after the decease of the testator be fully expired, nor shall any nuncupative will be at any time approved and allowed, unless process shall first have been issued to call in the widow and other person or persons principally interested, if resident within the territory, to the end that they may contest the same if they please. Nothing herein contained shall prevent any soldier, being in actual service, nor any mariner, being on ship-board, from disposing of his wages and other personal estate by a nuncupative will.

Sec. 25. All beneficial devises, legacies, and gifts whatsoever

Nuncupative will.

Testamentary words.

Devises, &c., when void.

made or given in any will, to a subscribing witness thereto shall be wholly void, unless there be two other competent subscribing witnesses to the same ; but a mere charge on the lands of the divisor for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

When witness
entitled to
share.

Sec. 26. But if such witness to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established; then so much of the share that would have descended or been distributed to such witness, as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

Revoking wills.

Sec. 27. No will nor any part thereof, shall be revoked, unless by burning, tearing, cancelling, or obliterating the same, with the intention of revoking it, by the testator, or by some other will or codicil in writing, executed as prescribed in this chapter ; or by some other writing, signed, attested, and subscribed in the manner provided in this chapter, for the execution of a will; excepting only that nothing contained in this section, shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of testator.

Will may be de-
posited with
probate judge.

Sec. 28. Any will in writing being enclosed in a sealed wrapper, and having indorsed thereon the name of the testator, and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the judge of probate in the county where the testator lives, and the judge of probate shall receive and safely keep such will, and give a certificate of the deposit thereof.

Only to be de-
livered to order
of testator.

Sec. 29. Such will shall, during the lifetime of the testator, be delivered only to himself or to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness ; and after the death of the testator, and at the first probate court after notice thereof, it shall be publicly opened by the judge of probate, and be retained by him.

Sec. 30. The judge of probate, shall give notice of such will

being in his possession to the executor therein appointed, if there be one, otherwise, to the persons interested in the provisions of the same, to be presented for probate in such other court.

Notice of will to be given.

Sec. 31. Every person other than the judge of probate, having the custody of any will, shall within thirty days after he has knowledge of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

Duties of other persons having possession of will.

Sec. 32. Every person named as executor in any will, shall within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate court which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate, and shall within the period above mentioned, signify, to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

Duty of person named executor

Sec. 33. Every person who shall neglect to perform any of the duties required in the last two preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and shall be liable to each and every person interested in such will, for the damages which each person may sustain thereby.

Person neglecting to perform duty.

Sec. 34. If any person having the custody of any will, after the death of the testator, shall, without reasonable cause fail or neglect to deliver the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county, by warrant issued by such court, and there be kept in close confinement, until he shall deliver the will as above directed.

Penalty.

Sec. 35. When any will shall have been delivered into or deposited in any probate court having jurisdiction of the same such court shall appoint a time and place for proving it when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publication under an order of such court, in such newspaper printed in this territory, as the judge shall direct, three weeks successively, previous to

Duties of court.

the time appointed, and no will shall be proved until notice shall be given as herein provided.

If will not con-
tested.

Sec. 36. If no person shall appear to contest the probate of will at the time appointed for that purpose, the court may in its discretion, grant probate thereof, on the testimony of one of the subscribing witnesses only, if such witness shall testify that such will was executed in all the particulars as required in this chapter, and that the testator was of a sound mind at the time of the execution thereof.

If witnesses re-
side out of ter-
ritory.

Sec. 37. If none of the subscribing witnesses shall reside in this territory at the time appointed for proving the will, the court may in its discretion admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and as the evidence of the execution of the will may admit proof of the handwriting of the testator and of the subscribing witnesses.

No will effect-
ual, except when

Sec. 38. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court, as provided in this chapter; or on appeal in the district court; and the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

Of wills allowed
in other parts.

Sec. 39. All wills which shall have been duly proved and allowed in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed, and recorded in the probate court of any county in which the testator shall have real and personal estate, on which such will may operate in the manner mentioned in the following sections.

When a copy of
such will is pre-
sented.

Sec. 40. When a copy of such will, and the probate thereof, duly authenticated, shall be produced by the executor or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

If it appear that
it ought to be
allowed.

Sec. 41. If on hearing the case, it shall appear to the court that the instrument ought to be allowed in this territory, as the last will and testament of the deceased, the copy shall be

filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Sec. 42. When any will shall be allowed, as mentioned in ^{Court shall grant letters.} the preceding section, the probate court shall grant letters testamentary, or letters of administration, with the will annexed, and such letters testamentary or letters of administration, shall extend to all the estate of the testator in this territory, and such estate, after payment of his just debts, and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it, and the residue shall be disposed of as provided by law in cases of estates in this territory, belonging to persons who are inhabitants of any other territory, state, or county.

Sec. 43. When any child shall be born after the making of ^{When child born after such will is made.} his parent's will and no provisions shall be made therein for him, such child shall have the same share in the estate of the testator, as if he had died intestate, and the share of such child shall be assigned to him, as provided by law in cases of intestate estate.

Sec. 44. When any testator shall omit to provide in his will ^{When testator omits to provide for children.} for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

Sec. 45. When any share of the estate of a testator shall be ^{Share of such child, how made up.} assigned to a child born after the making of a will, or to a child or the issue of a child, omitted in the will as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless, the obvious intention of the testator, in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated, in which case such specific devise, legacy, or provision, may be ex-

empted from such apportionment, and a different apportionment may be adopted, in the discretion of the probate court.

When devisee or legatee die before testator.

Sec. 46. When a devise or legacy shall be made to any child or other relation of the testator, and the devisee or legatee shall die before the testator, leaving issue who shall survive the testator, such issue shall take the estate so given by the will, in the same manner as the devisee or legatee would have done if he had survived the testator, unless a different disposition shall be made or directed by the will.

Estate liable for debts, &c.

Sec. 47. All the estate of the testator, real and personal, not exempt from execution by law, shall be liable to be disposed of for the payment of his debts and the expense of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expense of the maintenance of the widow and minor children, either constituting the family of the testator, out of his personal estate or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

If testator designates property to be used in payment of debts.

Sec. 48. If the testator shall make provisions by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

If such provision not sufficient.

Sec. 49. If the provisions made by the will, or the estate appropriated shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

Estate devised liable for debts.

Sec. 50. The estate, real or personal, given by will to any devisees, or legatees, not exempt from execution by law, shall be held liable to the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary in order to

carry into effect the intention of the testator, if there shall be other sufficient estate.

Sec. 51. When the estate given by any will shall be liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child or of the issue of a child not provided for in the will, as hereinbefore provided, the executor shall have a right to retain possession of the same until such liability shall be settled by order of the probate court; and until the devises and legacies so liable, shall be accordingly assigned by order of such court, and when the same can properly be done, any devisee or legatee may take his claim to such court to have such liability settled, and his devise or legacy assigned to him.

When executor may retain property.

Sec. 52. All the devisees and legatees who shall, with the consent of the executor or otherwise, have possession of the estate given to them by will, before such liability shall be settled by the probate court, shall hold the same, subject to the several liabilities mentioned in the preceding section, and shall be held to contribute according to their respective liabilities to the executor, or to any devisee or legatee from whom the estate devised to him may have been taken, for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child or the issue of a child omitted in the will: and the persons who may as heirs have received the estate not disposed of by the will, as provided in this chapter, shall be liable to contribute in like manner as the devisees or legatees.

Who are liable for share of debts.

Sec. 53. If any of the persons liable to contribute according to the provisions of the preceding section, shall be insolvent and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to, and to the extent of the estate they may have received; and if any of the persons so liable to contribute shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

If person liable, become insolvent or die.

Sec. 54. The probate court may, by decree for that purpose, settle the amount of the several liabilities, as provided in the

Court may settle amount of the several liabilities.

preceding sections, and decree how much and in what manner each person shall contribute, and may issue execution as circumstances may require; and the claimant may also have a remedy in any proper action or complaint in law or equity.

When wills are sufficient evidence.

Sec. 55. Every will when proved as provided in this chapter, shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate and attested by his seal; and every will so certified, and the record thereof or a transcript of such record certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this territory without further proof.

Attested copy to be recorded.

Sec. 56. An attested copy of every will devising lands, or any interest in lands, and the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated.

Certain words defined.

Sec. 57. The word "executor" in this act shall be construed to mean an administrator with the will annexed, and the word "chapter" shall be construed to mean act, and the words "he," "him" and "his" shall be construed to mean she, her and hers, as the case may be.

LETTERS TESTAMENTARY.

Section 58. When probate court to issue letters testamentary.

59. Executor to give bond, with what conditions.

60. If executor be a residuary legatee.

61. If person named, neglects trust for twenty days.

62. Same.

63. If person named executor is under age.

64. Of administrator with will annexed.

65. If unmarried, executrix is married.

66. When executor may be removed.

67. When executor die, &c.

68. When all executors named are not authorized part may act.

69. Executor of executor has what powers.

70. Separate bonds taken, when.

Sec. 58. When a will shall have been duly proved and allowed, the probate court shall issue letters testamentary thereon to the person named executor therein, if he is legally competent, and shall accept the trust, and give bond as required by law.

When probate court to issue letters testamentary.

Sec. 59. Every executor, before he shall enter upon the execution of this trust, and before letters testamentary shall issue, shall give bond to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows: to make and return to the probate court within three months a true and perfect inventory of all goods, chattels, rights, credits, and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him; to administer, according to law and to the will of the testator, all his goods, chattels, rights, credits, and estate, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay, and discharge all debts, legacies, charges, chargeable on the same, or such dividends thereon as shall be ordered and decreed by the probate court; to render a true and just account of his administration to the probate court, within one year, and at any other time when required by such court; to perform all orders and decrees of the probate court, by the executors to be performed in the premises.

Executor to give bonds.

Sec. 60. If, however, the executor shall be a residuary legatee, instead of the bond prescribed in the preceding section, he may give a bond, in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator, and in such case he shall not be required to return an inventory.

If executor be a residuary legatee.

Sec. 61. No person named as executor in any will, shall refuse to accept the trust, or shall neglect to give bond as prescribed in this chapter, for twenty days after the probate of such will, shall intermeddle or act as executor.

If person named neglects trust for twenty days

Sec. 62. If a person named executor in any will shall refuse to accept the trust, or shall, for the space of twenty days after the probate of the same, neglect to give bond as required by law, the probate court may grant letters testamentary to the

Same.

other executors, if there be any who are capable and willing to accept the trust ; and if there be no such other executor who will give bond, the court may commit administration of the estate, with the will annexed, to such person as would have been entitled to the same, if the testator had died intestate.

If person named executor is under age,

Sec. 63. When the person named executor in any will is under full age at the time of proving the will, administration shall be granted, with the will annexed, during the minority of the executor, unless there shall be another executor who shall accept the trust and give bond; and in that case the executor who shall give bond shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor, on giving bond according to law.

Of administrator with will annexed.

Sec. 64. Every person who shall be appointed administrator, with the will annexed, shall before entering upon the execution of his trust, give bond to the judge of probate, in the same manner and with the same conditions as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

Of executrix.

Sec. 65. When an unmarried woman appointed an executrix, alone or jointly with another person, shall marry, her marriage shall extinguish her authority as executrix, and her husband shall not be executor in her right.

When executor may be removed

Sec. 66. If an executor shall reside out of this territory, or shall neglect, after due notice given by the judge of probate, to render his account and settle the estate according to law, or to perform the decree of the court, or shall abscond, or become insane, or otherwise incapable or unsuitable to discharge the trust, the probate court may remove such executor.

When executor dies.

Sec. 67. When an executor shall die, or be removed, or his authority shall be extinguished, the remaining executor, if there be any, may execute the trust ; and if there shall be no other executor, administration, with the will annexed, may be granted of the estate not already administered.

What executors may act.

Sec. 68. When all the executors appointed in any will shall not be authorized, according to the provisions of this chapter, to act as such, such as are authorized shall have the same author-

ity to perform every act, and discharge every trust required and allowed by the will ; and their acts shall be as valid and effectual for every purpose as if all were authorized and should act together ; and administrators, with the will annexed, shall have the same authority to perform every act and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for any purpose.

Sec. 69. The executor of an executor shall not, as such, Executor of executor. have any authority to administer the estate of the first testator; but, on the death of the only surviving executor of any will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the probate court may judge proper.

Sec. 70. When two or more persons shall be appointed executors of any will, the judge of probate may take a separate Separate bonds taken. bond from each of them, with sureties, or a joint bond from all of them, with sureties.

ADMINISTRATORS AND EXECUTORS.

71. Estate, how applied and distributed.
72. Letters of administration granted by what court.
73. To whom and when granted.
74. Administrator to give bond.
75. When delay in granting letters, special administrator appointed.
76. Powers of special administrator.
77. Same not liable to action.
78. Same to give bond.
79. Upon granting letters his powers to cease.
80. If any person embezzles any money, goods, &c., of deceased.
81. When executor or administrator dies.
82. When administrator may be removed.
83. When unmarried women marry, her rights as administratrix extinguished.
84. Remaining administrator may execute duties or new one appointed.

Section 85. Powers of new administrator.

86. It, after letters granted, a will is proved.
87. Executor may complete unfinished administration.
88. All previous acts of administrators legalized.
89. When two or more separate bonds may be taken.
90. Notice of application for letters, &c., to be given.
91. Laws relating to exemption to apply to estate of intestate.

estate, how applied and distributed.

Sec. 71. When any person shall die, possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows :

1. The widow, if any, shall be allowed all her articles of apparel and ornament, and all the wearing apparel and ornaments of the deceased, the household furniture of the deceased, not exceeding in value two hundred and fifty dollars, and other personal property to be selected by her, not exceeding in value two hundred dollars : and this allowance shall be made as well when the widow receives the provisions made for her in the will of her husband, as when he dies intestate.

2. The widow and children constituting the family of the deceased, shall have such reasonable allowance out of the personal estate, as the probate court shall judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances; which, in case of an insolvent estate, shall not be longer than one year after granting administration, nor for any time after the dower and personal estate shall be assigned to the widow.

3. When a person shall die, leaving children under seven years of age, having no mother, or when the mother shall die, before the children shall arrive at the age of seven years, an allowance shall be made for the necessary maintenance of such children, until they arrive at the age of seven years, out of such part of the personal estate, and the income of such part of the real estate as would have been assigned to their mother, if she had been living.

4. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of one hundred and fifty dollars, the probate court may, by a decree for that purpose, assign for the use and support of the widow and children of such intestate, or for the support of children under seven years of age, if there be no widow, the whole of such estate, after the payment of the funeral charges, and expenses of administration.

5. If the personal estate shall amount to more than one hundred and fifty dollars, and more than the allowance mentioned in the preceding sub-divisions of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral and of settling his estate.

6. The residue, if any, of the personal estate, shall be distributed in the same proportion and to the same persons, and for the same purposes, as prescribed for the descent and disposition of the real estate, except that the widow, if any, shall be entitled to receive the same share of such residue, as a child of such intestate would be entitled to.

Sec. 72. When any person shall die intestate, being an inhabitant of this territory, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident, at the time of his death. If such deceased person, at the time of his death, resides in any other territory, state, or county, leaving estate to be administered in this territory, administration thereof shall be granted by the probate court of any county in which there shall be estate to be administered; and the administration first legally granted, shall extend to all the estate of the deceased in this territory, and shall exclude the jurisdiction of the probate court of every other county.

Sec. 73. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order :

1. The widow, or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of

Letters of administration.

To whom and when granted.

kin may request to have appointed, if suitable and competent to discharge the trust.

2. If the widow or next of kin, or the person selected by them shall be unsuitable or incompetent, or if the widow or next of kin, shall neglect, for thirty days after the death of the intestate, to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it.

3. If there be no such creditor competent and willing to take administration, the same may be committed to such other person or persons as the judge of probate may think proper.

shall give bond. Sec. 74. Every administrator, before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall give bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

When special administrator to be appointed. Sec. 75. When there shall be a delay in granting letters testamentary or of administration, occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as shall occasion the delay, shall be terminated, and an executor or administrator be thereupon appointed; and no appeal shall be allowed from the appointment of such special administrator.

Powers of special administrators. Sec. 76. An administrator, appointed according to the provisions of the preceding section, shall collect all the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator, who may afterwards be appointed, and for that purpose may commence and maintain suits as an administrator, and may sell such perishable and other personal estate as the probate court may order to be sold.

Same not liable to action. Sec. 77. Such special administrator shall not be liable to an action by any creditor, or to be called upon in any other way to pay the debts against the deceased.

Sec. 78. Every such special administrator shall, before entering upon the duties of his trust, give a bond to the judge of probate as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits and effects of the deceased, which shall come to his possession or knowledge; and that he will truly account for all the goods, chattels, debts, and effects of the deceased, which shall be received by him, whenever required by the probate court, and will deliver the same to the person who shall afterwards be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

Same to give bond.

Sec. 79. Upon granting letters testamentary or of administration on the estate of the deceased, the power of such special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money, and effects of the deceased, in his hands, and the executor or administrator may be admitted to prosecute to final judgment any suit commenced by such special administrator.

When his powers to cease.

Sec. 80. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, such person shall stand chargeable, and be liable to the action of the executor or administrator of such estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

Embezzlement of money, goods &c. of deceased.

Sec. 81. When any sole executor or administrator shall die without having fully administered the estate, the probate court may grant letters of administration, with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased, not already administered.

When administrator or executor dies.

Sec. 82. If an administrator shall reside out of this territory, or shall neglect, after due notice by the judge of probate to render his account, and to settle the estate according to law, or to perform any decree of such court, or shall abscond or become insane, or otherwise unsuitable or incapable to discharge

When administrator may be removed.

the trust, the probate court may, by an order therefor, remove such administrator.

When unmarried woman marry.

Sec. 83. When an unmarried woman, who is administratrix, alone or jointly with another person, shall marry, her marrying shall extinguish her authority as administratrix.

Who may execute trust.

Sec. 84. When an administrator shall be removed or his authority shall be extinguished, the remaining administrator if any may execute the trust; if there shall be no other, the court of probate may commit administration of the estate, not already administered, to some suitable person, as in the case of the death of a sole administrator.

Powers of new administrator.

Sec. 85. An administrator appointed in the place of any former executor or administrator, for the purpose of administering the estate not already administered, shall have the same powers and shall proceed in settling the estate in the same manner as the former executor or administrator should have had or done, and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution or any judgment recovered in the name of the former executor or administrator.

If after letters are granted a will is proved.

Sec. 86. If, after the granting of letters of administration by any probate court on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration within such time as the court shall direct.

Executor may complete unfinished administration.

Sec. 87. The executor of the will shall, in such case, be entitled to demand, sue for and collect all the goods, chattels, rights, and credits of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Previous acts legalized.

Sec. 88. All acts of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such

executor or administrator had continued lawfully to execute the duties of his trust.

Sec. 89. When two or more persons shall be appointed administrators on any estate, the judge of probate may take a separate bond from each, with sureties or a joint bond with sureties from all. Separate bonds may be taken.

Sec. 90. When application shall be made to the judge of probate for the appointment of an administrator of an intestate estate, or for letters of administration with the will annexed, he shall cause notice of the same and of the time and place of hearing thereof, to be published for three successive weeks in such newspaper as he may direct. Notice of application.

Sec. 91. Any laws now existing or hereafter passed, exempting property from execution by seizure and sale shall also apply to the property of the estates of intestates. Laws relating to exemption.

INVENTORY AND COLLECTION OF EFFECTS.

- Section 92. Return inventory of real estate, &c.
93. To be appraised by two disinterested persons.
 94. Order issued to appraisers.
 95. Appraisement carefully noted and certified.
 96. A separate inventory of personal property allowed the widow.
 97. Debts paid out of personal estate; if not sufficient, then out of real estate.
 98. Have possession of all real estate, and keep in tenantable repair.
 99. If complaint made of embezzlement, &c., person may be cited to appear and answer.
 100. If person cited does not appear.
 101. Person intrusted with parts of estate required to report, when.
 102. When debtor unable to pay all his debts.
 103. When mortgagee die without foreclosing.
 104. In case of redemption or sale.
 105. Real estate so held may be sold for payment of debts and legacies.

PROBATE COURTS.

Section 106. If not sold, may be partitioned among legatees.

107. When there is deficiency of assets.

108. Not bound to sue for estates, unless urged by creditors, and unless they give security.

109. All real estate recovered to be sold for payment of debts.

110. Property exempted.

Return inventory of real estate

Sec. 92. Every executor or administrator shall, within three months after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights, and credits of the deceased, which shall have come to his possession or knowledge ; excepting, only, that an executor who shall be a residuary legatee and shall have given bond to pay all the debts and legacies, as provided by the law, shall not be required to return inventory.

To be appraised

Sec. 93. The estate and effects, comprised in the inventory, shall be appraised by two or more disinterested persons, appointed by the judge of probate for that purpose, who shall be sworn to the faithful discharge of their trust ; and if any part of such estate or effects shall be in any other county, probate having jurisdiction in the case, or by a disinterested justice of the peace of such other county.

Order issued to appraisers.

Sec. 94. When appraisers shall be appointed by a justice of the peace, he shall issue an order to them, in substance as follows :

Territory of Dakota, } ss.
County of

To....., of....., in said county :

You are hereby appointed to appraise, on oath, the estate and effects of....., late of....., deceased, which may be in said county ; and when you have performed that service, you are required to deliver this order, and your doings in pursuance thereof, to....., executor (or administrator, as the case may be,) of said deceased.

Given under my hand this.....day of....., in the year

—————Justice of the Peace.

Sec. 95. The appraisers shall set down opposite to each item in such inventory, distinctly, in figures, the value thereof in money, and deliver the same, certified by them, together with their appointment, if made by a justice of the peace, to the executor or administrator.

Appraisement
carefully noted
and certified.

Sec. 96. A separate and distinct inventory and appraisement shall be made and returned, as aforesaid, of all the household furniture and other personal property, which may be allowed to the widow, pursuant to law ; but the same shall not be considered assets in the hands of the executor or administrator.

Separate inven-
tory of personal
property.

Sec. 97. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses ; and if the goods, chattels, rights, and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased and the expense of administration, the whole of his real estate, not exempt by law, except the widow's dower, or so much thereof as may be necessary, may be sold for that purpose by the executor or administrator, after obtaining licences therefor, in the manner provided by law.

Debts, how
paid.

Sec. 98. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents, issues, and profits of the real estate until the estate shall have been settled, or until delivered over by order of the probate court, to the heirs or devisees ; and shall keep in good tenantable repair, all houses, buildings, and fences thereon, which are under his control.

Rights of execu-
tor.

Sec. 99. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the judge of probate, on oath that any person is suspected to have concealed, embezzled, carried away or disposed of any money, goods, or chattels of the deceased, or that such person has in his possession or knowledge, any deeds, conveyances, bonds, contracts, other writings, which contain evidence of or tend to disclose the right, title, interest, or claim of the deceased to any real or personal, estate, or any claim or demand, or any last will and testament of the deceased, the said judge may cite such suspected person to appear before

If complaint
made of embezz-
lement.

the court of probate, and may examine him on oath upon the matter of such complaint.

If person cited does not appear

Sec. 100. If the person so cited shall refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the common jail of the county, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

Person intrusted with parts of estate, to report, when.

Sec. 101. The judge of probate, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account on oath, of any money, goods, chattels, bonds, accounts, or other papers, belonging to such estate, which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

When debtor unable to pay all his debts.

Sec. 102. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate may compound with such debtor and give him a discharge upon receiving a fair and just dividend of his effects.

When mortgagee die without foreclosing.

Sec. 103. When any mortgagee of real estate, or any assignee of such mortgagee, shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such mortgage and the debts secured thereby, shall be considered as personal assets in the hands of the executor or administrator, and he may foreclose the same, and may have any other remedy for the collection of such debts which the deceased could have had if living; or may continue any proceedings commenced by the deceased for that purpose.

In case of redemption or sale

Sec 104. In case of the redemption of any such mortgage, or the sale of the mortgaged premises, by virtue of a power of

sale contained therein, or otherwise, the money paid thereon shall be received by the executor or administrator and he shall thereupon give all necessary releases and receipts; and if upon the sale of the mortgaged premises, the same shall be bid in by the executor or administrator for such debts, he shall be seized of the sum for the same persons, whether creditors, next of kin, or others who would have been entitled to the money if the premises had been redeemed or purchased at such sale by some other person.

Sec. 105. Any real estate so held by an executor or administrator, or which may be purchased by him as such, upon a sale on execution for the recovery of a debt due the estate, may be sold for the payment of debts or legacies, and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court, in the manner provided by law.

Real estate so held may be sold

Sec. 106. If any land so held by an executor or administrator, as mentioned in the preceding section, shall not be sold by him, as therein provided, it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the deceased; and if upon such distribution the estate shall come to two or more persons, partition thereof may be made between them, in like manner as if it were real estate which the deceased held in his lifetime.

If not sold, may be partitioned among legatees.

Sec. 107. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall, in his lifetime, have conveyed any real estate, or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or shall have so conveyed in such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment, any proper action, or suit, at law, or in chancery, for the recovery of the same, and may recover for the benefit of the creditors, all such real estate so fraudulently conveyed; and may also for the benefit of the creditors, sue and recover for all goods, chattels; rights, or credits which may have been so fraudulently conveyed by the deceased in his lifetime, what-

When there is deficiency of assets.

ever may have been the manner of such fraudulent conveyance.

Not bound to
sue for estates,
unless, what

Sec. 108. No executor or administrator shall be bound to sue for such estates, as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court shall judge just and equitable.

Payment of
debts.

Sec. 109. All real estate so recovered, as provided in the 107th section of this act, shall be sold for the payment of debts in the same manner as if the deceased had died seized thereof upon obtaining a license therefor from the probate court, and the proceeds of all goods, chattels, rights, and credits, recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other assets in the hands of the executor or administrator.

Property exempt
ted.

Sec. 110. All property, real and personal, goods and chattels, rights and credits, interests and estates, exempt by law from seizure and sale under execution; and all property, real and personal, reserved by law to widows and minor children, be and the same is exempt as provided by law, any thing in this act to the reverse notwithstanding.

GUARDIANS AND THEIR DUTIES.

111. Who is natural guardian.
112. Probate court must appoint guardian—when.
113. Father or mother may be appointed.
114. Minor may select guardian—when.
115. Guardian must give bond and take oath.
116. Guardians must make out inventory.
117. Guardians have same power as parents.
118. Duty of guardians.
119. Concerning minor's property.
120. Form of petition to dispose of minor's property.
121. Court may direct postponement.
122. Court may direct reference.

- Section 123.** Guardians to give security—when.
 124. Court may award costs.
 125. Deed—how made, &c.
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 127. In case of failure to comply with order of court—what penalty.
 128. Guardians must make return—when.
 129. Effects of minor to be delivered up to new guardians.
 130. Relative to foreign guardians.
 131. How appointed.
 132. Duty of court.
 133. Compensation for guardian.
 134. Court may appoint guardian for half breeds.
 135. Same.
 136. Powers of guardians.

Sec. 111. The father is the natural guardian of the persons who is natural guardian. of his minor children. If he dies or is incapable of acting, the mother becomes the guardian. The natural and acting guardian of any minor child may, by will, appoint another guardian for such minor. If without such will, both parents be dead or disqualified to act as guardian, the probate court may appoint one.

Sec. 112. Although the parents are living and of sound Court must appoint guardian. mind, yet if the minor has property not derived from either of them, a guardian must be appointed by the probate court to manage such property.

Sec. 113. The father, or, in case of his death, absence or in- Father or mother appointed. capacity, the mother may be appointed the guardian to take charge of the property of his or her minor child, if deemed by the court a suitable person for that purpose.

Sec. 114. If the minor be over the age of fourteen years and Minor may select guardian. of sound intellect, he or she may select his, or her, own guardian, subject to the approval of the court.

Sec. 115. Guardians appointed to take charge of the prop- Guardian may give bond and take oath. erty of the minor, must give bond, with surety, to be approved by the court, in a penalty double the value of the personal estate, and of the rents and profits of the real estate of the minor, conditioned for the faithful discharge of their duties as

such guardians, according to law. They must also take an oath of the same tenor as the condition of the bond.

Must make out inventory.

Sec. 116. Within forty days after their appointment, they must make out an inventory of all the property of the minor, which shall be appraised in the same manner as the property of a deceased person. The inventory must be filed in the office of the judge of probate of the proper county.

Guardian have same power as parents.

Sec. 117. Guardians of the persons of minors have the same power and control over them, that parents would have, if living.

Duty of guardians.

Sec. 118. Guardians of the property of minors must prosecute and defend for their wards. They must also in other respects manage their interests, under the direction of the probate court. They may thus lease their lands or loan their money during their minority, and may do all other acts which the court may deem for the benefit of the wards.

Concerning minor's property.

Sec. 119. When not in violation of the terms of a will by which a minor holds his, or her, real property, it may, under the direction of the probate court, be sold or mortgaged on the application of the guardian either when such sale or mortgage is necessary for the minor's support and education, or when his, or her interest will thereby be promoted by the reason of the unproductiveness of the property or of its being exposed to waste or of any other peculiar circumstances.

Form of petition.

Sec. 120. The petition for an order to dispose of or mortgage the property of the minor, must state the grounds of the application, must be verified by oath, and a copy thereof, with a notice of the time at which such application will be made to the court, must be served personally upon the minor, at least ten days prior to the time fixed for such application.

Postponement.

Sec. 121. The probate court in its discretion, may direct a postponement of the matter, and may order such further publication through the newspapers or otherwise, as it may deem expedient.

Court may direct reference.

Sec. 122. The court may also, direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage as applied for.

Sec. 123. Before any such sale or mortgage can be executed, the guardian must give security, to the satisfaction of the court, the penalty of which shall be at least double the value of the property to be sold, or of the money to be raised by the mortgage, conditioned that he will faithfully perform his duty in that respect and account for and apply all moneys received by him under the direction of the court. ^{Guardian to give security.}

Sec. 124. When the application for the sale of property if resisted, the court may, in his discretion, award costs to the prevailing party, and may when satisfied that there was no reasonable grounds for making the application, direct the costs to be paid by the guardian from his own funds. ^{Court may award costs.}

Sec. 125. Deeds may be made by the guardian in his own name, but they must be returned to the court, and the sale or mortgage be approved before the same are valid. ^{Deeds.}

Sec. 126. The same rules that are prescribed in the sale of real property by executors and administrators shall be observed in the sales under the provisions of this act as far as applicable. ^{What rules shall apply.}

Sec. 127. A failure to comply with any order of the court in relation to the guardianship, shall be deemed a breach of the condition of the guardian's bond, which may, accordingly, be put in suit by any one aggrieved thereby, for which purpose the court may appoint another guardian of the minor if necessary. The court may, also, commit him to jail until he complies with such order. ^{Penalty.}

Sec. 128. Guardians of the property of minors must account, on oath, annually, or oftener, if required by the court. It may, also, direct them to give new or supplemental security, or may remove them for good cause shown, which cause must be entered on the record. ^{Returns, how made.}

Sec. 129. When a new guardian is appointed, the court may order the effects of the minor, which are in the hands of his predecessors, to be delivered up to such new guardian. ^{New guardian.}

Sec. 130. The foreign guardian of any non-resident minor may be appointed the guardian of such minor by the probate court of the county wherein such minor has any property, for ^{How appointed.}

the purpose of selling or otherwise controlling that and all other property of such minor, within this territory.

Foreign guardians.

Sec. 131. Such appointment may be made, upon his filing, in the office of the probate judge of the county wherein there is any such property, an authenticated copy of the order for his appointment. He shall thereupon qualify, like other guardians, except as in the next succeeding section is prescribed.

Duty of court.

Sec. 132. Upon the filing of an authenticated copy of the bond and the inventory rendered by the guardian in the foreign State or territory, if the court is satisfied with the sufficiency of the amount of the security, it may dispense with the filing of an additional bond.

Compensation of guardian.

Sec. 133. Guardians shall receive such compensation as the court may from time to time allow. The amount allowed and the service for which the allowance was made, must be entered upon the records of the court.

Guardian of half breeds.

Sec. 134. The probate court may, in like manner, as is provided for in other cases by this act, appoint guardians of the persons and guardians of the property of half breed minors, or infants of mixed blood.

Same.

Sec. 135. Whenever it is made to appear to the satisfaction of the probate judge that a half-breed minor, or an infant of mixed blood, residing within said county, has real or personal property, or is in receipt of, or is entitled to, annuity from the United States, or has script for an amount of land, it shall be the duty of the probate court to appoint a suitable guardian of the property of said half-breed child.

Powers of guardians.

Sec. 136. Guardians appointed under the provisions of sections one hundred and thirty four and one hundred and thirty five shall have the same power, and shall observe the same requirements as are provided for in other cases by this act. And all the business, in and out of court, appertaining to the guardianship of the persons or property of half breed minors, or infants of mixed blood, shall be conducted the same as is provided by this act in other cases except that, it is hereby enacted that an Indian woman, or a half breed woman, cannot be lawful guardian of the property of their children.

CONCERNING LUNATICS.

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149. Duty of guardian.
150. Same.
151. Guardian to make inventory.
152. Shall file additional inventory.
153. Inventory to be attested.
154. Duty of guardian.
155. Court may make certain order.
156. Duty of guardian.
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159. Same.
160. Where sale is ordered, guardian shall cause certain notice.
161. Lands to be sold to the highest bidder.
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163. If the court approve, guardian to execute deed.
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166. Conveyance shall be valid.
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168. Contract not binding, when.
169. Insane person exempt from civil or criminal action.
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Section 171. Jury to make inquiries into cases of recovery from insanity.

- 172. If true, person shall be discharged.
- 173. Disposition of estate, in case of death.
- 174. Power of probate court.
- 175. Guardian's duty on being removed.
- 176. Power of court.
- 177. Insane person to be confined in certain cases.
- 178. Same.
- 179. Expenses, how paid.
- 180. County to recover expenses.

Lunatics. Sec. 137. If information, in writing, be given to the probate court of any county within this territory, that any person in such county is an idiot, lunatic, or person of unsound mind, and incapable of managing his or her affairs, and praying that an inquiry thereinto be had, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury.

Information, how given. Sec. 138. Such information may also be given, in the vacation of said court, to the judge thereof; in which event he shall call a special term of the court, for the purpose of holding an inquiry, whether the person mentioned in such information be of unsound mind or not.

Discretionary power of court. Sec. 139. In proceedings under this act, the probate court may, in its discretion, cause the person alleged to be of unsound mind, to be brought before the court.

Duty of civil officers in cases of lunatics. Sec. 140. Whenever any justice of the peace, sheriff, coroner or constable, shall discover any person, resident of his county, be of unsound mind, as in the one hundred and thirty seventh section of this act mentioned, it shall be the duty of such officers to make application to the probate court of said county, for the exercise of its jurisdiction; thereupon the like proceedings shall be had as in the case of information by unofficial persons.

Duty of court. Sec. 141. If upon inquiry, it be found by the jury that the subject of the inquiry is of unsound mind, and incapable of managing his or her affairs, the court shall appoint a guardian of the person and estate of such person. The court may ap-

point two guardians, one to have charge of the person, and the other to have charge of the estate of such person of unsound mind.

Sec. 142. When any person shall be found to be insane, according to the preceding provisions, the costs of the proceedings shall be paid out of his or her estate, or, if that be insufficient, by the county. Costs, how paid

Sec. 143. If the person alleged to be of unsound mind shall be discharged, the costs shall be paid by the person at whose instance the proceeding is had, unless said person be an officer acting officially, according to the provisions of this act, in which case the costs shall be paid by the county. Same.

Sec. 144. The court may, if just cause appears at any time during the term at which an inquisition is had, set the same aside and cause a new jury to be impaneled to inquire into the facts; but when two juries concur in any cause the verdict shall not be set aside. Powers of court

Sec. 145. Every guardian of a person of unsound mind, before entering upon the duties assigned him, shall enter into a bond to the Territory of Dakota, for the use of any person complaining, in such sum and with such security as the court shall approve, conditioned that he will take due and proper care of such insane person, or will manage and administer his estate and effects to the best advantage according to law, and will faithfully do and perform all such acts, matters and things touching his guardianship, as may be prescribed by law or enjoined on him by the order, sentence or decree of any court of competent jurisdiction. Guardian shall give bond.

Sec. 146. The court may, at any time, require of any such guardian to give a new bond or additional security, as the circumstances of the case shall require, and if any order for that purpose be not complied with within a reasonable time to be therein mentioned, the appointment of the guardian may be revoked and another appointed who will give the bond and security required. Additional bond

Sec. 147. Every bond given by such guardian shall be deposited with the probate judge, and a copy thereof, duly certified by such judge, shall be evidence in all respects as the original. Bond, where deposited.

Guardian to publish notice. Sec. 148. It shall be the duty of every such guardian, within thirty days after his appointment, to cause a notice thereof to be published, at such time and such manner as the probate court shall order.

Duty of guardian. Sec. 149. Every such guardian shall take charge of the person committed to his charge, or of the estate of such person of unsound mind, as the case may be, and provide for his or her support and maintenance, or to dispose of or manage the estate of such person, as directed by this act.

Same. Sec. 150. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys and effects, books and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship.

Guardian to make inventory Sec. 151. Within three months after his appointment, such guardian shall make out and file, in the office of the probate judge, a just and true inventory of the real and personal estate of his ward, stating the income and profit thereof, and the debts, credits, and effects, so far as the same shall have come to the knowledge of such guardian.

Shall file, what. Sec. 152. Whenever any property belonging to such estate shall be discovered after the filing of any inventory, it shall be the duty of such guardian to file, as aforesaid, an additional inventory, containing a just and true account of the same, from time to time, as the same shall be discovered.

To be attested. Sec. 153. All such inventories shall be made in the presence of, and attested by two credible witnesses of the neighborhood, and shall be verified by oath or affirmation of the guardian.

Duty of guardian. Sec. 154. It shall be the duty of every such guardian to prosecute and defend all actions instituted in behalf of or against his ward, to collect all debts due or becoming due to his ward, and give acquittances and discharges therefor, and to adjust, settle or pay all demands due or becoming due from his ward, so far as his effects and estate will extend, as hereinafter provided.

Court may make certain order. Sec. 155. Every probate court by whom any person of unsound mind is committed to guardianship, may make an order

for the restraint, support and safe keeping of such person, for the management of his or her estate, for the support and maintenance of his or her family and education of his or her children out of the proceeds of such estate ; to set apart and reserve for the payment of debts, and to let, sell or mortgage any part of such estate, real or personal, when necessary for the purposes above specified.

Sec. 156. Whenever the personal estate of any such person of unsound mind shall be insufficient for the discharge of his debts, the maintenance of himself or herself and family, or the education of his or her children : it shall be the duty of the guardian to apply, by petition, to the court by which he was appointed, praying for authority to mortgage, lease or sell the whole or so much of the real estate of such person of unsound mind as shall be sufficient and necessary to supply the deficiency.

Sec. 157. The petition shall set forth the particulars of the amount of the estate, real and personal, of such insane person, and of the debts by him or her owing, accompanied by a full, true and perfect account of the guardianship of the petitioner, showing the application of the funds which may have come to his hands.

Sec. 158. If it appears to the court, upon examination of the matter, that the personal estate is insufficient for the purposes above mentioned, and that the property has been applied, as the circumstances of the case rendered proper, the court shall make an order directing the mortgage, lease or sale of the whole or such part of the estate as may be necessary or proper.

Sec. 159. The court making such order shall direct the time and terms of such sale, or, if a mortgage or lease be ordered, the terms of such mortgage or lease, and the manner in which the proceeds shall be secured, and the income or produce thereof be appropriated.

Sec. 160. When a sale of real estate shall be ordered, the guardian shall cause notice of the time, place, and terms of sale, together with a description of the property to be sold, to be published four weeks successively in some newspaper in or nearest to the county in which the premises to be sold are situated, if

said newspaper be published within this territory, and shall also put up like notices at six of the most public places in such county six weeks before the day of sale.

How sale conducted.

Sec. 161. Such guardian shall, at the time and place appointed for the sale, sell such lands at public auction to the highest bidder, and make report of his proceedings to the court at the term next succeeding the sale.

Reports.

Sec. 162. The report shall be verified by the affidavit of the guardian, which affidavit shall also state that such guardian did not, directly or indirectly, become the purchaser of the property sold and that he was in no wise interested in the purchase thereof.

If the court approve.

Sec. 163. If the court approved the proceedings, the guardian shall execute a deed to the purchaser or purchasers, reciting the order of sale, and conveying to the purchaser or purchasers all the estate, right, title and interest of such person of unsound mind to the estate sold.

If disapproved.

Sec. 164. If the report be disapproved, the court may set aside the sale, and order all money paid to be refunded, and all securities given to be cancelled, and may renew the order of sale as often as may be necessary, until the proceedings are approved.

No deed given until sale approved.

Sec. 165. When the court shall order a lease or mortgage of any estate, no deed or instrument of writing shall be executed for that purpose, until the court shall have approved the agreement made by the guardian under such order.

Conveyance valid.

Sec. 166. Every conveyance, mortgage, lease and assurance made under the order of a probate court, pursuant to the provisions of this act, shall be as valid and effectual as if the same had been executed by such insane person when of sound memory and understanding.

Guardian shall render account.

Sec. 167. Every guardian appointed under this act shall, once a year or oftener, if thereto required by the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with such court.

Contract not binding when.

Sec. 168. No contract of any person found to be of unsound mind, hereinbefore specified which shall be made without the consent of his or her guardian, shall be valid or binding, and

such guardian may sue for and recover any money or property which may have been sold or disposed of by his ward, without his consent.

Sec. 169. No such insane person shall be held to bail, nor ^{Insane person.} shall his or her body be taken in execution on any civil or criminal action.

Sec. 170. In all actions commenced against such insane person, ^{Process, how served.} the process shall be served on his guardian ; and on judgments against such person, or his or her guardian, as such, the execution shall be against his property only, and in no case against his or her body, nor against the body or estate of such guardian, unless he shall have rendered himself liable thereto, by false pleading or otherwise.

Sec. 171. If any person shall allege, in writing, verified by ^{Duty of jury.} oath or affirmation, that any person declared to be of unsound mind, has been restored to his or her right mind, the court by which the proceedings were had, shall cause the facts to be inquired into by a jury.

Sec 172. If it shall be found that such person has been re- ^{When person to be discharged.} stored to his or her right mind, he or she shall be discharged from care and custody, and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hand, belonging or appertaining to him or her.

Sec. 173. In case of the death of any such insane person ^{Disposition of estate.} while under guardianship, the power of the guardian shall cease, and the estate shall descend and be distributed in the same manner as if such person had been of sound mind, and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his personal representatives.

Sec. 174. The several probate courts shall have power to ^{Power of probate court.} remove such guardians, at any time, for neglect of duty, misconduct or mismanagement, or disobedience to any lawful order, and appoint others.

Sec. 175. Whenever any such guardian shall be removed ^{Guardian's duty.} from his trust, he shall immediately settle his accounts, and render to his successor the state and effects of his ward.

- Power of court.** Sec. 176. The probate court shall have full power to control the guardian of such insane person, in the management of the person and estate, and the settlement of his accounts, and may enforce and carry into execution their orders, sentences and decrees, in the same manner as a court of chancery.
- Insane person** Sec. 177. If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person, or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place until the next setting of the probate court of the county, who shall make such order for the restraint, support and safe keeping of such person as the circumstances of the case shall require.
- Same.** Sec. 178. If any such person, as in the last preceding section is specified, shall not be confined by the person having charge of him or her or there being no person who has such charge, and judge of court or record, or any justice of the peace may cause such insane person to be apprehended, and may employ any person to confine him or her, in some suitable place until the probate court shall make further order therein, as in the preceding section specified.
- Expenses.** Sec. 179. The expense attending such confinement shall be paid by the guardian out of his or her estate, or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury.
- County to recover expenses.** Sec. 180. In all cases of appropriations out of the county treasury, for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such person, if there be any sufficient ability to pay the same.

CONCERNING APPRENTICES.

- Section 181. Shall serve on the time specified.
 182. May bind himself.
 183. Master to make affidavit.

- Section 184. Mother to have power in certain cases.
 185. Fathers incapacity to be decided ; how.
 186. Probate court to bind apprentice.
 187. Guardian to appoint apprentice.
 188. Shall not remove apprentice.
 189. Duty of probate courts.
 190. Age of apprentice recorded.
 191. When indentures shall be void.
 192. Apprentice to make complaint.
 193. Apprentice to be discharged ; when .
 194. Masters may complain.
 195. If apprentice abscond ; to be reclaimed ; how.
 196. Duty of justice.
 197. Penalty for enticing apprentice to abscond.
 198. Penalty for harboring runaway apprentice.
 199. Executor may bind apprentice.
 200. Apprentice not to be removed beyond territory.
 201. If master fails to give surety, another appointed as custodian.
 202. Apprentice to be re-indentured in certain cases.
 203. Apprentice if bound to two or more persons.

Sec. 181. Every person bound by indenture of his free will, with the consent of his father, or if the father be dead, of the mother or guardian, and signified by such parent or guardian signing the same, or by the probate court, as hereinafter directed, to serve as clerk or apprentice, in any profession, trade or employment, until the age of twenty one years, or, if a female, until the age of eighteen years, or for a shorter time, shall be bound to serve the time specified in such indenture. shall serve for the time specified.

Sec. 182. Any infant, having no parent or guardian, may, with the approbation of the probate court, endorsed on the indenture, bind himself an apprentice until he arrives at the age of twenty-one years, or if a female, at the age of eighteen years. May bind himself.

Sec. 183. Upon the execution of every indenture of apprenticeship the person to whom the apprentice is bound, shall make an affidavit that he will faithfully perform the duties required

by the indenture and enjoined on him by law, which affidavit shall be indorsed on the indenture.

Master to make affidavit.

Sec. 184. When the father has no legal capacity to give consent, or when he shall willfully have abandoned his family for six months, without making suitable provisions for their support, or has become an habitual drunkard, the mother shall have the same power to give such consent as if the father was dead.

Mother to have power in certain cases.

Sec. 185. Acts of incapacity, desertion or drunkenness, shall be decided in the probate court, by a jury, before the indenture shall take effect, and an indorsement on the indenture, under the seal of the court, if a seal has been provided, that the same are proved, shall be sufficient evidence of the mother's power to give such consent; but if the jury do not find the charge of incapacity, drunkenness or desertion to be true, the person at whose instance such proceedings may have been had, shall pay all costs attending the same.

Father's incapacity to be decided, how.

Sec. 186. When any poor child is, or may be, chargeable to the county, or beg for alms, or when the parents of such children are poor, and their father an habitual drunkard, or if there be no father, when the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood, it shall be lawful for the probate court to bind such child an apprentice, if a male, until he arrives at the age of twenty-one years, and if a female, to the age of eighteen years.

Court to bind apprentice.

Sec. 187. Every orphan or minor, who has not estate sufficient for his or her maintenance, may be bound by his or her guardian, under the order and direction of the probate court, and the indenture of binding such infant, shall be as effectual as if such infant were of full age; and the counterpart of such indenture shall, for the benefit of the infant so bound be deposited in the office of the judge of probate before whom such binding shall take place, who shall preserve the same.

Guardian to appoint apprentice.

Sec. 188. It shall not be lawful for any master to remove an apprentice out of this territory, and in all indentures by the probate court, for binding out any orphan or poor child as an apprentice there shall be inserted, among other covenants, a

clause to the effect, that every master to whom such child shall be bound, shall cause such child to be taught to read and write, and the ground rules of arithmetic, the compound rules and the rule of three, and at the expiration of his, or her, time of service, shall give him, or her, a new bible, a dictionary, arithmetic, English grammar, and ten dollars worth of religious books, and two new suits of clothes; if a male, to be worth forty dollars, and if a female, to be worth thirty dollars, and fifty dollars in current money of the United States.

Sec. 189. The probate court shall see that the terms of the indenture, and the covenants therein contained, be fulfilled, and that such child be not ill used; and the said court is hereby required to inquire into, and redress any grievances that may occur in the premises, in such manner as is prescribed by law. Duty of court.

Sec. 190. The age of every apprentice shall be inserted in the indenture. Age of apprentice recorded..

Sec. 191. All indentures entered into otherwise than according to law, shall be utterly void, so far as concerns the apprentice therein bound. When indentures void.

Sec. 192. The probate court shall receive the complaints of apprentices who reside within the county, against their masters alleging undeserved or immoderate correction, insufficient allowance of food, raiment or lodging, want of instruction in their trade or profession, or that they are in danger of being removed out of this territory, or the violation of the indentures of apprenticeship; and may hear and determine such cases by a jury, and make such order therein as will relieve the party injured, in future. Apprentice to make complaint

Sec. 193. The probate court shall have power, when circumstances require it, to discharge an apprentice from his apprenticeship; and in case any money or other thing has been paid, or contracted to be paid by either party, in relation to such apprenticeship, the court shall make such order concerning the same, as shall seem just and reasonable. If the apprentice so discharged shall have been originally bound by the probate court, it shall be the duty of the court, if judged necessary, again to bind such apprentice. Apprentice to be discharged, when.

Masters may
complain.

Sec. 194. The court shall, in like manner, hear and determine the complaint of masters against their apprentices, for desertion without good cause, misconduct or ill behavior, and may punish such apprentice according to the nature and aggravation of his offense; and if the offense be willful desertion, without cause, the court may, in addition to other punishments, order the apprentice guilty thereof, to make restitution by the payment of a sum not exceeding ten dollars, for each month he may be so absent, to be collected as other debts after such apprentice shall have become of full age. The awarding of costs in the proceedings under this section shall be in the discretion of the court.

If apprentice
abscond.

Sec. 195. If any apprentice shall abscond or depart from the service of his master, without leave, or shall rebel against or assault his master, any judge of probate or justice of the peace, on complaint made, and sufficient cause shown on oath, by the master, or any one in his behalf, shall issue a warrant directed to any sheriff or constable in this territory or any discreet and responsible person, to be named in the warrant, to execute the same in any part of this territory.

Duty of Justice

Sec. 196. If upon the return of any such warrant, the probate court shall not be in session, it shall be the duty of the person serving the same to carry the apprentice before some judge or justice of the peace of said county, who shall take bail for the appearance of the apprentice at the next term of the probate court, to answer to the complaint of the master. The costs of the process, service and other proceedings, shall be paid, in the first instance, by the master; but hereing, may order such apprentice to make restitution of such costs, by service, after the expiration of the time for the court, upon the final which he shall have been bound.

Costs to be paid

Sec. 197. Every person who shall consult, persuade, entice or assist any apprentice to run away or absent himself from the service of his master, shall forfeit not less than twenty nor more than five hundred dollars, to be sued for and recovered, with costs, by such master, in any court having jurisdiction thereof.

Penalty for en-
ticing appren-
tice to abscond.

Sec. 198. Every person who shall entertain, harbor, or con-

veal any apprentice, knowing such apprentice to be runaway or to have absented himself from the service of his master without leave, shall forfeit one dollar for every day's entertainment, harboring or concealing, to be sued for and recovered by action of debt, with costs, by such master, in any court having jurisdiction thereof.

Penalty for harboring runaway apprentice.

Sec. 199. The executor, who, by the last will of a father, is directed to bring up his child to some trade or calling, shall have power, with the consent of the mother, if living, to bind such child by indenture in like manner as the father, if living, might have done, or shall raise such child according to such direction, if consented to by the mother.

Executor may bind apprentice

Sec. 200. If it shall appear to any probate judge or justice of the peace, upon the oath of any competent person, that any master is about to remove, or cause to be removed, any apprentice out of this territory, such probate judge or justice of the peace shall issue his warrant and cause such master to be brought before him; and if, upon examination, it shall appear that such apprentice is in danger of being removed without this territory, the said judge or justice may require the master to enter into recognizance with sufficient security, in the sum of one thousand dollars, conditioned that such apprentice shall not be removed without this territory, and that said master will appear, with the apprentice, before the probate court, at the time fixed by the probate judge, and abide the decision of the court thereon, which recognizance shall be returned to the probate court; and the court shall proceed therein, in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance and otherwise proceed according to law and justice.

Apprentice not to be removed beyond Territory.

Sec. 201. If the master, when brought before the judge or justice, fails to enter into recognizance when required so to do, such judge or justice shall commit the custody of such apprentice to some other proper person, who will enter into recognizance.

If master fails to give security

Sec. 202. Whenever any master of an apprentice shall wish to remove out of this territory, or quit his trade or business, he shall appear with his apprentice before the probate court of the

Apprentice to be re-indentured when.

proper county ; and if the court be satisfied that the master has done justice to said apprentice for the time he has had charge of the same, such court shall have power to discharge such apprentice from the service of such master, and again bind him, if necessary, to some other person.

When bound to two or more persons.

Sec. 203. Whenever any person shall become bound as an apprentice to two or more persons, and one or more of them die before the expiration of such term of service, the indenture shall survive to and against such survivor, and, in case of the death of all masters in any such indenture, before the expiration of the term of service, the executor or administrator shall bring the indenture and apprentice named therein, before the probate court of the proper county, and such court, shall, if necessary, again bind such apprentice to some other person.

ADOPTION OF CHILDREN.

Section 204. What person may adopt children.

205. Certain parties must consent, and proceedings.

206. Further proceedings for adoption.

207. Rights of adopted child.

208. Case of ill treatment, duty of probate court.

209. Appeals from probate court, when.

210. What party can take appeal.

211. Proceedings in case of appeal.

212. Time for appeal limited.

213. Probate court—court of record.

214. Conflicting acts repealed.

215. When to take effect.

What person may adopt children.

Sec. 204. Any person competent to make a will is authorized in the manner hereinafter set forth, to adopt, as his own, the minor child of another, conferring thereby upon such child all the rights, privileges, and responsibilities which would pertain to the child if born to the person adopting in lawful wedlock.

Certain parties must consent.

Sec. 205. In order thereto, the consent of both parents, if living and not divorced and separated, or if unmarried the consent of the parent lawfully having the care and providing for the wants of the child, or if either parent is dead, then the con-

sent of the survivor, or if both parents be dead, or if the child shall have been and remain abandoned by them, the consent of the mayor of the city, where the child is living, or if not in a city, then of the probate judge of the county where the child is living, shall be given to such adoption, by an instrument in writing, signed by the party or parties consenting, and stating the name of the parent, if known, the name of the child, if known, the name of the person adopting such child, and the residence of all, if known, and declaring the name by which such child is hereafter to be called and known, and stating also, that such child is given to the person adopting, for the purpose of adopting as his own child.

Sec. 206. Such instrument in writing shall be also signed by the person adopting, and shall be acknowledged by all the parties thereto, in the same manner as deeds affecting real estate are required to be acknowledged; *Provided*, That when both parents of the child execute the same, the mother shall be examined apart from her husband, by the officer taking the same, and shall certify whether or not she executed the same freely and without compulsion, or undue influence of her husband, and if not the instrument shall not be valid; and when duly acknowledged, the same shall be recorded in the county where the person adopting resides, in the office and with the record of deeds of real estate; and shall be indexed, with the name of the parent by adoption as grantor, and the child as grantee in its original name, if stated in the instrument.

Further proceedings for adoption.

Sec. 207. Upon the execution, acknowledgement, and record of such instrument, the rights, duties and relation between the parent and child, by adoption, shall, thereafter, in all respects, including the right of inheritance, be the same that exist by law between parent and child by lawful birth.

Rights of adopted child.

Sec. 208. In case of mal-treatment committed or allowed by the adopted parent, or palpable neglect of duty on his or her part, toward such child, the custody thereof may be taken from him and entrusted to another at his or her expense, if so ordered by the court; and the same proceedings may be had therefor, so far as are applicable, as are authorized by law in such a case, in the relation of master and apprentice; or the court

In case of ill treatment.

may, on showing of the facts, require from the adopted parent, bond, with security in a sum to be fixed by him, the county being the obligee, and for the benefit of the child, conditioned for the proper treatment and performance of duty toward the child, on the part of the parent; *Provided*, That no action of the court or judge in the premises shall affect or diminish the acquired right of inheritance, on the part of the child, to the extent of such right in a natural child of lawful birth.

Appeals from
probate court.

Sec. 209. Appeals may be taken to the district court from judgments or orders in a probate court in the following cases :

1st. An order admitting a will to record or probate or refusing the same.

2nd. An order appointing a person administrator, executor or guardian of an infant or a trustee for an insane person or removing him or refusing to make such appointment or removal.

3d. An order directing real property to be sold, mortgaged or leased, or confirming the same.

4th. An order or judgment by which a debt claim, legacy, or distributive share is allowed or payment thereof directed, or such allowance or direction refused when the amount in controversy exceeds fifteen dollars.

5th. Judgment upon an accounting, by an executor, administrator, guardian or trustee, including an intermediate order invoking the merits and necessarily affecting such judgment.

What party can
take appeal.

Sec. 210. The appeal can only be taken by a party aggrieved who appear and move for or oppose the order or judgment, appealed from, or who being entitled to be heard, the latter fact to be shown by affidavit filed and served with the notice.

Proceedings in
case of appeal.

Sec. 211. The appeal may be taken upon question of fact or law, and may be made by the service of a notice of the appeal upon the adverse party, stating the appeal from the order or judgment or some specified part thereof and filing the copy of the said notice in the office of the judge of probate together with the recognizance to be made by the party appealing with one or more sufficient sureties to be approved by the judge of

probate conditioned that the party will prosecute his appeal with due diligence to a determination, and will pay all costs that may be adjudged against him in the district court.

Sec. 212. The appeal must be taken within thirty days after the notice of the order or judgment appealed from. Time for appeal limited.

Sec. 213. Every probate court now organized or to be hereafter organized shall be a court of record, and authorized to adopt such seal, with such inscriptions and devices as the judge thereof may allow and direct. Probate court; court of record.

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

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

APPROVED, January 2d, 1865.

POISONS.

CHAPTER XIX.

AN ACT TO PROHIBIT LAYING OUT STRYCHNINE, OR ANY OTHER POISONS.

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

Section 1. No person shall lay out strychnine, or any other poison, within the limits of any town, or within one mile of any dwelling house, or any barn, stable, or out building, used at Laying out of strychnine.

the time for the keeping or shelter of horses, cattle, sheep or swine, or within one mile of any public highway in this territory.

~~Misdemeanor.~~

Sec. 2. All persons who shall disregard any of the provisions of section first, shall be guilty of a misdemeanor.

When to take effect.

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

APPROVED, January 11, 1865.

PUBLIC INSTRUCTION.

CHAPTER XX.

AN ACT QUALIFYING SECTION FIFTY-ONE OF CHAPTER NINETEEN, GENERAL LAWS OF 1863-64.

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

Board of education to appoint superintendent of public instruction.

Section 1. That section fifty-one of an act entitled "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," approved January 14, 1864, shall be so construed as to authorize the board of education for the Territory of Dakota to appoint a suitable person as superintendent of public instruction for the Territory of Dakota, even if such person so appointed shall not have resided in this territory for the period of nine months next preceding said appointment;

Provided, That but one appointment shall be made under the provisions of this act.

Sec. 2. This act shall take effect from and after its passage. When to take effect.

APPROVED, Dec. 29th, 1864.

ROADS.

CHAPTER XXI.

AN ACT ENTITLED AN ACT LOCATING A TERRITORIAL ROAD IN CLAY COUNTY.

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

Section 1. Franklin Taylor, John W. Boyle and Benjamin Shepherd be and they are hereby appointed commissioners to survey and locate a territorial road, commencing on the east line of Clay county, at a point that will intersect the road from Pacquett's ferry, on the Sioux river, running on the bottom to Vermillion, in Clay county, thence westwardly, on the most direct course, to intersect the territorial road at William Benedict's in said Clay county, in township number 92 north, of range 52 west. Commissioners to lay out a road.

Sec. 2. The said commissioners shall meet at the house of Jesse L. Fisher, at Greenpoint on or before the first day of June, A. D. 1865, and shall proceed to survey and locate said Commissioners to meet—free.

road. The surveyor employed by them shall be entitled to receive a reasonable compensation, not exceeding four dollars per day and the commissioners two dollars per day, for such time as is actually expended in surveying and establishing said road.

Surveyor to file
a plat.

Sec. 3. It is hereby made the duty of the surveyor to file a plat of the same in the office of the register of deeds of said county, on or before the fourth day of July, A. D., 1865.

Expense, how
paid

Sec. 4. The expenses of locating said road shall be audited by the county commissioners, and paid by the treasurer of said county out of any funds not otherwise appropriated.

When to take
effect.

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

APPROVED, January 12th, 1865.

CHAPTER XXV.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM THE NORTH LINE OF UNION COUNTY TO THE BIG SIOUX RIVER.

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

Location of
road.

Section 1. That Jefferson Cleveland, Lewis Beaubien, and I. T. Gore be and are hereby appointed commissioners to locate, mark, survey and establish a territorial road from the north line of Union county by way of the valley of the Big Sioux river to the Missouri river at or near the point where the north line of section fourteen, township eighty nine, north of range forty-nine west, intersects the Missouri river, thence by the most practicable route to a point on the Big Sioux river near the house of Mathias Mitchel.

Sec. 2. The said commissioners or a majority of them shall

meet at the house of Lewis Beaubien on the first Monday of November next or sooner if convenient, and proceed to locate said road. Time of meeting

Sec. 3. The expenses incurred in surveying, marking and establishing said road shall be paid by the county of Union. Expense, how paid.

Sec. 4. After the road is surveyed and located, it shall be the duty of the surveyor of the same on or before the first Monday in December next to file in the office of the register of deeds of Union county a plat of said road. Surveyor to file plat.

Sec. 5. The commissioners and surveyor of said road shall each receive two dollars per day for each day employed in surveying and establishing said road. Per diem.

Sec. 6. All acts or parts of acts conflicting with the provisions of this act are hereby repealed. Conflicting acts repealed.

Sec. 7. This act shall take effect from and after its passage and approval by the Governor. When to take effect.

APPROVED, January 13th, 1865.

CHAPTER XXII.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM EMMANUEL CREEK TO SPRINGLAKE, THENCE TO PONCA AGENCY AND KERLER'S TRADING POST, AT THE MOUTH OF THE KEHA PAHA.

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

Section 1. That the persons herein named in section second of this act, are hereby appointed commissioners to locate, mark and survey a territorial road from Emanuel creek, commencing at Rouse's station, and running to Spring Lakes, thence to Location of road.

Ponca Agency, thence to Kerler's trading post, at the mouth of the Keha Paha.

**Commissioners
to lay out road.**

Sec. 2. That John Rouse and E. W. Wall and C. V. Cooper are hereby appointed commissioners to locate so much of said road as passes through the county of Bon Homme and that James Keegan and C. N. Young and G. W. Howe are appointed to locate so much of said road as passes through the county of Todd. The commissioners for Bon Homme shall meet at the residence of John Rouse on or before the first Monday in June 1865, and proceed to locate so much of said road as passes through said county. The commissioners of the county of Todd shall meet on the first Monday in June, 1865, and proceed to locate and establish so much of said road as passes through the county of Todd. The commissioners herein named shall have power to appoint substitutes, whose duties shall be the same as herein given to the commissioners.

passes, how

Sec. 3. The expenses incurred in surveying, marking and striking and establishing said road shall be paid by the respective counties through which such road shall pass, each county paying the expense of locating so much of said road as leads through the same.

Compensation.

Sec. 4. The commissioners and surveyor of said road shall each receive two dollars per day for every day actually employed in surveying and locating said road.

**Surveyor to file
plat.**

Sec. 5. After said road shall be surveyed and located it shall be the duty of the surveyor of said road on or before the tenth day of September, 1865, to file in the office of the register of deeds a plat of so much of said road as passes through each county.

**When to take
effect.**

Sec. 6. This act shall take effect and be in force from and after its passage and approval by the Governor.

APPROVED, January 12th, 1865.

CHAPTER XXIII.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL
ROAD IN BON HOMME COUNTY.

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

Section 1. The persons herein named in section second of ^{Commissioners appointed.} this act, are hereby appointed commissioners to locate, survey and mark a territorial road from the west line of Yankton county, on the mail route from Yankton to Fort Randall, by the way of W. A. Burleigh's residence, Bon Homme, to Rouse's station, on Emanuel creek, to intersect a territorial road from Emanuel creek to Spring Lakes.

Sec. 2. That J. W. Owens, G. A. Fisher and C. Philbrick, ^{Compensation of commissioners and surveyors.} are hereby appointed commissioners, or a majority of them, who shall meet at the residence of G. A. Fisher, in Bon Homme, on or before the second Monday of June, A. D., 1865, and proceed to locate and establish said road. The commissioners and surveyor, shall each receive for their services three dollars per day and that all other expenses actually incurred in locating said road shall be borne by the county of Bon Homme.

[Sec. 3. This act shall take effect from and after its passage ^{When to take effect.} and approval by the governor.]

APPROVED, January 13th, 1865.

CHAPTER XXIV.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM PACQUETT'S FERRY TO [THE EAST LINE OF CLAY COUNTY] VERMILLION.

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

- Commissioners appointed.** Section 1. That Levi Cross, Charles Le Brecche and Joseph Shayer, be and are hereby appointed commissioners to locate, mark, survey and establish a territorial road from Pacquett's ferry, by way of Willow Post Office, Fourteen Mile House and Elk Point to the east boundary line of Clay county, with a branch from the main line to a point on the Big Sioux opposite Theopolis Bruguiers house.
- Time of meeting** Sec. 2. The said commissioners, or a majority of them shall meet at the house of Charles Le Brecche, on or before the first Monday in September next and proceed to locate said road.
- Union county to pay expenses.** Sec. 3. The expenses incurred in surveying, marking and establishing said road shall be paid by the county of Union.
- Compensation of commissioners and surveyor.** Sec. 4. The commissioners and surveyor of said road shall each receive two dollars per day for each day employed and [in] surveying and establishing said road.
- Surveyor to file Plat.** Sec. 5. After the road is surveyed and located it shall be the duty of the surveyor of the same, on or before the first Monday in October next, to file in the office of the register of deeds of Union county, a plat of said road.
- Conflicting acts repealed.** Sec. 6. All acts and parts of acts conflicting with this act are hereby repealed.
- When to take effect.** Sec. 7. This act to take effect from and after its passage and approval by the governor.
- APPROVED, January 11th, 1865.

CHAPTER XXVI.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL
ROAD FROM THE MOUTH OF THE RUNNING WATER
VIA THE MOUTH OF PONCA CREEK TO FORT RAN-
DALL, D. T.

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

Section 1. That John Dillon and James Kegan and Geo. <sup>Commissioners
to locate road.</sup> Howe, be and they are hereby appointed commissioners to locate and establish a territorial road from the mouth of the Running Water via the mouth of Ponca creek to Fort Randall, Dakota Territory.

Sec. 2. It shall be the duty of said commissioners, or a ma- ^{When to meet.} jority of them to meet at the house of Franklin Donley, near the mouth of the Running Water, on or before the (10) tenth of October, 18[6]55, and proceed to locate said road.

Sec. 3. The county shall pay expenses incurred in locating, <sup>County to pay
expenses.</sup> surveying, marking and staking the same in said county.

Sec. 4. This act shall take effect and be in force from <sup>When to take
effect.</sup> and after its passage and approval by the Governor.

APPROVED, December 1st, 1864.

CHAPTER XXVII.

AN ACT LOCATING A TERRITORIAL ROAD FROM YANKTON TO THE BIG SIOUX RIVER.

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

County road declared territorial, and commissioners appointed to continue the locating

Section 1. That the county road already located through Clay county, intersecting the territorial road through Yankton county, located by an act approved January 9th, 1863, is hereby declared a territorial road, and that A. Carpenter, James Fate and Carl Kingsley are hereby appointed commissioners to change said road as they may think practicable, between the southwest corner of William Shriner's and Knut Weeks' claim, on the west side of the Vermillion river. The said commissioners are also empowered, "and it is made their duty," to continue the locating and establishing of said road from the place where the county road intersects the western boundary line of Union county, thence by the way of the terminus of the bluffs between Brule Creek and Big Sioux River, intersecting the Big Sioux River at some point on section twenty-eight (28), township ninety-two north, range forty-nine west of the fifth principal meridian.

Surveyor to file plat.

Sec. 2. After said road is surveyed it shall be the duty of the surveyor of said road, on or before the first Monday in November, A. D., 1865, to place in the office of register of deeds of each county through which said road shall pass, a plat of so much of said road as passes through said county.

Fees.

Sec. 3. The commissioners and surveyor locating said road, shall each receive two dollars per day for each day so employed. Clay county, shall only pay for the time spent in changing the location of the road between William Shriner's claim and the claim of Knut Weeks.

When to take effect.

Sec. 4. This act shall take effect from and after its passage.

APPROVED, January 11, 1865.

CHAPTER XXVIII.

AN ACT CHANGING, VACATING AND ESTABLISHING A
TERRITORIAL ROAD IN YANKTON COUNTY.

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

Section 1. That P. H. Risling, Wm Oldham and W. Elliot ^{Commissioners} be and they are hereby appointed commissioners to survey, mark ^{to lay out road.} and establish a territorial road as follows, to wit : Commencing at a point on the territorial road from Vermilion to Yankton, surveyed by M. K. Armstrong under the act of the Legislative Assembly of this territory entitled "An act locating a territorial road from Vermilion to Yankton, approved December 24th, 1863, ten chains south of quarter post on north line of section 13, township 93, north of range 55 west, thence in a northwest direction to the corner of sections 11, 12, 13 and 14, same township and range, to the intersection of the county road running from the east line of Yankton county via the James river bridge to Yankton, surveyed and located June 10th, 1864

Sec. 2. That so much of the territorial road located under ^{Declared vacant} the act mentioned in section one of this act, as is hereinafter specified is hereby declared vacated, to wit : Commencing at a point 10 chains south of quarter post on north line of section 13, township 93 north of range 55 west, thence south 65 degrees west, 47 chains and twenty links to a point 10 chains north of quarter post between sections 13 and 14 same townships and range, thence west one mile, thence north 77 degrees west one mile and three chains, thence south 85½ degrees west one mile and 62 chains to east line of C. F. Picotts treaty grant, thence south 70 degrees west along bench 63 chains to east end of Fifth street in the village of Yankton.

Sec. 3. That so much of the county road mentioned in section one of this act as is hereinafter specified be and the same is ^{Declared territorial road.}

hereby declared to be a territorial road, to wit: Commencing at the point where the same is intersected by the territorial road provided for in this act, on section line between sections 10 and 15, township 93 north, of range 55 west, thence due west, on section line between sections 10, 15, 16, 9, 8, and 17, to a point where the same intersects the territorial road from Yankton to Greenway's ferry, surveyed and located under act of Legislative Assembly of this Territory entitled "An act to locate a territorial road from Yankton to the Big Sioux river," approved January 9th, 1863, thence by said road to the village of Yankton.

Commissioners
to meet.

Sec. 4. It shall be the duty of the Commissioners mentioned in section one of this act or a majority of them to meet at the house of P. H. Risling on or before the first day of June A. D., 1865, and proceed with a competent surveyor to locate said road.

Who to pay ex-
penses.

Sec. 5. The county of Yankton shall pay the expenses incurred in locating, surveying, marking and staking the same. The surveyor shall receive three dollars per day while engaged in locating the same, and the commissioners two dollars per day.

Duty of com-
missioners.

Sec. 6. It shall be the duty of the commissioners to file in the office of the register of deeds of Yankton county a plat of the territorial road provided in this act.

When to take
effect.

Sec. 7. This act shall take effect and be in force from and after its passage.

APPROVED, January 12, 1865.

TAXES.

CHAPTER XXIX.

AN ACT TO AUTHORIZE THE COUNTY COMMISSIONERS OF YANKTON COUNTY TO LEVY A TAX FOR THE YEAR 1864, AND TO PROVIDE FOR THE COLLECTION OF THE SAME.

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

Section 1. That the county commissioners of Yankton county, be and are hereby authorized to levy a tax of two mills on the dollar, on all property assessed in said county for the year 1864, and also a poll tax of one dollar for each male person over the age of twenty-one years. County commissioners to levy tax.

Sec. 2. The tax so levied by the said county commissioners shall be collected as provided in chapter 69, session laws of 1862, as far as applicable, but where the time specified for collection of taxes by said law conflicts with the enforcement of this act, it shall be the duty of the county commissioners to make such rules and regulations as they shall see fit. How collected.

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

APPROVED, January 11th, 1865.

TERRITORIAL WARRANTS

CHAPTER XXX.

AN ACT RESPECTING TERRITORIAL WARRANTS.

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

Auditor may is-
sue, what.

Section 1. That the Territorial auditor, be and is hereby authorized, in cases where one individual has an account audited against the territory, to issue, equal to the amount thereof, small warrants, in sums from one to twenty dollars, to suit the convenience of the person entitled thereto, and that any warrants already issued that may be returned by the holder thereof to the auditor, he may cancel the same and issue in lieu thereof small warrants as provided herein, equal in the aggregate to the amount of the warrants cancelled.

May cancel war-
rants, &c.

When to take
effect.

Sec. 2. This act shall take effect from and after its approval.

APPROVED, January 11th, 1865.

TIMBER.

CHAPTER XXXI.

*AN ACT TO ENCOURAGE THE CULTIVATION AND PRESERVATION OF TIMBER.

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

Section 1. That any owner or owners, occupant or occupants of any land or lands in this territory, who shall sow seed, set out, or otherwise cultivate two and one half acres of land in growing timber, every such owner or owners, occupant or occupants of such land or lands, shall be allowed to hold exempt from taxation, ten acres of land for every two and one half acres so cultivated as aforesaid. Premium for growing timber.

Sec. 2. If any person or persons shall wantonly or maliciously cut, dig up or injure any timber cultivated and growing as provided in the preceding section, or shall wantonly or maliciously open, let down, throw down or prostrate any fence, gate or bars belonging to any enclosure or field of cultivated and growing timber, or leave down or open any such fence, gate or bars, every such person or persons, shall upon conviction thereof be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding sixty days, or both at the discretion of the court, and shall moreover be liable in damages to the party injured. Penalty for injuring the same.

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

APPROVED, January 15th, 1864.

* "This law was passed at the 3d Legislative Session, 1863-4, but was omitted in printing the laws of that session."

TREES

CHAPTER XXXII.

AN ACT TO ENCOURAGE THE CULTIVATION OF FRUIT AND FOREST TREES AND GRAPE VINES.

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

Cultivation of
trees not to in-
crease the value
of land for reve-
nue.

When to take
effect.

Section 1. That the cultivation of fruit, forest, and ornamental trees or grapevines, upon any lands in this Territory shall in no case increase the value of said lands for revenue purposes.

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

APPROVED, December 24th, 1864.

WEIGHTS AND MEASURES

CHAPTER XXXIII.

AN ACT REGULATING THE WEIGHT OF GRAIN &C.

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

Section 1. The standard weights in this territory shall be as prescribed in the following section: Standard weights declared.

Sec. 2. A bushel of wheat, potatoes, peas, beans, and clover seed shall be deemed each, sixty pounds;

A bushel of rye and Indian corn, fifty-six pounds;

A bushel of barley, forty-eight pounds;

A bushel of buckwheat forty-two pounds;

A bushel of oats, thirty-two pounds:

A bushel of herdsgrass or Timothy, shall be deemed forty-two pounds :

A bushel of Indian corn, on the cob, shall be deemed seventy two pounds ;

And a ton of hay shall be deemed two thousand pounds, net weight, or by measurement, three hundred and forty-three cubic feet, as the standard weight or measurement of the same in all purchases and sales thereof.

Sec. 3. All the weights expressed in the foregoing section shall be understood to mean by Avoirdupois calculation and all contracts and sales concerning the same shall be understood and construed accordingly. How interpreted.

When to take
effect.

Sec. 4. This act shall take effect and be in force from and after its passage and approval by the Governor.

APPROVED, January 11, 1865.

PRIVATE LAWS.

PRIVATE LAWS.

AMENDMENTS.

CHAPTER I.

AN ACT AMENDATORY OF AN ACT GRANTING TO
CHARLES E. ROWLEY A FERRY CHARTER ACROSS
THE MISSOURI RIVER.

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

Section 1. That section one of chapter sixty-one of the ses-
sion laws of 1863 and 1864, be amended as follows: where "town-
ship No. twenty-three" occurs, that it shall be so amended as
to read, township ninety-three.

Amending sec-
tion 1 of chap-
ter 61.

Sec. 2. In section four, where "sixty-four" occurs, the sec-
tion shall be so amended as to read sixty-five.

Amending sec-
tion 4 of chap-
ter 61.

Sec. 3. This act shall take effect and be in force from and
after its passage and approval by the Governor.

When to take
effect.

APPROVED, December 24th, 1864.

CITIZENSHIP CONFERRED.

CHAPTER II.

AN ACT CONFERRING THE RIGHTS OF CITIZENSHIP UPON DAVID LECLAIR AND CHARLES LECLAIR.

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

David LeClare
and Charles Le-
Clare.

Section 1. That David LeClair and Charles LeClair, of the Territory of Dakota, be and are hereby declared to be citizens of the Territory of Dakota, and entitled to all the rights and privileges of other citizens of said Territory.

When to take
effect.

Sec. 2. This act shall take effect and be in force from and after its passage and approval by the Governor.

APPROVED, December 24th, 1864.

DIVORCES.

CHAPTER III.

AN ACT TO RELEASE ELIZABETH D. CRANDALL FROM THE BONDS OF MATRIMONY.

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

Section 1. That the bonds of matrimony heretofore existing between Elizabeth D. Crandall, as wife, and Trueman R. Crandall, as husband, so far as the same effect the said Elizabeth D. Crandall be and the same are hereby dissolved, and that the said Elizabeth D. Crandall is hereby released from the marriage contract which has heretofore bound her to the said Trueman R. Crandall, and she is by this act restored to all the rights and privileges of an unmarried person.

Sec. 2. That the said Elizabeth D. Crandall shall have the right to resume her maiden name; and all manner of property both real and personal, owned by her, in her own right, and all such property acquired by her before her marriage with said Trueman R. Crandall and all such property acquired by her since she has lived apart from her said husband, and all such property as she may hereafter acquire shall be and is hereby declared exempt from any debts or liabilities of the said Trueman R. Crandall, and without his control and disposal; and the said Trueman R. Crandall is forever barred from any allowance, allimony or dower whatever in any property both real and personal, now owned, or that may hereafter be acquired by the said Elizabeth D. Crandall in her present name, or in the name that she may rightfully assume by virtue of this act.

Sec. 3. That the said Elizabeth D. Crandall, shall have the

Bonds of matrimony dissolved.

Resume maiden name—property before and since marriage.

Control of child

exclusive control of her child, Nettie C. Crandall, begotten in wedlock, until she shall arrive at the age of majority.

Sell and convey
real estate.

Sec. 4. That the said Elizabeth D. Crandall, in her present name, or in the name she may rightfully assume, by virtue of this act, may grant, sell and convey real estate, and make and execute deeds therefor, which shall be binding both in law and equity.

When to take
effect.

Sec. 5. This act shall take effect from and after its passage, any law now in force to the reverse notwithstanding.

APPROVED, January 13th, 1865.

FERRIES.

CHAPTER IV.

AN ACT GRANTING TO JOHN H. ROUSE, E. W. WALL
AND C. H. McCARTHY A FERRY CHARTER [A]CROSS
THE MISSOURI RIVER.

Ferry charter
granted.

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

Section 1. That John H. Rouse, E. W. Wall and C. H. McCarthy, their heirs, executors, administrators or assigns shall have the exclusive privilege for the period of ten years, of keeping and maintaining a ferry across the Missouri river at a point opposite Niobrara, in Nebraska, five miles up and five miles down said river.

Duties of said
company

Sec. 2. The said John H. Rouse, E. W. Wall and C. H. McCarthy, shall at all times keep a good and safe boat in good repair for the accommodation of all persons wishing to cross

said ferry, and shall give prompt and ready attention to all passengers and teams on all occasions from sunrise to sunset, except when the navigation of said river is dangerous on account of ice running in said river, or foggy and tempestuous weather.

Sec. 3. The owners of said ferry privilege shall be allowed ^{Rates of ferriage.} to charge the following rates; to-wit:

For two horses, mules or oxen, and wagon with driver, with or without load, one dollar and fifty cents;

For two horses, mules and buggy, with driver, one dollar and fifty cents;

For each led horse or mule, twenty-five cents;

For each additional pair of horses, mules or oxen in a team, fifty cents:

For one horse or mule with buggy and driver, one dollar;

For loose cattle per head, twenty cents;

For freight per hundred, ten cents;

And for lumber per thousand feet, one dollar.

Sec. 4. Said John H. Rouse, E. W. Wall and C. H. McCarthy, ^{to file bonds.} shall before running said ferry, file or cause to be filed in the office of register of deeds, of Bon Homme county, a bond with one or more sureties, to be approved by the county commissioners of said county, in the penal sum of five hundred dollars, that they will fulfill all the duties that are imposed upon them by this act.

Sec. 5. Any person, who, shall sustain any injury from the negligence of the ferryman or ferrymen in their employ, ^{Remedy for injury.} may have a remedy by an action upon the bond required in this act.

Sec. 6. All acts or parts of acts conflicting with this act ^{Conflicting acts repealed.} are hereby repealed.

Sec. 7. This act shall take effect from and after its passage ^{When to take effect.} and approval by the Governor.

APPROVED, January 12th, 1865.

CHAPTER V.

AN ACT GRANTING TO CHRISTOPHER MALONEY A FERRY CHARTER ACROSS THE MISSOURI RIVER.

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

Ferry charter
granted to Chris-
topher Maloney

Section 1. That Christopher Maloney, his heirs, executors, administrators and assignees, shall have the exclusive privilege for a period of ten years of keeping and maintaining a ferry across the Missouri river in said territory, at a point on the Missouri river, where the north line of section ten (10) township eighty-nine (89) north of range forty-eight (48) west, intersects said river and for the distance of two miles below said point.

Duties of said
Maloney

Sec. 2. That said Maloney shall at all times keep a safe and good boat or boats in good repair for the accomodation of all persons wishing to cross said ferry, and shall give prompt and ready attention to all passengers, and teams on all occasions, from sunrise to sunset except in tempestuous weather; *Provided*, The said Christopher Maloney, his heirs, executors, administrators, or assignees, shall before running said ferry boat or boats, file or cause to be filed in the office of the board of county commissioners of the county within which said ferry is situated, a bond to said board, with one or more sufficient sureties to be approved by a majority of said board in the penal sum of five hundred dollars conditional, that he will fulfill all the duties that are imposed upon him in this act.

Time allowed to
start ferry.

Sec. 3. That said Christopher Maloney, his heirs, executors, administrators, or assignees, shall within fifteen months after the passage of this act, have and maintain a good and sufficient boat or boats for the accomodation of persons wishing to cross the Missouri river at said point, and in case of failure or neglect to do so, he shall forfeit all benefits that may have accrued to him from the passage of this act, but any other person or persons residents of this territory who shall comply with the conditions of this act within three months thereafter shall be entitled to all the benefits of this act.

Sec 4. Any person who shall sustain any injury from the negligence or default of the said Christopher Maloney, or any person or persons in his employ, or in the employ of any persons who may establish a ferry under the provisions of this act may have a remedy by an action upon the bond required in this act.

Remedy for injury received.

Sec. 5 The rates for crossing said ferry shall not exceed the following, to wit :

Rates.

For two horses, mules or oxen, and wagon, with or without load, one dollar.

For each additional pair of horses, mules or oxen, thirty cents ;

For each two horses or mules and buggy seventy-five cents

For each one horse or mule with buggy and driver, fifty cents ;

For each led horse or mule, twenty-five cents;

For loose cattle per head, fifteen cents ;

For sheep and swine per head, ten cents;

For each one hundred pounds of freight or merchandise unloaded, ten cents ;

For each thousand feet of lumber unloaded one dollar ;

And it shall be the duty of said ferryman running said ferry to post on his boat or near the landing in some conspicuous place, the said rates of toll allowed.

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

When to take effect.

APPROVED, January 2, 1865.

CHAPTER VI.

AN ACT GRANTING TO JAMES TUFTS, ROBERT HAGERMAN, ENOS STUTSMAN, D. P. BRADFORD AND THEIR ASSOCIATES AND ASSIGNS A CHARTER FOR A FERRY AT OR NEAR THE MOUTH OF THE YELLOW STONE RIVER.

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

Granting ferry charter to Jas. Tufts and others.

Sec. 1. That James Tufts, Robert M. Hagerman, Enos Stutsman, D. P. Bradford and their associates, and successors be and are hereby declared a company incorporate for the purposes and with the power hereinafter specified to continue for the period of twenty years from and after the approval of this act.

Limits of said charter.

Sec. 2. That said company shall have exclusive right and privilege to establish, run and maintain during the period named in the preceding section a ferry on the Missouri river, at or near the mouth of the Yellow Stone river, and the exclusive franchise granted shall extend from said point up said Missouri river twenty miles, and down said point twenty miles, and also to extend from the mouth of the Yellow Stone river up the same for the distance of twenty miles, said company shall have the privilege of placing and running a ferry on the last named river at any point on the same within the limits mentioned.

Keep safe boats in good repair.

Sec. 3. Before said company shall run a ferry for pay as herein authorized, they shall place one or more safe and sufficient ferry boats at such place or places as they may determine within the said limits, and shall keep the same in good repair, and give prompt attention to all persons wishing to cross on the same at all hours from sunrise to sunset except when the navigation is obstructed by ice, or rendered dangerous by fogs, high winds or from other causes.

Sec. 4. Before said company shall be allowed to carry pas- To file bond.
sengers, teams, stock or freight for pay, they shall file in the
office of the Secretary of the territory a bond in the penal sum
of one thousand dollars, to be approved by said officer con-
ditioned for the faithful discharge of their duties as ferry-
men.

Sec. 5. Any person being aggrieved by the neglect, miscon- Remedy for dam-
duct or default of said company may have an action for dama- ages.
ges by a civil action in any court of this territory of competent
jurisdiction upon the bond required by this act.

Sec. 6. Said company shall be allowed to charge such rates Rates.
of toll as are reasonable and just, or may be hereafter imposed
by the Legislative Assembly of the territory of Dakota.

Sec. 7. Said company shall be known by the name and style Name of com-
of "The upper Missouri ferry and transportation company" and pany.
shall have the power to issue shares and to sell and assign the
same.

Sec. 9. All acts and parts of acts conflicting with this act Conflicting acts
are hereby repealed. repealed.

Sec. 6. This act shall take effect and be in force from and When to take
after its passage and approval by the Governor. effect.

APPROVED, January 13th, 1865.

CHAPTER VII.

AN ACT GRANTING TO MATTHIAS MITCHEL A FERRY
CHARTER ACROSS THE BIG SIOUX RIVER.

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

Section 1. That Mathias Mitchel, his heirs, executors, ad- Granting to Mat-
ministrators or assigns shall have the exclusive privilege, for thias Mitchell a
ferry charter.

the period of ten years, from the passage of this act to keep and maintain a ferry across the Big Sioux river, at a point on said river in the county of Union at or near the center of the east line of section two, in township eighty-nine, north of range forty-eight west, and from said point his exclusive franchise shall extend one mile up and one half mile down said river.

To file bond.

Sec. 2. That said Matthias Mitchel his heirs, executors, administrators or assigns shall on or before the time upon which he or they shall commence to run said ferry for pay, file or cause to be filed, in the office of register of deeds of the county of Union a bond to said county, for the use of the public, in the penal sum of five hundred dollars with sufficient surety to be approved by said register of deeds, conditioned that he, the said Matthias Mitchel, his heirs or lawful representatives will fulfill all the duties that are imposed upon him, or them in this act, and in case of his or their failure or neglect to do so, he or they shall forfeit all the benefit that might have accrued to him or them from this act.

Keep a safe boat
in good repair.

Sec. 3. Before the said Matthias Mitchel or his lawful representatives shall commence to run said ferry for pay, he or they shall place a good and safe flat boat at said ferry and so long thereafter as he or they shall run said ferry for pay he or they shall at times, keep a safe and good boat in good repair for the accommodation of all persons wishing to cross said river at said ferry and shall give prompt and ready attention to all passengers, teams or freight on all occasions, from sunrise to sunset, excepting in foggy or tempestuous weather, or when the crossing of said river is rendered dangerous by floating ice or by high water.

Bemedy for injury.

Sec. 4. Any person or persons who shall suffer any damage by the neglect, default or misconduct on the part of the person or persons having charge of said ferry may have a remedy by a civil action upon the bond required by this act, in any court of competent jurisdiction.

Rates.

Sec. 5. The rates charged at said ferry shall not exceed the following:

Foot passengers each, ten cents;

For each horse or mule with or without a rider, fifteen cents ;

For each head of loose cattle, five cents ;

For two horse, mule or cattle team, loaded or without load with driver, twenty-five cents ;

For each single horse or mule to carriage, twenty cents;

For each horse, mule or ox over two attached to a team, ten cents ;

For each head of swine or sheep five cents ;

All freight not attached to teams five cents per one hundred pounds ;

All lumber in the pile, fifty cents per M.

Sec. 6. Said Ferryman is required to keep a bill of his legal rates posted up in a conspicuous place at or near said ferry in view of the passing public. Rates to be posted up.

Sec. 7. This act shall take effect from and after its pas- When to take effect.
sage.

APPROVED, January 9th, 1865.

INCORPORATIONS.

CHAPTER VIII.

AN ACT TO INCORPORATE THE TOWN OF "SPRING LAKE," IN TODD COUNTY.

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

Town of Spring Lake incorporated. Section 1. That so much land as is contained in the town of Spring Lake, in Todd county, be and the same is hereby created a town corporate by the name of "Spring Lake," with all the powers, privileges and responsibilities usually enjoyed by municipal corporations.

Officers designated. Sec. 2. That for the good order and government of said town, it shall be lawful, and there shall be established a president, recorder and three trustees, who shall constitute the town council of said town, and shall be known as "the town council of Spring Lake," and any three of whom shall constitute a quorum for the transaction of business.

Names of officers—their powers. Sec. 3. That John Dillon as president, James B. Gayton as recorder and Charles H. McCarthy, Charles Young and Geo. Howe, shall be known, and are hereby constituted the town council of said town, who shall hold their respective office for one year and until their successors shall be elected and qualified, and who shall have full power and authority to make and establish all needful rules and regulations for the government of said town.

Sec. 4. It shall be the duty of the president, with the consent of the town council of said town corporate, to enter so much land within the corporate limits of said town, as can be entered under the provisions of the Act of Congress, entitled "An act for the relief of citizens of towns upon the lands of the United States under certain circumstances, approved May 23d, 1844."

Sec. 5. It shall be the duty of the town council, as soon as the title to said lands shall be obtained, pursuant to the third and fourth sections of this act to ascertain the number of persons entitled legally or equitably to lots or squares within said town and to deed under the hand of the president and seal of the corporation to every such person as aforesaid.

Sec. 6. If any vacancy should occur in any of the town council aforesaid, a quorum of said town council duly assembled shall at any time fill said vacancy.

Sec. 7. This act shall take effect from and after its passage and approval by the Governor.

APPROVED, January 11, 1865.

REPEALS.

CHAPTER IX.

AN ACT TO REPEAL CHAPTER FORTY-THREE OF THE PRIVATE LAWS OF 1862-3.

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

Repealing chap-
ter forty-three
of private laws
of 1862-3.

Section 1. That chapter forty-three of the private laws of 1862-3, entitled An act incorporating the "Racine Ameni Transportation and Mining company," approved, January 3d, 1863, be and the same is hereby repealed.

When to take
effect.

Sec. 2. This act shall take effect and be in force from and after its passage

APPROVED, December 22d, 1864.

RESOLUTIONS AND MEMORIALS

RESOLUTIONS AND MEMORIALS

RESOLUTIONS.

CHAPTER X.

JOINT RESOLUTION RELATIVE TO THE CONTEST BY J. B. S. TODD, OF THE SEAT OF WALTER A. BURLEIGH IN THE 39TH CONGRESS OF THE UNITED STATES, AS DELEGATE FROM DAKOTA TERRITORY.

WHEREAS, J. B. S. Todd has without the slightest grounds for so doing, served a notice on Walter A. Burleigh, delegate elect to the 39th Congress of the United States, from Dakota territory, contesting his seat in that body, and

Joint resolution
relative to con-
test between J.
B. S. Todd and
Walter A. Bur-
leigh.

WHEREAS, The grounds set forth in the said notice are frivolous and false; and

Declaring no-
tice of contest
frivolous and
false.

WHEREAS, It is well known to the members of the Legislative Assembly of the territory of Dakota, now in session, (the popular branch of which was elected at the same time that the said Walter A. Burleigh was elected a delegate to the 39th Congress,) that the election was fairly and lawfully conducted in all the lawfully established precincts of said territory, and .

that to the knowledge of the members of this Legislative Assembly no undue or improper influences were employed by the said Burleigh or his friends at said election; and

Contest calculated to injure the territory.

WHEREAS, In the opinion of this Legislative Assembly a contest of this kind when no possible grounds exists is well calculated to jeopardize the rights, interests and standing of the people of this territory, if not to seriously endanger our very existence as a territory; and,

WHEREAS, The said Walter A. Burleigh, is not as alleged by said Todd, a resident of an Indian Reservation, but on the contrary, is an actual and bona fide resident of Bon Homme county, in this territory, which is outside of any Indian Reservation, and on the ceded lands of said territory; therefore,

Be it resolved by the Legislative Assembly of the Territory of Dakota, That the said J. B. S. Todd, contestant, has no adequate or just grounds upon which to base said contest, and is not entitled to, and should not receive from the Honorable members of Congress or the Administration that consideration which properly pertains to a contestant who has just and equitable grounds upon which to base a contest.

APPROVED, January 9, 1865.

CHAPTER XI.

JOINT RESOLUTION RELATIVE TO THE EMPLOYMENT OF AN ENROLLING CLERK FOR THE COUNCIL AND HOUSE OF REPRESENTATIVES.

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

First—That the committee on enrollment of the House of Representatives, and the committee on engrossed and enrolled

bills of the Council be authorized and empowered to employ an enrolling clerk for their respective houses, at the rate of four dollars per day, payable in territorial warrants, the time of service of said clerks not to exceed fifteen days.

Appointment of
enrolling clerk.

Second—That the territorial auditor is hereby authorized and instructed to issue to the persons so employed by the committee of the House and the committee of the Council, territorial warrants to the value of the amount of service so performed by said clerks, as shall be certified by said committees, and attested by the President of the Council, and the Speaker of the House of Representatives at the close of this session.

Territorial war-
rants.

APPROVED, December 28th, 1864.

MEMORIALS.

CHAPTER XII.

A MEMORIAL TO CONGRESS FOR A GEOLOGICAL SURVEY OF THE TERRITORY OF DAKOTA.

To the Honorable, the Senate and House of Representatives of the United States in Congress Assembled.

Your memorialists, the Legislative assembly of the Territory of Dakota, recognizing the liberal policy of the General Government respecting the new Territories, in developing their resources and promoting their settlement and prosperity, would most respectfully represent that a geological survey of their Territory would be of vast benefit to the same, and at the

Asking for a Ge-
ological survey
of Dakota Terr-
tory.

same time materially add to the aggregate wealth of the Federal Government.

The Indian Expedition under General Sully during the last season made discoveries that fully establish the fact that coal of a superior quality abounds on the upper Missouri and its tributaries, within this territory while the existence of Gold and other metals in the same region has been known for years past to hunters and trappers of the far west—But, as a Geological survey only can demonstrate the extent of this, as yet hidden wealth, and as the future prosperity of this territory in a great measure depends upon the development of its mineral resources your memorialists do most respectfully but earnestly request that an appropriation for the purpose above named be made by Congress at an early day, and your memorialist as in duty bound will ever pray.

APPROVED, January 12, 1865.

CHAPTER XIII.

A MEMORIAL OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF DAKOTA, PRAYING FOR THE ESTABLISHMENT OF MILITARY POSTS ON THE BIG SIOUX AND DAKOTA RIVERS.

To the Hon. E. M. Stanton Secretary of War.

Establishment
of military posts
asked for.

Your memorialists, the Legislative Assembly of the territory of Dakota, would most respectfully represent, that the safety of the people of southern Dakota and northern Iowa from the attacks of hostile bands of Indians require the establishment of two small military posts—One on the Big Sioux River in the vicinity of Sioux Falls and one at a point on the Dakota River near a strait line between said Sioux Falls and Fort Randall.

Sioux Falls is about half way between Fort Randall, Dakota, and Fort Ridgley Minnesota, and your memorialist are of the opinion that such posts would give better protection to Southern Dakota, than the system heretofore adopted, besides being far less expensive; therefore your memorialist pray for the establishment of such military posts; and as in duty bound will ever pray.

Resolved, That a copy of this memorial be sent to the Secretary of War, Hon. J. B. S. Todd and Hon. A. W. Hubbard. To whom sent.

APPROVED, January 12th, 1864.

CHAPTER XIV.

A MEMORIAL TO CONGRESS ASKING FOR THE ESTABLISHMENT OF A MAIL ROUTE FROM BON HOMME, THENCE TO SPRING LAKES AND PONCA AGENCY IN TODD COUNTY.

To the Honorable Senate and House of Representatives of the United States in Congress assembled :

Your memorialists, the Legislative Assembly of the territory of Dakota, would respectfully represent to your honorable body that service upon the mail route from Dakota City, Nebraska territory, via Niobrara, Nebraska territory, to Ponca Agency, Dakota territory, has been entirely suspended, and that the people of Ponca Agency and southwestern Dakota are thereby deprived of all mail facilities, and although they have a post office at Ponca Agency, are obliged to send by private conveyance a distance of forty miles for their mail matter. Praying for the establishment of a mail route from Bon Homme to Ponca Agency.

Your memorialists would respectfully represent that a great inducement for the immigration and settlement of a new coun-

try is the early establishment of mail routes and postal facilities, which, by affording the pioneers direct communication with the east, removes one of the great privations experienced by early settlers, and thus induces others to join them in making the western country their home.

Your memorialists would further state, that the route herein asked for, embraces a fine portion of country, well timbered and watered, and not in distance exceeding forty miles, and that the early establishment of this route will facilitate the speedy settlement and advancement of the county.

We therefore pray your honorable body to establish the route herein named with semi-weekly service thereon, and we your memorialists will as in duty bound ever pray.

Be it resolved by the Council and House of Representatives of the Territory of Dakota:

That his excellency the governor be and is hereby requested to forward an authenticated copy of this memorial and resolution to our delegate in Congress who is hereby requested to lay the same before the Congress of the United States and urge immediate and favorable action thereon.

APPROVED, December 21st, 1864.

CHAPTER XV.

A MEMORIAL TO HIS EXCELLENCY THE PRESIDENT OF THE UNITED STATES, RELATING TO THE NORTHERN BRANCH OF THE PACIFIC RAILROAD.

Asking the President to designate the Missouri and Niobrara Railroad company to build the northern branch of the Pacific Railroad.

The Legislative Assembly of the Territory of Dakota would most respectfully represent, that in the law of Congress passed July 1st, 1862, popularly known as the "Pacific railroad law," provision is made in section 14 for a branch of said road from Sioux City, to unite with the central branch a main trunk at a

point not further west than the one hundredth degree of west longitude, the restriction, as to the point of junction rendered this branch entirely useless, for all practical purposes. In order to remedy that defect, the Legislature of Iowa for the year 1864 memorialized Congress, so to amend the section as to allow that branch to run "westwardly;" to unite with the main trunk at the nearest and most practicable route (session laws of Iowa for 1864, page 179) the legislature of Dakota Territory for 1864, upon the recommendation of the Governor passed a similar memorial, the Legislature of Wisconsin for the same year passed a like memorial to Congress, the object and purpose of all these memorials was to secure such an amendment of said 14th section, as to allow that branch to run westwardly up the valley of the Missouri river, also up the valley of the Niobrara, one of its tributaries, to unite with the main trunk of the Pacific Railroad at a point farther west than the one hundredth parallel of longitude; this would enable this branch to run by the nearest and most practicable route to unite with the main trunk. The valley of the Niobrara is selected, because it is exactly along that "nearest and most practicable route;" this stream rises in the "Wind river" mountains or rather the southern slope of the "Black Hills" a little northwest of Fort Larimie, running thence about three hundred miles nearly due east to the Missouri river on about the parallel of $42\frac{1}{2}$ degrees of north latitude; this route would allow all the roads running west and southwest from Lake Michigan and the head of Lake Superior through the States of Wisconsin and Minnesota and the north half of Iowa, to unite at some point on the western boundary of the latter State, at or near $42\frac{1}{2}$ degrees and thence to continue on that line to unite with the main trunk by the nearest and most practicable route east of the passes of the Rocky mountains. These are four principal lines of Railroads passing through those States, all now being rapidly constructed, that cannot make a good and feasible connection with the main trunk of the Pacific railroad by any other route, one of those roads (which are destined to become one of the most important among those connecting with the Lakes) runs from the head of Lake Superior, southwest, via St Paul in Minnesota to Sioux City in Iowa, (session laws of Congress for 1864) page 77, sections 1

Memorial to
His Excellency
the President.

relating to the
northern branch
of the Pacific
Railroad.

and 7 and laws providing for a road from St Paul and Lake Superior. Another road runs from Lake Michigan via La Crosse in Wisconsin and Winona in Minnesota, to unite with the northern branch of the Pacific Railroad at Yankton the Capital of Dakota. Another road from Milwaukie via Prairie Du Chien and Mc Gregor Iowa, to unite with the first named road in the interior of Iowa (ib page 77, section 1;) another road via Dubuque to Sioux City, the route via the Niobrara valley, will be the shortest, most direct and most feasible for all these roads to unite with the main trunk of the Pacific Railroad. Indeed as we are creditably informed, it is the only feasible, practicable and direct route, we are also informed that there is some talk of a route down the valley of the Missouri river to unite with the central or Iowa branch of the Pacific Railroad at or near the mouth of the Elk Horn, a tributary of the Platte river; such a route would run about south from Sioux City for nearly one hundred and fifty miles; this would necessitate all the above roads to run at least two hundred miles out of the most direct route by the way of the Niobrara valley, that is to say, when the roads are completed, it would necessitate the business on those four roads to travel at least two hundred miles further to reach the passes in the Rocky mountains, than would be necessary, should that Sioux City branch run up the Niobrara valley or by the way direct from Chicago. It needs no argument to prove that such a route would not be of any practicable value or importance, whatever to those roads, the only one that would in the slightest degree be benefitted by such a diversion of that branch would be the aforesaid road, via Dubuque, known as the Dubuque and Sioux City railroad, but we do most earnestly protest against a policy which would favor that, or any other of those roads at the expense of all the others, as that supposed south route most assuredly would; this route was evidently intended to be a link by the nearest and most practicable route between those lakes and navigable routes to the Mississippi and the main trunk of the Pacific railroad. Such a southern diversion would utterly destroy such a connection; this is easily demonstrated, from a point at or near the south gap, where the Pacific railroad must cross the Rocky mountains to Milwaukie and the head of Lake Superior by the way of the southern diversion

would be at least two hundred miles farther than it would be, if that branch passed down the valley of Niobrara, or than it would be to Chicago by the state valley route, hence every pound of freight and every passenger not absolutely compelled to go by these routes would pass directly to Chicago. There are many other advantages of this Niobrara route over any other, all too of a national character.

Relative to Pacific Railroad.

First, the road would necessarily cross the Missouri river at or near the mouth of the Niobrara, this would shorten the navigation on the upper Missouri river, nearly three hundred miles, thereby cutting off that much of the very worst and most difficult and dangerous portion of that river.

Second. It would develop a large, and the best portion of Dakota Territory which otherwise would be entirely cut off from all railroad communication.

Third, It would also be the nearest and most feasible route to the rich and fertile valleys of the Yellow Stone and upper Missouri rivers and their numerous tributaries.

Fourth. It would make available to the necessities of the whole Missouri valley those rich and inexhaustible coal mines, lying within easy and practicable navigation on the Missouri river above the mouth of the Niobrara.

Fifth. It would make available for the necessities of the settlements of Dakota, Nebraska, and western Iowa, the extensive and valuable pine forests lying on the Niobrara and White Rivers, and the eastern slope of the Black Hills. These cannot be reached in any other manner as the streams penetrating them are not raftable nor is the Missouri,

Sixth. It would develop the great agricultural and other resources of that whole region of country and cause its early settlement, which would not and could not be done for long years to come, should that branch be diverted from that route.

Seventh. On the contrary, by allowing that branch to be changed to the contemplated south direction, would utterly ruin three of the above named roads as national highways, leading

Relative to Pa- to and from the Lakes and reduce them to mere local roads.
cific railroad.

Eighth. In short, it would utterly defeat the very object and purpose of that branch, to wit: to make it a link, "by the nearest and most practicable route" in the great system of railroads between Lakes Michigan and Superior and the Central Pacific Railroad.

Ninth. On the contrary, by allowing it to run up the valley of the Niobrara all the above named and many other advantages would be gained without any additional expense to the Government.

Tenth. Should it run on that southern direction, it would pass directly through a region already amply supplied with the very means of constructing railroads by other provisions of the laws of Congress.

Therefore your memorialists would most respectfully ask that the company, designated to build said Northern Branch of the Pacific Railroad, may be a company that would build the same on the line designated by this memorial, and they would most respectfully suggest the name of the Missouri and Niobrara Railroad Company, a company chartered by this Territory.

And as in duty bound, your memorialists will ever pray.

APPROVED, January 12, 1865.

CHAPTER XVI.

A MEMORIAL TO THE QUARTERMASTER OF THE FIRST
MILITARY DISTRICT, DEPARTMENT OF THE NORTH
WEST.

WHEREAS, The Congress of the United States did at its last session appropriate, "For the survey of a military road from Sioux City, Iowa, to Fort Randall, Dakota territory, and from Niobrara, Nebraska territory, to Fort Randall, and to bridge the Dakota and Vermillion rivers, and other streams, the sum of fifteen thousand dollars;" and,

Suggesting
route for mili-
tary road from
Sioux City to
Fort Randall.

WHEREAS, By direction of the War Department, it has been made the duty of the Quartermaster of the first Military District, Department of the North West, to expend said appropriation.

Now therefore, your memorialists, the Legislative Assembly of the territory of Dakota, beg leave most respectfully to represent, that in their opinion the object sought will be best promoted and secured, by constructing a permanent and durable bridge across the said Vermillion river at such point as will secure, with the least outlay of expenditure, a substantial bridge with a good road bed, leading to and from the same at all seasons of the year, and from the said bridge across the Vermillion river aforesaid.

Your memorialists are clearly of the opinion from a personal acquaintance and examination of the country, that the survey should be established considerably north of the general route as now traveled, between the Vermillion and Dakota rivers, so as to make the high ground, available at the shortest practicable distance, thus intersecting the Dakota river, at or near the point on said river, known as Greenway's ferry.

Your memorialists, would further represent that a durable and substantial bridge can be constructed at the point indica-

ted, with no greater outlay of expenditure, than at any other point on said river, and that while the distance is not increased the said bridge would be of much greater use, as but a short grade, on either side of the said river, at said point indicated is necessary to secure a road to and from said bridge on high land making the road and bridge available at all seasons of the year, which it would not be at any other point nearer the mouth of the said Dakota river.

Your memorialists, would also represent that by bridging, "Sgnatch," Emanuel and Choteau and Ponca creeks, at the most practicable points, that the best interests of the government and country will be promoted, and therefore respectfully ask herewith to present these suggestions for your consideration fully believing that in adopting them you will best consult the public interests, and your memorialist as in duty bound will ever pray.

APPROVED, December 24th, 1865.

CHAPTER XVII.

A MEMORIAL TO CONGRESS ASKING FOR THE CONSTRUCTION OF A GOVERNMENT WAGON ROAD FROM YANKTON, DAKOTA TERRITORY, TO VIRGINIA CITY MONTANA TERRITORY.

Asking for the establishment of a government wagon road from Yankton to Virginia City.

The Legislative Assembly of Dakota, in fourth annual session convened, does most respectfully represent to the Senate and House of Representatives of the United States, in thirty-eighth Congress Assembled, as follows: From Omaha, in Nebraska, northward along the Missouri river for a distance of near a thousand miles, to Fort Union, there is no public highway leaving the river and leading westward to the peopled and

mineral regions of Montana and Idaho. Virginia City contains the largest population of any city in the northern range of the Rocky Mountains and is situated in the heart of the mining regions of Montana territory; five hundred miles of road can be made to connect the navigation of the Missouri with the nearest settlements and mining regions of the Rocky Mountains. Upwards of fifty thousand people have gone into the upper ranges of the Rocky Mountains within the last two years and are now engaged in the pursuits of mining and agriculture. By a comparison of the proceeds of the various mining companies, quartz mill establishments and dust brokers in that region, it is proved, that over seventeen million dollars in gold have been dug from the mountains north of the latitude of Yankton, since July, 1863. The expense to the government in constructing a road from Yankton to Virginia City via Niobrara route would be small; *Whereas*, the benefit arising from the construction of said road would be of paramount importance, not only to the inhabitants of the territories of Dakota and Montana, but to all of the North Western States.

Asking for the establishment of government wagon road.

Your memorialists believe that the best practicable route for the north branch of the Pacific railroad is by the Niobrara route and that the construction of a wagon road over said route would tend to develop the agricultural resources of the rich and fertile valley of the Neobrara river and of the whole country along said route to the very heart of the mountains. This road would not only lay open the mineral wealth of the Black Hills and the Big Horn ranges, but would link together the united energies and resources of the three territories of Idaho, Montana and Dakota, by a short thoroughfare of but a few hundred miles; annually bearing forth to the east its northwest harvest of grain and gold.

The explorations of Warren, Harney and Reynolds, attest the practicability of the route with an abundance of wood, water and grass.

And to aid in the construction of said wagon road, your memorialists would respectfully ask of your honorable body an appropriation of twenty thousand dollars, and that the expendi-

Construction of
wagon road. ture of this sum may be placed in charge of the war department
to be used for the above named purposes under the direction of
said department.

Trusting to the wisdom and justice of Congress, your memorialists will ever pray.

APPROVED, January 9th, 1865.

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