GENERAL LAWS.

CRIMINAL PROCEDURE.

CHAPTER 1.

AN ACT TO ESTABLISH A CODE OF CRIMINAL PROCEDURE FOR DAKOTA TERRITORY.

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

PRELIMINARY PROVISIONS.

Section 1. Title of the code.
2. Divisions of the code.
3. Definition of a public offense.
4. Divisions of public offenses.
5. Definition of a felony.
6. Definition of a misdemeanor.
7. No person punishable, but on legal conviction.
8. Public offenses, how prosecuted.
9. Criminal action defined.
10. Parties to a criminal action.
11. The party prosecuted known as defendant.
12. Rights of a defendant in a criminal action.
13. Second prosecution for the same offense, prohibited.
14. No person shall be a witness against himself in a criminal action, or be unnecessarily restrained.
15. No person to be convicted, but upon verdict or judgment.

Title of Code.

Section 1. This act shall be known as THE CODE OF CRIMINAL PROCEDURE OF THE TERRITORY OF DAKOTA.

Divisions of code

Sec. 2. This code is divided into six parts.

The first relates to the courts having original jurisdiction of criminal actions;

The second relates to the prevention of public offenses:

The third relates to judicial proceedings for the removal of public officers by impeachment or otherwise;

The fourth relates to the proceedings in criminal actions prosecuted by indictment or information;

The fifth relates to proceedings in the justices courts;

The sixth relates to special proceedings of a criminal nature.

Definition of public offense

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

1; Death: 2, Imprisonment: 3, Fine: 4, Removal from office; or, disqualification to hold and enjoy any office of honor, trust or profit under this Territory.

Divisions of public offenses

Sec. 4. Public offenses are divided into, 1, Felonies; and 2, Misdemeanors.

Definition of a felony.

Sec. 5. A felony is a public offence, punishable with death, or which is, or in the discretion of the court may be, punishable by imprisonment in a penitentiary.

Definition of a misdemeanor.

Sec. 6. Every other public offense is a misdemeanor.

Persons, when punishable

Sec. 7. No person can be punished for a public offense, except upon legal conviction in a court having jurisdiction thereof.

Public offenses, how prosecuted

Sec. 8. Every public offense must be prosecuted by indictment or information, except, 1, Where proceedings are had for the removal of a civil officer of the Territory, on an impeachment by the House of Representatives, for willful or corrupt misconduct in office;

2, Where proceedings are had for the removal of justices of the peace;

3, Offences arising in the militia, when in actual service; and in the land and naval forces in time of war, or which this Territory may keep, with the consent of Congress, in time of peace;

4, Petit larceny, not charged as a second offense;

5, Assault and battery, not charged to have been committed riotously, or upon a public officer in the execution of his duties;

6, Poisoning, killing, maiming, wounding, or cruelly beating an animal;

7, Racing animals, within one mile of the place where a court is held;

8, Committing a willful trespass, or severing any produce or article from the freehold, not amounting to grand larceny;

9, Selling poisonous substances, not labelled as required by statute

10, Maliciously removing, altering, defacing, or cutting down monuments or marked trees;

11, Maliciously breaking, destroying or removing mile-stones, mile-boards or guide-boards, or altering an inscription thereon.

Criminal action defined.

Sec. 9. The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

Parties to a criminal action

Sec. 10. A criminal action is prosecuted in the name of the people of the Territory of Dakota as a party, against the party charged with the offense.

Party known as defendant.

Sec. 11. The party prosecuted in a criminal action is designated in this code as the defendant.

Rights of defendant.

Sec. 12. In a criminal action the defendant is entitled, 1, To a speedy and public trial; 2, To be allowed counsel, as in civil actions; or he may appear and defend in person and with counsel; and 3, To produce witnesses in his behalf, and to be confronted with the witnesses against him in the presence of the court; except that where the charge has been preliminarily examined before a magistrate, and the testimony reduced by him to the form of a deposition, in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness, or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally, according to sections 179 and 180, the deposition of the witness may be read upon its being satisfactorily shown to the court that he is dead or insane, or cannot with due diligence be found in the Territory.

Second prosecution for the same offense prohibited

Sec. 13. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted.

No person compelled to be witness against himself.

Sec. 14. No person can be compelled, in a criminal action, to be witness against himself; nor can a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge.

Persons, how convicted.

Sec. 15. No person can be convicted of a public offense, where he is entitled to a trial by jury, unless by the verdict of a jury accepted and recorded by the court, or upon a plea of guilty.

PART I.

OF THE COURTS HAVING ORIGINAL JURISDICTION IN CRIMINAL ACTIONS

Title I. Of courts of original criminal jurisdiction in general.
II. Of the court for the trial of impeachments.
III. Of the courts of districts.
IV. Of the justices courts.

TITLE I.

OF THE COURTSOF ORIGINAL CRIMINAL JURISDICTION IN GENERAL.

Section 16. The courts of original criminal jurisdiction.

Courts having original jurisdiction.

Sec. 16. The following are the courts of justice in this Territory having original jurisdiction of criminal actions: 1, The court for the trial of impeachments; 2, The district courts; 3, The justices courts. They are courts of recoad, except the justices courts.

TITLE II.

OF THE COURT FOR THE TRIAL OF IMPEACHMENTS.

Section 17. Its jurisdiction.
18. Members of the court.
19. Presiding officers.

Section 20. Clerk and officers.
21. Time of holding the court.
22. Oath to members of the court.
23. Compensation of members and officers of the court.

Its jurisdiction.

Sec. 17. The court for the trial of impeachments has power to try impeachments, when presented by the House of Representatives, of all civil officers of the Territory, except justices of the peace, for willful and corrupt misconduct in office.

The Court, members of

Sec. 18. The court is composed of the president of the council and the councilmen, or a majority of them.

Presiding officers

Sec. 19. The president of the council is the presiding officer of the court.

Clerk and officers

Sec. 20. The secretary and officers of the council are the clerk and officers of the court for the trial of impeachments.

Time of holding Court.

Sec. 21. There are no stated terms of this court; but upon the delivery of an impeachment from the House of Representatives, the president of the council must cause the court to be summoned to meet at the capitol in the city of Yankton, on a day not less than thirty nor more than sixty days from the day of the delivery of the articles of impeachment.

Oath of members of Court.

Sec. 22. At the time and place appointed, and before the court proceeds to act on the impeachment, the secretary must administer to the presiding officers, and the presiding officers to each of the members of the court then present, an oath or affirmation truly and impartially to hear, try and determine, the impeachment; and no member of the court can act or vote upon the impeachment, or any question arising thereon, without having taken this oath or affirmation.

Compensation of members and officers.

Sec. 23. When the court is held during the recess of the legislature, the president of the council, the councilmen, and the secretary and officers of the court, are entitled to the same compensation for their attendance thereon, and for traveling to and from the place where it is held, as is allowed them at a meeting of the council.

TITLE III.

OF THE COURTS OF DISTRICTS.

Section 24. Courts of district or county.
25. Its jurisdiction.

Courts of District or County.

Sec. 24. There is in each of the districts of this Territory, a court denominated the district court with the jurisdiction conferred by the next three sections, and no other. But nothing contained in this section affects its jurisdiction in actions, or proceedings now pending therein. The district court may be held in several different counties in the same district, as the legislature may direct.

Its jurisdiction,

Sec. 25. The district court has jurisdiction:

1, To inquire, by the intervention of a grand jury or by the imformation of the district attorney, of all public offenses committed or triable in the county or district for which the court may be held;

2, To inquire into the cause of the detention of persons imprisoned in the jail of the county or district, and make an order for their re-commitment or discharge, or otherwise, according to law;

3, To exercise the powers conferred upon it by other provisions of this code.

TITLE IV.

THE COURTS OF JUSTICES OF THE PEACE.

Section 26. Courts of justices of the peace.

Courts of justices of the Peace.

Sec. 26. The justices courts have jurisdiction concurrent with the district court, of all misdemeanors committed in their respective counties where the maximum punishment fixed by law does not exceed a fine of one hundred dollars or imprisonment in the county jail for a period of thirty days, or both such fine and imprisonment.

PART II.

OF THE PREVENTION OF PUBLIC OFFENSES.

Title I. Of lawful resistance.
II. Of the intervention of officers of justice.

TITLE I.

OF LAWFUL RESISTANCE.

Chapter I. General provisions.
II. Resistance by the party about to be injured.
III. Resistance by other parties.

CHAPTER I.

GENERAL PROVISIONS RESPECTING LAWFUL RESISTANCE.

Section 27. Lawful resistance by whom made.

Sec. 27. Lawful resistance to the commission of a public offense may be made : f lawful esistance,

1, By the party about to be injured ;

2, By other parties.

CHAPTER II.

RESISTANCE BY THE PARTY ABOUT TO BE INJURED.

Section 28. In what cases, and to what extent.

Sec. 28. Resistance sufficient to prevent the offense, may be made by the party about to be injured: In what cases, o what extent.

1, To prevent an offense against his person :

2, To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

CHAPTER III.

RESISTANCE BY OTHER PARTIES.

Section 29. In what cases.

In what cases.

Sec. 29. Any other person, in aid or defence of the person about to be injured, may make resistance sufficient to prevent the offense.

TITLE II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

Chapter I. Intervention of public officers in general.
II. Security to keep the peace.
III. Police in cities and villages, and their attendance at exposed places.
IV. Suppression of riots.

CHAPTER I.

INTERVENTION OF PUBLIC OFFICERS IN GENERAL.

Section 30. In what cases.
31. Persons acting in their aid, justified.

In what cases.

Sec. 30. Public offenses may be prevented by the intervention of the officers of justice:

1, By requiring security to keep the peace;

2, By forming a police in cities and villages, and by requiring their attendance in exposed places;

3, By suppressing riots.

Persons, when justified;

Sec. 31. When the officers of justice are authorized to act in the prevention of public offenses, other persons, who by their command, act in their aid, are justified in so doing.

CHAPTER II.

SECURITY TO KEEP THE PEACE.

Section 32. Information of the threatened offense.

Section 33. Warrant of arrest.
34. Proceeding, on complaint being controverted.
35. Person complained of, when to be discharged.
36. Security to keep the peace, when required.
37. Effect of giving or refusing to give security.
38. Persons committed for not giving security, how discharged.
39. Undertaking to be transmitted to court.
40. Security when required, for assault, &c., in presence of a court or magistrate.
41. Appearance of party bound, upon his undertaking.
42. Person bound, may be discharged, if complainant does not appear.
43. Proceedings in court, on appearance of both parties.
44. Undertaking, when broken.
45. Undertaking, when, and how to be prosecuted.
46. Evidence of breach.
47. Security for the peace, not required, except according to this chapter.

Information of threatened offense

Sec. 32. An information verified by the oath of the complainant, may be laid before any of the magistrates mentioned in section 111, that a person has threatened to commit an offense against the person or property of another.

Warrant of arrest

Sec. 33. If it appear from the information that there is just reason to fear the commission of the offense threatened, by the person complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, or marshal or policeman of the city or town, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate of the county.

Proceeding, on complaint being controverted.

Sec. 34. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

Person discharged.

Sec. 35. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

Security to keep the peace, when required.

Sec. 36. If, however, there be just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking, in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next district court of the county, and in the mean time to keep the peace toward the people of this Territory, and particularly towards the complainant.

Giving or refusing security, effects of.

Sec. 37. If the undertaking required by the last section be given, the party complained of must be discharged. If he do not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

Person committed, how discharged.

Sec. 38. If the person complained of be committed for not giving security, he may be discharged by any justice of the peace of the county or police or special justice of the city, upon giving the same.

Undertaking to be transmitted to Court.

Sec. 39. An undertaking given as provided in section 67, must be transmitted by the magistrate to the next district court of the county.

Security, when required for assault, &c., in presence of court

Sec. 40. A person who in the presence of a court or magistrate, assaults or threatens to assault another, or commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security as provided in section 36, or if he refuse to do so, may be committed as provided in section 37.

Appearance of party bound, upon his undertaking,

Sec. 41. A person who has entered into an undertaking to keep the peace, must appear on the first day of the next term of the district court of the county. If he do not, the court may forfeit his undertaking, and order it to be prosecuted unless his default be executed.

Person bound, when discharged

Sec. 42. If the complainant do not appear, the person complained of may be discharged, unless good cause to the contrary be shown.

Proceedings in Court on appearance of both parties

Sec. 43. If both parties appear, the court may hear their proofs and allegations, and may either discharge the undertaking, or require a new one, for a time not exceeding one year.

Undertaking, when broken

Sec. 44. An undertaking to keep the peace is broken, on the failure of a person complained of to appear at the district court as provided in section 41, or upon his being convicted of a breach of the peace.

Undertaking, when and how prosecuted

Sec. 45. Upon the district attorney producing evidence of such conviction to the district court to which the undertaking is returned, that court must order the undertaking to be prosecuted; and the district attorney must thereupon commence an action upon it in the name of the people of this Territory.

Evidence of breach

Sec. 46. In the action, the offense stated in the record of conviction must be alleged as the breach of the undertaking, and is conclusive evidence thereof.

Security for the peace not required except according to this chapter

Sec. 47. Security to keep the peace or to be of good behavior, cannot be required, except as prescribed in this chapter.

CHAPTER III.

POLICE IN CITIES AND THEIR ATTENDANCE AT EXPOSED PLACES.

Section 48. Organization and regulation of the police.
49. Force to preserve the peace, at public meetings, when and how ordered.

Organization and regulation of the Police

Sec. 48. The organization and regulation of the police in the cities and villages in this Territory, are governed by special statutes.

Force to preserve the peace at public meetings

Sec. 49. The mayor or other officer having the direction of the police in a city or village, must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

CHAPTER IV.

SUPPRESSION OF RIOTS.

Section 50. Powers of sheriff or other officer in overcoming resistance to process.
51. His duty to certify to court the name of resisters and their abettors.
52. Duty of a person commanded to aid the officer.

Section 53. When governor to order out a military force to aid in executing process.
54. Magistrates and officers to command rioters to disperse.
55. To arrest rioters if they do not disperse.
56. Consequences of refusal to aid the magistrate or officers.
57. Consequences of neglect or refusal of a magistrate or officer to act.
58. Proceedings, if rioters do not disperse.
59. Officers who may order out the military.
60. Commanding officer and troops to obey the orders.
61. Armed force to obey orders.
62. Conduct of the troops.
63. Governor may, in certain cases, proclaim a county in a state of insurrection.
64. May revoke the proclamation.
65. Consequences of resisting process, after a county is proclaimed in a state of insurrection.

Powers of Sheriff or other officers

Sec. 50. When a sheriff or other public officer, authorized to execute process, finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting, and confining the resisters and their aiders and abettors, to be punished according to law.

His duty &c.

Sec. 51. The officer must certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they may be proceeded against for contempt.

Duty of person commanded to aid officer

Sec. 52. Every person commanded by a public officer to assist him in the execution of process, as provided in section 50, who, without lawful cause, refuses or neglects to obey the command, is guilty of a misdemeanor.

Governor when to order out Military forces

Sec. 53. If it appears to the governor, that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, he must, on the application of the sheriff, order such a military force from any other county or counties, as is necessary.

Duty of Magistrates

Sec. 54. When persons to the number of twelve or more, armed with dangerous weapons, or to the number of thirty or more, whether armed or not, are unlawfully or riotously assembled in a city, or village or town, the sheriff of the county and his under sheriff and deputies, the mayor and aldermen of the city, or the supervisor of the town, or president or chief executive officer of the village, and the justice of the peace or the police justices of the city, village or town, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of this Territory, immediately to disperse.

To arrest rioters if they do not disperse

Sec. 55. If the persons assembled do not immediately disperse, the magistrates and officers must arrest them or cause them to be arrested, that they may be punished according to law; and for that purpose, may command the aid of all persons present or within the county.

Consequence of refusal &c.

Sec. 56. If a person so commanded to aid the magistrates or officers, neglect to do so, he is deemed one of the rioters, and is punishable accordingly.

Neglect of officer to act, consequences of

Sec. 57. If a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section 54, neglect to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Proceedings if rioters do not disperse

Sec. 58. If the persons assembled, and commanded to disperse, do not immediately disperse, any two of the magistrates or officers mentioned in section 54, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary, to disperse the assembly and arrest the offenders.

Officers who may order out Military

Sec. 59. When there is an unlawful or riotous assembly, with intent to commit a felony, or to offer violence to persons or property, or to resist by force the laws of the Territory, and the fact is made to appear to the governor, or to a judge of the supreme court, or to a county judge, or to the sheriff of the county, or to the mayor, recorder or city judge of a city, either of those officers may issue an order directed to the commanding officer of a division, brigade, regiment, battalion or com-

pany, to order his command, or any part of it, (describing the kind and number of troops,) to appear at a specified time and place to aid the civil authorities in suppressing violence, and enforcing the law.

Officers and troops to obey the orders

Sec. 60. The commanding officer to whom the order is given must forthwith obey it; and the troops required must appear at the time and place appointed, armed and equipped with ammunition as for inspection.

Armed force to obey orders

Sec. 61. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto, of either of the officers mentioned in section 59.

Conduct of troops

Sec. 62. The commanding officer must act entirely on the defensive, not suffering his men to fire, and permitting them to use their edged or pointed weapons only to repel actual violence, except in one of the following cases:

1, If an attack be made on any of the troops, by which his life is in danger, or if an attempt be made to disarm him, which he cannot otherwise avoid, he may defend himself by discharging his fire-arms;

2, If a general attack be made by the rioters upon the troops with fire-arms, missiles or other weapons, by which their lives are indiscriminately put in danger, the commanding officer may order the troops to fire; but not until an endeavor has been made to disperse the rioters by means less dangerous to persons who may be engaged in the riot;

3, If the troops cannot be placed between the rioters and the persons or property which they apparently intend to attack, and the illegal purpose of the riot be persevered in by means evidently dangerous to the lives and property of others, although no attack be made on the troops themselves, the magistrates or officers mentioned in section 59, or any two of them, may direct the commanding officer to disperse the rioters, which he is authorized to do by ordering the troops, first to use the bayonet or sword, and if they prove ineffectual to disperse the assembly, but not otherwise, then to discharge their fire-arms against them;

4, The troops must not be brought up to the place, until after the magistrate or other officer has proclaimed the office

which he holds, and ordered the assembly to disperse; nor can they make a discharge of fire arms against the rioters, until after a signal given by three discharges in rapid succession, with blank cartridges, and the lapse of a reasonable time thereafter;

5, Every endeavor must be used, both by the magistrates and civil officers, and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse, before an attack is made upon them by which their lives may be endangered.

Governor may do in certain cases —what

Sec. 63. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county, by bodies of men; or that combinations to resist the execution of process by force, exist in any county, and that the power of the county has been exerted, and has not been sufficient to enable the officer having the process, to execute it, he may, on the application of the officer, or of the district attorney or the county judge of the county, by proclamation to be published in the territorial paper, and in such papers in the county as he may direct, declare the county to be in a state of insurrection, and may order into the service of the Territory such number and description of volunteer or uniform companies, or other militia of the Territory, as he may deem necessary, to serve for such term, and under the command of such officer or officers, as he may direct.

May revoke

Sec. 64. The governor may, when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease, at the time and in the manner directed by him.

Resisting process. Consequence of

Sec. 65. A person who, after the publication of the proclamation authorized by section 63, resists or aids in resisting, the execution of process in a 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 guilty of a felony, and is punishable by imprisonment in the territorial prison for not less than two years.

PART II.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS, BY IMPEACHMENT OR OTHERWISE.

Title I. Of impeachments.
II. Of the removal of justices of the peace, police justices, and justices of justices' courts and their clerks.

TITLE I.

OF IMPEACHMENTS.

Section 66. Impeachment to be delivered to president of council.
67. Court to be summoned, and copy of impeachment served on defendant.
68. Service, how made.
69. Proceedings if defendant does not appear.
70. Defendant may object to sufficiency of, or deny impeachment.
71. Form of objection or denial.
72. Proceedings thereon.
73. Trial.
74. Two-thirds necessary to conviction.
75, 76. Judgment on conviction, how pronounced.
77. Nature of the judgment.
78. Effect of judgment of suspension.
79. Judicial officer, when impeached, disqualified to act until acquitted.
80. Presiding officer, when president of the council is impeached.
81. Impeachment not a bar to indictment.

Impeachment, to whom delivered

Sec. 66. When a civil officer of the Territory is impeached by the assembly for willful or corrupt misconduct in office, the articles of impeachment must be delivered to the president of the council.

Court summoned and copy served

Sec. 67. The president of the council must thereupon cause the court to be summoned to meet at the capitol, in the city of Yankton, on a day not less than thirty nor more than sixty days from the day of delivery of the articles of impeachment.

He must also cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed for the meeting of the court, to be served on the defendant, not less than twenty days before the day fixed for the meeting of the court.

Service, how made

Sec. 68. The service must be upon the defendant personally, or if he cannot, upon diligent inquiry, be found in the Territory, the court, upon due proof of that fact, may order that publication may be made in such manner as it deems proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

Proceedings if defendant does not appear

Sec. 69. If the defendant do not appear, the court, upon proof of service or publication as provided in the last two sections, may of their own motion, or for cause shown, assign another day for hearing the impeachment; or may then, or at any other time which it may appoint, proceed, in the absence of the defendant, to trial and judgment.

When defendant may object

Sec. 70. When the defendant appears, he must answer the articles of impeachment; which he may do, either by objecting to their sufficiency, or of any article therein, or by denying the truth of the same.

Form of objection

Sec. 71. If the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form; it being sufficient, if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral, and without oath, and must be entered upon the minutes.

Proceedings thereon

Sec. 72. If an objection to the sufficiency of the impeachment be not sustained by a majority of the members of the court who heard the argument, the defendant must forthwith answer the articles of impeachment. If he plead guilty, or refuse to plead, the court must render judgment of conviction against him. If he deny the matters charged, the court must, at such time as they may appoint, proceed to try the impeachment.

Trial

Sec. 73. The oath or affirmation prescribed by section 22, having been administered, the court must proceed to try and determine the impeachment, and may adjourn the trial from time to time.

Number necessary to convict

Sec. 74. The defendant cannot be convicted on impeachment, without the concurrence of two-thirds of the members present; and if two-thirds of the members present do not concur in a conviction, he must be declared acquitted.

Judgement, how pronounced

Sec. 75. After conviction, the court must immediately, or at such other time as it may appoint, pronounce judgment in the form of a resolution, entered upon the minutes of the court. The vote upon the passage thereof must be taken by yeas and nays, and must also be entered upon the minutes.

Same

Sec. 76. On the adoption of the resolution, by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the court.

Nature of judgment

Sec. 77. The judgment may be, that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of honor, trust or profit, under this Territory.

Effect of judgment

Sec. 78. If judgment of suspension be given, the defendant during the continuance thereof, is disqualified from receiving the salary, fees or emoluments of his office.

Officer when impeached disqualified

Sec. 79. A judicial officer cannot exercise his office after being impeached, until he is acquitted.

Notice given

Sec. 80. If the president of the council be impeached, notice of the impeachment must be immediately given to the council by the House of Representatives, that another president may be chosen.

Indictment not barred

Sec. 81. If the offense for which the defendant is impeached be the subject of an indictment, the indictment is not barred by the impeachment.

TITLE II.

OF THE REMOVAL OF JUSTICES OF THE PEACE.

Section 82. Accusation to be presented to the presiding judge of the court.
83. Form and verification of the accusation.
84. To be transmitted to district attorney, and copy to be served on defendant, with notice to appear and answer.

Section 85. Proceedings, if defendant do not appear.
86. Defendant may object to or deny the accusation.
87. Form of the objection.
88. Manner of denial.
89. If objection overruled, defendant to answer forthwith.
90. Proceedings upon plea of guilty, refusal to answer, or denial.
91. Judgment upon conviction, and its form.

Accusation to whom presented

Sec. 82. An accusation in writing against a justice of the peace, for willful or corrupt misconduct in office may be presented to the presiding judge of the district court of the county in or for which the officer accused is elected or appointed.

What accusation must state

Sec. 83. The accusation must state the offense charged, in ordinary and concise language, without repetition and in such manner as to enable a person of common understanding to know what is intended, and must be verified by the oath of the person making it, to the effect that he believes the charges therein contained, to be true.

To whom the same is transmitted

Copy served

Sec. 84. After receiving the accusation, the judge to whom it is delivered must forthwith cause to be transmitted to the district attorney of the county, who must cause a copy thereof to be served upon the defendant, and require by written notice, of not less than twenty days, that he appear before the district court of the county, and answer the accusation, at a specified time, which must be either at a term of the court, or at any other time appointed by the presiding judge, by a written order filed with the clerk.

Proceedings if defendant do not appear

Sec. 85. The defendant must appear at the time appointed in the notice, and answer the accusation, unless, for sufficient cause, the court assigns another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

Defendant may object

Sec. 86. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

Form of objection

Sec. 87. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form; it being sufficient if it present intelligibly the ground of the objection.

Manner of denial

Sec. 88. If he deny the truth of the accusation, the denial may be oral and without oath, and must be entitled upon the minutes.

When to answer forthwith

Sec. 89. If an objection to the sufficiency of the accusation be not sustained, the defendant must answer the accusation forthwith.

When judgment is rendered

Sec. 90. If the defendant plead guilty, or refuse to answer the accusation, the court must render judgment of conviction against him. If he deny the matters charged, the court must proceed to try the accusation.

Judgment upon conviction,—its forms.

Sec. 91. Upon a conviction, the court must pronounce judgment that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of removal.

PART IV.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

Title I. Of the local jurisdiction of public offences.
II. Of the time of commencing criminal action.
III. Of the information, and proceedings thereon to the commitment, inclusive.
IV. Of the proceedings after commitment, and before indictment.
V. Of the indictment.
VI. Of the proceedings on the indictment before trial.
VII. Of the trial.
VIII. Of the proceedings after trial, and before judgment.
IX. Of the judgment and execution.
X. Of appeals.
XI. Of miscellaneous proceedings.

TITLE I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

Section 92. Jurisdiction of offenses committed in this Territory.

Section 93. When the offense is commenced without, but consummated within the Territory.
94. When an inhabitant of this Territory is concerned in a duel out of the same, and a party wounded dies therein.
95. When an inhabitant of this Territory leaves the same to elude the statutes against dueling.
96. When an offense is committed partly in one county and partly in another.
97. When an offense is committed on the boundary of two or more counties, or within five hundred yards thereof.
98. Jurisdiction of an offense on board a vessel.
99. Of indictment for kidnapping, enticing away a child or abduction.
100. Of indictment for bigamy or incest, when committed in one county and defendant apprehended in another.
101. When property is feloniously taken in one county and brought into another.
102. Of an indictment against an accessory after the fact.
103. Conviction or acquittal in another Territory or State, a bar, where the jurisdiction is concurrent.
104. Conviction or acquittal in another county, a bar, where the jurisdiction is concurrent.

Jurisdiction of offences committed in this Territory

Sec. 92. Every person, whether an inhabitant of this or any other Territory, State or county, or district of the United States, is liable to punishment, by the laws of this Territory, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

When commenced without but consummated within the Territory

Sec. 93. When the commission of a public offense commenced without this Territory, is consummated within its boundaries, the defendant is liable to punishment thereof in this Territory, though he were out of the Territory at the time of the commission of the offense charged, if he consummated it in this Territory through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and in such case, the jurisdiction is in the county in which the offense is consummated.

When an inhabitant is concerned in a duel, and a party wounded dies therein

Sec. 94. When an inhabitant or resident of this Territory, by previous appointment or engagement, fights a duel, or is concerned as second therein, out of the jurisdiction of this Territory, and in the duel a wound is inflicted upon a person whereof he dies in this Territory, the jurisdiction of the offense is in the county where the death happened.

To elude the statutes against dueling

Sec. 95. When an inhabitant of this Territory shall have left the same for the purpose of eluding the operation of the provisions of the statutes relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed, or in any county in which in the opinion of the governor, the evidence can be most conveniently obtained and produced, to be *designed* [designated] by him by a written appointment, filed in the office of the clerk of that county.

Offense committed partly in one and partly in another county

Sec. 96. When a public offense is committed, partly in one county and partly in another county, or the acts or effects thereof, constituting or requisite to the consummation of the offense, occur in two or more counties, the jurisdiction is in either county.

Offenses on boundaries &c.

Sec. 97. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

Offenses on board vessels

Sec. 98. When an offense is committed in this Territory, on board a vessel navigating a river, lake or canal, or lying therein in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates.

Kidnapping &c. indictment for

Sec. 99. The jurisdiction of an indictment—

1, For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him with intent against his will, to cause him to be secretly confined or imprisoned in this Territory, or to be sent out of the Territory, or to be sold as a slave, or in any way held to service, or of selling or in any manner transferring for a term the services or labor of a black, mulatto, or other person of color, forcibly taken, inveigled or kidnapped from this Territory, to any other Territory, place or country; or

2, For decoying, or taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having lawful charge of the child; or

3, For inveigling, enticing or taking away an unmarried female of previous chaste character, under the age of twenty-one years, for the purpose of prostitution;

Is in any county in which the offense is committed, or into or out of which the person, upon whom the offense was committed, may in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, aiding or in being an accessory to the commission of the offense, or in abetting the parties concerned therein.

Bigamy, incest &c.

Sec. 100. When the offense either of bigamy or of incest is committed in one county, and the defendant is apprehended in another, the jurisdiction is in either county.

Property feloniously taken

Sec. 101. When property feloniously taken in one county, by burglary, robbery, larceny or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if, before the conviction of the defendant in the latter, he be indicted in the former county, the sheriff of the latter must upon demand deliver him to the sheriff of the former county, upon being served with a copy of the indictment, and upon a receipt endorsed thereon by the sheriff of the former county, of the body of the defendant; and is, on filing the copy of the indictment and the receipt, exonerated from all liability in respect to the custody of the defendant.

Indictment against accessory after the fact

Sec. 102. In the case of an accessory after the fact in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

Conviction in another State or Territory

Sec. 103. When an act charged as a public offense, is within the jurisdiction of another Territory, county or State as well as of this Territory, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this Territory.

Conviction or acquittal in another county

Sec. 104. When an offense is in the jurisdiction of two or more counties, a conviction or acquittal thereof in one county, is a bar to a prosecution or indictment thereof in another.

TITLE II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

Section 105. Prosecution for murder may be commenced at any time.

106. Limitation of two years, in indictment for personating another and marrying in such assumed character, and for abduction and seduction.

107. Limitation of three years, in all other cases.

108. Exception, when defendant is out of the Territory.

109. Indictment deemed found, when presented in court and filed.

Prosecution for murder

Sec. 105. There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Limitation

Sec. 106. An indictment for a public offense must be found within two years after its commission, in the following cases:

1, Falsely representing or personating any person, and in such assumed character marrying another;

2, Inveigling, enticing, or taking away an unmarried female, of previous chaste character, under the age of twenty-five years, for the purpose of prostitution;

3, Seducing and having illicit connection with an unmarried female of previous chaste character, under promise of marriage.

In other cases

Sec. 107. In all other cases, an indictment for a public offense must be found within three years after its commission.

When defendant is out of Territory

Sec. 108. If when the offense is committed, the defendant be out of the Territory, the indictment may be found within the term herein limited after his coming within the Territory; and no time, during which the defendant is not an inhabitant of or usually resident within the Territory, is part of the limitation.

Sec. 109. An indictment is found, within the meaning of the last three sections, when it is duly presented by the grand jury in open court, and there received and filed. Indictment deemed found, —when

TITLE III.

OF THE PRELIMINARY INFORMATION, AND PROCEEDINGS THEREON TO THE COMMITMENT INCLUSIVE.

Chapter I. The information.
II. The warrant of arrest.
III. Arrest by an officer under a warrant.
IV. Arrest by an officer without a warrrant.
V. Arrest by a private person.
VI. Re-taking after an escape or rescue.
VII. Examination of the case, and discharge of the defendant or holding him to answer.

CHAPTER I.

THE INFORMATION.

Section 110. Preliminary information defined.
111. Magistrate defined.
112. Who are magistrates.

Sec. 110. The preliminary information is the allegation made to a magistrate that a person has been guilty of some designated public offense. Information defined

Sec. 111. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. Magistrate defined

Sec. 112. The following persons are magistrates: Who are Magistrates

1, The judges of the supreme court;

2, The judge of the probate court;

3, Justices of the peace;

4, Police and other special justices, appointed or elected in a city, village, or town;

5, The mayors and recorders of cities.

CHAPTER II.

THE WARRANT OF ARREST.

Section 113. Examination of the prosecutor and his witnesses upon the information,

114. Form of the warrant.

115. Name or description of the defendant in the warrant and statement of the offense.

116. Warrant to be directed and executed by a peace officer.

117. Who are peace officers.

118, 119. To what peace officers warrant to be directed and when and how to be executed in another county.

120. Endorsement on the warrant for service in another county how and upon what proof to be made.

121. Defendant to be taken before the magistrate issuing the warrant or another magistrate in the same county.

122. Defendant arrested for a misdemeanor in another county to be taken before a magistrate therein and admitted to bail.

123. Proceedings on taking bail from the defendant in such case.

124. Proceedings where he is admitted to bail in such case but bail is not given.

125. Before what magistrate in the same county defendant is to be taken when the magistrate issuing the warrant is unable to act.

126. Defendant in all cases to taken before a magistrate without delay.

127. If the defendant be taken before another magistrate than the one who issued the warrant, depositions to be sent to the magistrate or witnesses to be examined anew.

Examination of prosecutors witnesses &c.

Sec. 113. When an information verified by oath or affirmation is laid before a magistrate of the commission of a public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, issue a warrant of arrest.

Form of warrant

Sec. 114. A warrant of arrest is an order in writing in the name of the people signed by a magistrate commanding the arrest of the defendant and may be substantially in the following form:

"County of Yankton [or as the case may be.]

"In the name of the people of the Territory of Dakota. To any sheriff, constable, marshal or policeman in this Territory [or in the county of Yankton or as the case may be as provided in sections 118 and 119.]

"Information upon oath having been this day laid before me that the crime of [designating it] has been committed, and accusing C. D. thereof,

"You are therefore commanded forthwith to arrest the above named C. D., and bring him before me, at—[naming the place,] or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

"Dated at the City of Yankton [or as the case may be,] this day of , 186 ."

E. F. Justice of the peace [or as the case may be.]

What warrant must specify

Sec. 115. The warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the magistrate has authority to issue the warrant and the time of issuing it, and the city, town or village where it is issued, and signed by the magistrate with his name of office.

Warrant to whom directed

Sec. 116. The warrant must be directed to and executed by a peace officer.

Who are peace officers

Sec. 117. A peace officer is a sheriff of a county, or a constable, marshal, or policeman of a city, town or village.

To what officer warrant directed

Sec. 118. If the warrant be issued by a judge of the supreme court, or by the presiding judge of a city court, it may be directed generally to any sheriff, constable, marshal or policeman in the territory, and may be executed by any of those officers to whom it may be delivered.

How executed and when

Sec. 119. If it be issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed in that county, or if the defendant be in another county it may

be executed therein, upon the written direction of a magistrate of that county endorsed upon the warrant, signed by him with his name of office, and dated at the city, town or village where it is made, to the following effect:

"This warrant may be executed in the county of" [as the case may be.]

Endorsement

Sec. 120. The endorsement mentioned in the last section cannot, however, be made unless upon the oath of a creditable witness, in writing, endorsed on or annexed to the warrant proving the hand writing of the magistrate by whom it was issued. Upon this proof the magistrate endorsing the warrant is exempted from liability to a civil or criminal action though it afterwards appear that the warrant was illegally or improperly issued.

Defendant before whom taken

Sec. 121. If the offense charged in the warrant be a felony the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county as provided in section 125.

When arrested in another county

Sec. 122. If the offense charged in the warrant be a misdemeanor and the defendant be arrested in another county, the officer must upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail and take bail from him accordingly.

Bail, proceedings

Sec. 123. On taking bail the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

Proceedings when he is admitted to bail, bail not given

Sec. 124. If on the admission of the defendant to bail as provided in section 122, bail be not forthwith given, the officer must take the defendant before the magistrate who issued the warrant or some other magistrate in the same county as provided in the next section.

Before what magistrate defendant to be taken

Sec. 125. When by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible

magistrate in the same county. The officer must at the same time deliver to the magistrate, the warrant, with the return endorsed and subscribed by him.

Defendant to be taken before magistrate without delay

Sec. 126. The defendant must in all cases be taken before the magistrate without unnecessary delay.

When defendant be taken before another magistrate than the one who issued the warrant

Sec. 127. If the defendant be taken before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or if they cannot be procured the prosecutor and his witness must be summoned to give their testimony anew.

CHAPTER III.

ARREST BY AN OFFICER UNDER A WARRANT.

Section 128. Arrest defined.
129. By whom an arrest may be made.
130. Every person bound to aid an officer in an arrest.
131. When the arrest may be made.
132. How an arrest is made.
133. No further restraint allowed than is necessary to arrest and detention of defendant.
134. Officer must state his authority, and show warrant if required.
135. If defendant flee or resist, officer may use all necessary means to affect arrest.
136, 137. When officer may break open a door or window.

Arrest defined

Sec. 128. Arrest is the taking of a person into custody that he may be held to answer for a public offense.

Arrest made by whom

Sec. 129. An arrest may be either:

1, By a peace officer under a warrant;

2, By a peace officer without a warrant; or

3, By a private person.

Persons bound to aid officer

Sec. 130. Every person must aid an officer in the execution of a warrant, if the officer require his aid and be present and acting in its execution.

When arrest may be made

Sec. 131. If the offense charged be a felony the arrest may be made on any day, and at any time of the day or night. If it be a misdemeanor the arrest cannot be made on Sunday or at night, unless upon the direction of the magistrate endorsed upon the warrant.

Arrest, how made

Sec. 132. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Amount of restraint

Sec. 133. The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

Officer must State his authority

Sec. 134. The officer must inform the defendent that he acts under the authority of the warrant, and must also show the warrant if required.

Officer may use all necessary means to effect arrest

Sec. 135. If, after notice of intention to arrest the defendent, he either flee or forcibly resist, the officer may use all necessary means to affect the arrest.

Officer may break open door or window, when

Sec. 136. The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if after notice of his authority and purpose, he be refused admittance.

Same

Sec. 137. An officer may break open an outer or inner door or window of a dwelling house for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

CHAPTER IV.

ARREST BY AN OFFICER WITHOUT A WARRANT.

Section 138. In what case allowed
139. May break open a door or window, if admittance refused.
140. May arrest at night, on reasonable suspicion of felony.
141. Must state his authority, and cause of arrest, except where party is committing felony or is pursued after escape.
142. May take before a magistrate a person arrested by a by-stander for breach of the peace.
143. Magistrate may commit by verbal or written order, for offenses committed in his presence.

Arrest without warrant—in what cases

Sec. 138. A peace officer may, without a warrant, arrest a person.

1, For a public offiense, committed or attempted in his presense;

2, When the person arrested has committed a felony, although not in his presence;

3, When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it;

4, On charge, made upon reasonable cause, of the commission of a felony by the party arrested.

To make arrest as provided in last section

Sec. 139. To make an arrest as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he be refused admittance.

May arrest at night

Sec. 140. He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterwards appear that the felony had not been committed.

Must state his authority

Sec. 141. When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a public offense, or is pursued immediately after an escape.

Person arrested by bystander

Sec. 142. He may take before a magistrate, a person, who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

May commit, —how

Sec. 143. When a public offense is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

CHAPTER V.

ARREST BY A PRIVATE PERSON.

Section 144. In what cases allowed.
145. Must inform the party of the cause of arrest except when actually committing the offense or on pursuit after escape.
146. May break open a door or window if admittance refused.

Section 147. Must immediately take prisoner before a magistrate or deliver him to peace officer.

In what cases allowed

Sec. 144. A private person may arrest another—

1, For a public offense committed or attempted in his presence;

2, When the person arrested has committed a felony, although not in his presence;

3, When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Must inform the party of cause of arrest

Sec. 145. He must, before making the arrest, inform the person to be arrested of the cause thereof; and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit immediately after its commission.

May break open door or window

Sec. 146. If the person to be arrested have committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling-house, for the purpose of making the arrest.

Must take prisoner before magistrate

Sec. 147. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

CHAPTER VI.

RE-TAKING, AFTER AN ESCAPE OR RESCUE.

Section 148. May be at any time or in any place in the territory.

149. May break open a door or window, if admittance refused.

At any time or in any place

Sec. 148. If a person arrested, escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the territory.

May break open door &c.

Sec. 149. To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a dwelling-house.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT OR HOLDING HIM TO ANSWER.

Section 150. Magistrate to inform the defendant of the charge, and his right to counsel.
151. Time to send, and sending for counsel.
152. On appearance of counsel, or waiting for him a reasonable time, examination to proceed.
153. When to be completed. Adjournment.
154. On adjournment, defendant to be committed or discharged on deposit of money.
155. Form of commitment.
156. Depositions to be read on examinations, and witnesses examined.
157. Examination of witnesses to be in presence of defendant, and witnesses to be cross-examined in his behalf.
158. Defendant to be informed of his right to make a statement.
159. Waiver of his right, how taken.
160, 161. Statement how taken.
162. How reduced to writing, and how authenticated.
163. After statement or waiver, defendant's witnesses to be examined.
164. Witnesses to be kept apart.
165. Testimony, how taken and authenticated.
166. Depositions and statement, how and by whom kept.
167. Violation of the last section, a misdemeanor.
168. Defendant entitled to copies of depositions and statement.
169. Defendant, when and how to be discharged.
170. When and how to be committed.
171. Order for commitment.
172. Certificate of bail being taken.
173. Order for bail on commitment.
174, 175. Form of commitment.
176. Undertaking of witnesses to appear, when and how taken.
177. Security for appearance of witnesses, when and how required.

Section 178. Infants and married women may be required to give security for appearance as witness.
179. Witness to be committed on refusal to give security for appearance.
180. Witness unable to give security, may be conditionally examined.
181. Last section not applicable to prosecutor or accomplice.
182. Magistrate to return depositions, statement and undertakings of witnesses to the court.

Duty of magistrates,-his right to counsel

Sec. 150. When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, before any further proceedings are had.

Time allowed

Sec. 151. He must also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel as the defendant may name. The officer must without delay perform that duty, and shall receive fees therefor as upon service of a subpoena.

Reasonable for examination

Sec. 152. The magistrate must, immediately after the appearance of counsel, or if none appear and the defendant require the aid of counsel, after waiting a reasonable time therefor, proceed to examine the case.

When to be completed —adjournment

Sec. 153. The examination must be completed at one session unless the magistrate for good cause adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

On adjournment —on deposit of money

Sec. 154. If an adjournment be had for any cause, the magistrate must commit the defendant for examination, or discharge him from custody upon sufficient bail, or upon the deposit of money as provided in this code, as security for his appearance at the time to which the examination is adjourned.

Form of commitment

Sec. 155. The commitment for examination is by an endorsement signed by the magistrate, on the warrant of arrest, to the following effect: "The within named A. B., having been

brought before me under this warrant, and having failed to give bail for his appearance, is committed to the sheriff of the county of ———, to await examination on the —— day of ———— 18——, at —— o'clock, at which time you will have his body before me at my office."

Deposition to be read

Sec. 156. At the examination, the magistrate must, in the first place, read to the defendant the information on file before him. He must also after the commencement of the prosecution, issue subpoenas for any witnesses required by the prosecutor or the defendant.

Examination of witnesses

Sec. 157. The witnesses must be examined in the presence of the defendant; and may be cross-examined in his behalf.

Defendant to be informed of right to make a statement

Sec. 158. When the examination of the witnesses on the part of the people is closed, the magistrate must distinctly inform the defendant that it is his right to make a statement in relation to the charge against him, (stating to him the nature thereof;) that the statement is designed to enable him, if he sees fit, to answer the charge and to explain the facts alleged against him, that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

Waiver

Sec. 159. If the defendant waive his right to make a statement, the magistrate must make a note thereof, but the fact of his waiver cannot be used against the defendant on the trial.

Statement, how taken

Sec. 160. If the defendant choose to make a statement, he may do so in writing, or upon his failure so to do, the magistrate must proceed to take it in writing without oath, and must put to the defendant the following questions only:

What is your name and age?

Where were you born?

Where do you reside, and how long have you resided there?

What is your business or profession?

Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

Same

Sec. 161. The answer of the defendant to each of the questions must be distinctly read to him, as it is taken down. He may thereupon correct or add to his answer and it must be corrected until it is made conformable to what he declares is the truth.

How reduced to writing,—how authenticated

Sec. 162. The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form:

1, It must set forth in detail that the defendant was informed of his rights as provided in section 158, and that after being so informed, he made the statement;

2, It must contain the questions put to him, and his answers thereto, as provided in sections 160 and 161;

3, It may be signed by the defendant, or he may refuse to sign it; but if he refuses to sign it, his reasons therefor must be stated as he gives it;

4, It must be signed and certified by the magistrate.

Witnesses examined after Waiver

Sec. 163. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, must be sworn and examined.

Witnesses kept apart

Sec. 164. The witnesses produced on the part either of the people or of the defendant, can not be present at the examination of the defendant, and while a witness is under examination, the magistrate may exclude all witnesses who have not been examined, or who are to be examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Testimony, how taken

Sec. 165. The testimony given by each witness must be reduced to writing, as a deposition by the magistrate or under his direction, and authenticated in the following form:

1, It must state the name of the witness, his place of residence, and his business or profession;

2, It must contain the questions put to the witness, and his answers thereto; or may be in narrative form, and read to him, and corrected or added to, until it is made conformable to what he declares is the truth;

3, If a question put be objected to on either side, and overruled, or the witness decline answering it, that fact with the ground on which the question was overruled, or the answer declined, must be stated;

4, The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing, as he gives it;

5, It must be signed and certified by the magistrate.

Deposition

Sec. 166. The magistrate or his clerk must keep the depositions taken on the examination, and the statement of the defendant, if any, until they are returned to the proper court, and must not permit them to be inspected by any person except a judge of a court having jurisdiction of the offense, the district attorney of the county, and the defendant and his counsel.

Violation of last section misdemeanor

Sec. 167. A violation of the provisions of the last section is punishable as a misdemeanor.

Defendant entitled to copies

Sec. 168. If the defendant be held to answer the charge, the magistrate or his clerk having the custody of the depositions taken on examination, and of the statement of the defendant, must, on payment of his fees, at the rate of five cents for every hundred words, and within two days after demand, furnish to the defendant or his counsel, a copy of the depositions and statement, or of either of them, or permit him to take a copy.

When and how discharged

Sec. 169. After hearing the proofs and the statement of the defendant, if he have made one, if it appear, either that a public offense has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an endorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

When and how committed

Sec. 170. If, however, it appear from the examination that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner endorse on the depositions and statement, an order, signed by him, to the following effect; "It appearing to me by the within depositions [and statement, if any,] that the offense therein mentioned, [or any other offense, according to the fact, stating generally the nature thereof,] has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

Order for commitment

Sec. 171. If the offense be not bailable, the following words or words to the same effect, must be added to the endorsement: "and that he be committed to the sheriff of the county of——."

Certificate of bail

Sec. 172. If the offense be bailable, and bail be taken by the magistrate, the following words or words to the same effect must be added to the endorsement mentioned in section 170: "and I have admitted him to bail, to answer, by the undertaking hereto annexed."

Order for bail

Sec. 173. If the offense be bailable and the defendant be admitted to bail, but bail have not been taken, the following words or words to the same effect must be added to the endorsement mentioned in section 170: "and that he be admitted to bail in the sum of ——— dollars, and be committed to the sheriff of the county of ——— until said bail be given."

Form of commitment

Sec. 174. If the magistrate order the defendant to be committed as provided in sections 171 and 173, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

Same

Sec. 175. The commitment must be to the following effect:

"County of———:

"In the name of the people of the Territory of Dakota:

"To the sheriff of the county of ———.

"An order having been this day made by me, that A. B. be held to answer upon a charge [stating briefly the nature of the offense,] you are commanded to receive him into your custody and detain him until he be legally discharged."

Dated at———, this———day of———, 186 ."

C. D., Justice of the Peace."

[or as the case may be.]

Undertaking, when and how taken

Sec. 176. On holding the defendant to answer, the magistrate must take from each of the material witnesses examined before him on the part of the people, a written undertaking, without surety, to the effect that he will appear and testify at the court to which the depositions and statement are to be sent, or that he will forfeit such sum as the magistrate may fix and determine.

Security

Sec. 177. When the magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify, unless security be required, he may order

the witness to enter into a written undertaking, with such sureties, and in such sum as he may deem proper, for his appearance, as specified in the last section.

Infants and married women

Sec. 178. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

Witnesses, when committed

Sec. 179. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to prison until he comply, or be legally discharged.

Witnesses conditionally examined

Sec. 180. When, however, it satisfactorily appears by the examination on oath of the witness or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people, in the manner and with the effect provided in this code, and must thereupon be discharged.

Last section not applicable, to whom

Sec. 181. The last section does not apply to the prosecutor or to an accomplice in the commission of the offense charged.

Magistrates to return depositions &c. to Court

Sec. 182. When a magistrate has discharged a defendant, or has held him to answer as provided in sections 169 and 170, he must return immediately to the next district court of the county, the warrant, if any, the depositions of all the witnesses examined before him, the statement of the defendant if he have made one, and all undertakings of bail for the appearance of witnesses taken by him.

TITLE IV.

OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT OR INFORMATION.

Chapter I. Preliminary provisions.
II. Formation of the grand jury.
III. Powers and duties of the grand jury.
IV. Presentment and proceedings thereon.

CHAPTER I.

PRELIMINARY PROVISIONS.

Section 183, 184. Public offenses how prosecuted.

Public offenses how prosecuted

Sec. 183. All public offenses of the grade of felony shall be prosecuted by indictment in the district court. All public offenses of the grade of misdemeanor shall be prosecuted upon the information of the district attorney to the district court of the county wherein such offense is alleged to have been committed; *Provided, however*, That such defendant may, before pleading to such information, demand that the offense with which he is charged be submitted to the grand jury.

Same

Sec. 184. When, however, the proceedings are had for the removal of justices of the peace, they may be commenced by an accusation in writing provided in sections 81 and 82.

CHAPTER II.

FORMATION OF THE GRAND JURY.

Section 185. Grand jury defined.
186, 187. For what courts to be drawn.
188. Manner of designating the additional grand jurors.
189. Summoning the additional grand jurors, and compelling their attendance.
190. When new grand jury may be summoned for the same court.
191. Manner of drawing the new grand jury.
192. Summoning the new grand jury and compelling their attendance.
193. Number to constitute a grand jury.
194. Grand jury how drawn when more than a sufficient number attends.
195. Who may challenge the panel or an individual grand juror.
196. Causes of challenge to the panel.
197. Causes of challenge to an individual grand juror.
198. Manner of taking and trying the challenges.

Section 199. Decision upon the challenge.
200. Effect of allowing a challenge to the panel.
201, 202. Effect of allowing a challenge to an individual grand juror.
203. Appointment of foreman.
204, 205, 206. Oath of the foreman and the other grand jurors.
207. Charge of the court.
208. Retirement of the grand jury.
209. Appointment of a clerk, and his duties.
210. Discharge of the grand jury.

Grand Jury defined

Sec. 185. A grand jury is a body of men, not less than twelve nor more than sixteen in number, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, and chosen by lot, and sworn to inquire of public offences committed or triable in the county.

For what courts drawn

Sec. 186. A grand jury may be drawn for every term of the district court:

1, At the request of the district attorney;

2, When the presiding judge thinks that crimes have been committed that demand examination by a grand jury.

Manner of designating

Sec. 187. If at least twelve persons, qualified to serve as grand jurors, and who have been summoned, do not appear, or if the number of grand jurors attending be reduced below twelve, the court may order the sheriff to summon from the bystanders, a sufficient number, (specifying it,) to complete the grand jury, who must attend and serve as if they had been originally summoned as grand jurors, and subject to the same penalties, unless excused or discharged by the court.

Summoning additional grand Jurors

Sec. 188. If an offence be committed during the sitting of the court, after the discharge of the grand jury, or if the panel for any reason be set aside, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury.

How drawn

Sec. 189. The names of the persons to be summoned, must be drawn in the same manner as the original grand jurors.

ame

Sec. 190. The sheriff must accordingly, in the manner required in respect to the grand jurors originally drawn, forthwith summon the persons whose names are so drawn or designa-

ted, who must attend and serve as if they had been originally summoned as grand jurors, and subject to the same penalties, unless excused or discharged by the court.

Number to constitute same

Sec. 191. No more than sixteen, nor less than twelve persons, can be sworn on a grand jury; nor can a grand jury proceed to any business, unless twelve members at least are present.

When more than sufficient number attends

Sec. 192. When more than sixteen persons summoned as grand jurors attend to serve, the clerk must prepare separate ballots containing their names, folded as nearly alike as possible, and so that the names cannot be seen, and must deposit them in a box. He must then openly draw out of the box sixteen ballots; and the persons whose names are drawn, constitute the grand jury. The names remaining in the box, as well as those drawn, must be returned to the box of drawn grand jurors.

Who may challenge

Sec. 193. A person held to answer a charge for a public offense, may challenge the panel of the grand jury, or an individual grand juror.

Challenge may be interposed —causes

Sec. 194. A challenge to the panel may be interposed for one or more of the following causes only:

1, That the requisite number of ballots was not drawn from the grand jury box of the county;

2, That notice of the drawing of the grand jury was not given;

3, That the drawing was not had in the presence of the officers designated by the code of civil procedure; and

4, That the drawing was not had at least fourteen days before the court.

Challenges to individual grand jurors

Sec. 195. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

1, That he is a minor;

2, That he is an alien;

3, That he is insane;

4, That he is the prosecutor upon a charge against the defendant;

5, That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking, as such;

6, That a state of mind exists on his part, in reference to the case or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot act impartially and without prejudice to the substantive rights of the party challenging.

May be oral

Sec. 196. The challenges mentioned in the last three sections may be oral, and must be entered upon the minutes, and tried by the court, in the same manner as challenges in the case of a trial jury which are triable by the court.

Court must allow or disallow challenge

Sec. 197. The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes.

If allowed Jury discharged

Sec. 198. If a challenge to the panel be allowed, the grand jury must be discharged.

Effect of allowing challenge.

Sec. 199. If a challenge to an individual grand juror be allowed, he cannot be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon.

A violation how punishable

Sec. 200. The grand jury must inform the court of a violation of the last section, and it is punishable by the court as a contempt.

Appointment of foreman

Sec. 201. From the persons summoned to serve as grand jurors, and appearing, the court must appoint a foreman. The court must also appoint a foreman, when a person already appointed is discharged or excused, before the grand jury are dismissed.

Oath to foreman.

Sec. 202. The following oath must be administered to the foreman of the grand jury: "You, as foreman of this grand jury, shall diligently inquire and true presentment make, of all public offenses against the people of this Territory committed or triable within this county, [or *in* [if] a city court, "within this city,"] of which you shall have or can obtain legal evidence; you shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof: but in all your presentments, or indictments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God."

Oath to other grand jurors.

Sec. 203. The following oath must be immediately thereupon

administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of [you] shall well and truly observe on your part. So help you God."

Same

Sec. 204. If, after the foreman is sworn, any grand juror appear and be admitted as such, the oath, as prescribed in section 203, must be administered to him commencing, "You, as one of this grand jury," and so on to the end.

Charge by the Court

Sec. 205. The grand jury being empannelled and sworn, must be charged by the court. In doing so, the court must read to them the provisions of this code, from section 210 to section 214, both inclusive, and must give them such information as it may deem proper as to the nature of their duties, and any charges for public offenses returned to the court or likely to come before the grand jury. The court need not, however, charge them respecting violations of a particular statute.

Retirement of Jury

Sec. 206. The grand jury must then retire to a private room, and inquire into the offenses cognizable by them.

Appointment of clerk

Sec. 207. The grand jury must appoint one of their number as clerk, who must preserve minutes of their proceedings (except of the votes of the individual members on a presentment or indictment,) and of the evidence given before them.

Discharge of grand jury

Sec. 208. The grand jury, on the completion of the business before them, must be discharged by the court; but whether the business be completed or not, they are discharged by the final adjournment of the court.

CHAPTER III.

POWERS AND DUTIES OF THE GRAND JURY.

Section 209. Power of grand jury to inquire into all public offenses committed or triable in the county, and to proceed by presentment or indictment.

210. When defendant has been held to answer, grand jury may indict.

211. In all other cases, they can proceed by presentment only.

212. Definition of an indictment.

Section, 213. Definition of a presentment.
214. Foreman may administer oaths.
215, 216. Evidence receivable before the grand jury.
217. Grand jury not bound to hear evidence for the defendant, but may order explanatory evidence to be produced.
218. Degree of evidence to warrant an indictment.
219. Grand jurors must declare their knowledge as to commission of a public offense.
220. Grand jury must inquire as to persons imprisoned on criminal charges and not indicted; the condition of public prisons; and the misconduct of public officers.
221. Grand jury entitled to access to public prisons, and to examine public records.
222. When and from whom they may ask advice and who may be present during their sessions.
223. Secrets of the grand jury to be kept.
224. Grand jury, when bound to disclose the testimony of a witness.
225. Grand juror not to be questioned for his conduct as such.

Power of grand jury

Sec. 209. The grand jury has power and it is their duty to inquire into all public offenses committed or triable in the county, and to present them to the court, either by presentment or indictment, as provided in the next two sections.

Grand jury may indict—when

Sec. 210. Upon such inquiry, they may, where the defendant has been held by a magistrate to answer the charge, and in no other case, if they believe him guilty thereof, find an indictment against him.

In other cases

Sec. 211. In all cases if, upon investigation, the grand jury believe that a person is guilty of a public offense, they can proceed by presentment only.

Definition of

Sec. 212. An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

Presentment —definition of

Sec. 213. A presentment is a formal statement in writing by the grand jury, representing to the court that a public offense has been committed, which is triable in the county, and that

there is reasonable ground for believing that a particular individual, named or described, has committed it.

Foreman may administer oaths

Sec. 214. The foreman may administer an oath to any witness appearing before the grand jury.

Evidence receivable

Sec. 215. In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive no other evidence than:

1, Such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence; or

2, The deposition of a witness in the cases mentioned in the third subdivision of section 12.

Same

Sec. 216. The grand jury can receive none but legal evidence, and the best evidence in degree to the exclusion of hearsay or secondary evidence.

Grand jury not bound to hear evidence may order explanatory

Sec. 217. The grand jury is not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Degree of evidence

Sec. 218. The grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Grand jurors must declare their knowledge &c.

Sec. 219. If a member of the grand jury know, or have reason to believe, that a public offense has been committed, which is triable in the county, he must declare the same to his fellow jurors, who must thereupon investigate the same.

Must inquire as to persons imprisoned

Sec. 220. The grand jury must inquire:

1, Into the case of every person imprisoned in the jail of the county on a criminal charge, and not indicted, and into all indictable offenses of which they have or can obtain knowledge.

2, Into the condition and management of the public prisons in the county; and

3, Into the willful and corrupt misconduct in office of public officers of every description in the county.

Sec. 221. They are also entitled to free access at all reasonable times, to the public prisons, and to the examination, without charge, of all public records in the county. Entitled to access to prisons &c.

Sec. 222. The grand jury may at all reasonable times, ask the advice of the court, or of any member thereof, or of the district attorney of the county; but unless such advice be asked, neither of those officers are permitted to be present during the sessions of the grand jury, nor is any other person permitted to be present during their sessions, except the members of the grand jury, and a witness actually under examination. When and from whom they may ask advice

Sec. 223. Every member of the grand jury must keep secret, whatever he himself, or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them. Secrets

Sec. 224. A member of the grand jury may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor. When bound to disclose

Sec. 225. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors. Not to be questioned

TITLE V.

OF THE INDICTMENT.

Chapter I. Finding and presentation of the indictment.
II. Form of the indictment.
III. Arraignment of the defendant.
IV. Setting aside the indictment.
V. Demurrer.
VI. Plea.
VII. Removal of the action before trial.

CHAPTER I.

FINDING AND PRESENTATION OF THE INDICTMENT.

Section 226. Indictment must be found by twelve grand jurors, and endorsed by foreman.

227. If not so found, depositions, &c., must be returned to the court with dismissal endorsed.

228. Effect of dismissal.

229. Names of witness must be inserted at foot of indictment, or endorsed thereon.

230. Indictment must be presented in presence of grand jury and filed.

Indictment, how found

Sec. 226. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be endorsed, "A true bill," and the endorsement must be signed by the foreman of the grand jury.

How dismissed

Sec. 227. If twelve grand jurors do not concur in finding an indictment, the depositions [and statement, if any,] transmitted to them, must be returned to the court with an endorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Effect of dismissal

Sec. 228. The dismissal of the charge does not, however, prevent its being again submitted to a grand jury as often as the court may so direct. But without such direction, it cannot be again submitted.

Names of witnesses inserted thereon

Sec. 229. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, as provided in section 216, must, in all cases, be inserted at the foot of the indictment or indorsed thereon before it is presented to the court.

How presented

Sec. 230. An indictment when found by the grand jury, as prescribed in section 227, must be presented by their foreman, in their presence, to the court and must be filed with the clerk, and remain in his office as a public record.

CHAPTER II.

FORM OF THE INDICTMENT.

Section 231. Forms of pleading heretofore existing, abolished.
232. First pleading for the people is indictment.
233. Indictment, what to contain.
234. Indictment must be direct and certain.
235. When defendant is indicted by fictitious or erroneous name, his true name may be inserted in subsequent proceedings.
236. Indictment must charge but one offense and in one form, except where it may be committed by different means.
237. Statement as to time when offense was committed.
238. Statement as to person injured or intended to be injured.
239. Construction of words used in indictment.
240. Words used in a statute need not be strictly pursued.
241. Indictment, when sufficient.
242. Indictment not insufficient for defect of form not tending to prejudice defendant.
243. Presumptions of law and matters of which judicial notice is taken, need not be stated.
244. Pleading a judgment or determination of, or proceeding before a court or officer of special jurisdiction.
245. Private statute, how pleaded.
246. Pleading in indictment for libel.
247. Pleading in indictment for forgery, where the instrument has been destroyed, or withheld by defendant.
248. Pleading in indictment for perjury or subornation of perjury.
249. Upon indictment against several, one or more may be convicted or acquitted.
250. Distinction between accessory before the fact and principal, and between principals in the first and second degree, in felony, abrogated.
251. Accessory after the fact, in felony, may be indicted, tried and punished, though principal neither tried nor indicted.
252. Indictment for compounding a felony, though the person guilty of the original offense be neither indicted nor tried.

Forms of pleading abolished

Sec. 231. All the forms of pleading in criminal actions, heretofore existing, are abolished; and hereafter the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this code.

First pleading people, indictment

Sec. 232. The first pleading on the part of the people is the indictment or information.

Indictment, what to contain

Sec. 233. The indictment or information must contain:

1, The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

2, A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Must be direct and certain

Sec. 234. The indictment or information must be direct and certain, as it regards:

1, The party charged;

2, The offense charged;

3, The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

When indicted by fictitious name

Sec. 235. When a defendant is indicted or prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Must charge but one offense

Sec. 236. The indictment must charge but one offense, and in one form only; except that where the offense may be committed by the use of different means, the indictment may allege the means in the alternative.

Statement as to time &c.

Sec. 237. The precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

Statement as to person

Sec. 238. When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

Sec. 239. The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. Construction of words

Sec. 240. Words used in a statute to define a public offense, need not be strictly pursued in the indictment; but other words, conveying the same meaning, may be used. Words used in statute not strictly pursued

Sec. 241. The indictment is sufficient if it can be understood therefrom: Indictment, when sufficient

1, That it is entitled in a court having authority to receive it, though the name of the court be not accurately stated;

2, That it was found by a grand jury of the county in which the court was held;

3, That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name;

4, That the offense was committed at some place within the jurisdiction of the court; except where, as provided by sections 93 to 102, both inclusive, the act, though done without the local jurisdiction of the county, is triable therein;

5, That the offense was committed at some time prior to the time of finding the indictment;

6, That the act or omission, charged as the offense, is clearly and distinctly set forth, in ordinary and concise language, without repetition; and in such a manner as to enable a person of common understanding to know what is intended;

7, That the act or omission, charged as the offense, is stated with such a degree of certainty, as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

Sec. 242. No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits. Indictment not sufficient, when

Sec. 243. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment. Presumptions of law &c.

Pleading a judgment &c.

Sec. 244. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

Private statutes how pleaded

Sec. 245. In pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

Pleading in indictment for libel

Sec. 246. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on trial.

For forgery

Sec. 247. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

For perjury

Sec. 248. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court, or before whom, the oath alleged to be false, was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

Upon indictment against several, one or more may be convicted or acquitted

Sec. 249. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Distinction between accessory &c.

Sec. 250. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly

commit the act constituting the offense, or aid and abet in its commission, though not present, must hereafter be indicted, tried and punished as principals, as in the case of a misdemeanor.

Accessory after the fact, in felony how tried

Sec. 251. An accessory after the fact to the commission of a felony, may be indicted, tried and punished, though the principal felon be neither indicted nor tried.

Indictment for compounding &c.

Sec. 252. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon the agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense have not been indicted or tried.

CHAPTER III.

INFORMATIONS.

Section 253. An information defined.
254. Information must be based on affidavit and filed with clerk of district court.
255. Duty of clerk after information is filed.
256. Duty of district attorney when informed of public offense.
257. Same.
258. Duty after examination.
259. Duty of magistrate when witness refuse to attend.
260. When witness refuses to answer proper questions.
261. Duty of attorney when defendant committed or held to bail.
262. When defendant fails to elect, duty of attorney.
263. Names of witness to be endorsed on information.
264. Clerk to fix bail.

Information defined

Sec. 253. An information is an accusation in writing preferred by the district attorney of the proper county, accusing the defendant therein named of some misdemeanor punishable under the statutes of this Territory, and triable within such county.

Information, based on what

Sec. 254. Such information must be based upon the affidavit of some person cognizant of the commission of the offense, and may be filed in the office of the clerk of the proper district court, either in vacation or in term time.

Duty of clerk

Sec. 255. Upon the filing of such information in the office of the clerk of the district court of the proper county, such clerk shall forthwith issue a process for the arrest of the defendant, in the same manner as in this act prescribed for the issuance of process upon an indictment. Which warrant shall be served with like effect as a bench warrant.

Duty of District attorney

Sec. 256. Whenever in any manner the district attorney of the proper county shall obtain information of the commission of any public offense triable within his county, upon information, he shall forthwith apply to some magistrate of his county to issue a subpœna requiring such witnesses as such district attorney may direct to appear before such magistrate to testify concerning any misdemeanors of which such witnesses may have knowledge. Which subpœna shall be directed to any officer authorized to serve the process of any court having criminal jurisdiction, and shall be served and returned as other subpœnas in criminal cases.

Same

Sec. 257. Upon the appearance of such witness or witnesses before such magistrate, the district attorney shall proceed to take the testimony of such witness or witnesses, and reduce the same to writing in the presence and hearing of such magistrate, who must cause the same to be read over to and subscribed by the witness. All of which must be duly certified by such magistrate.

Duty afte examination

Sec. 258. If in the opinion of such district attorney, the depositions taken before the magistrate disclose the fact that a misdemeanor has been committed upon information, and implicating any person or persons, as probably guilty of the perpetration thereof, [he] shall thereupon file an information based upon the testimony so taken, and cause a warrant to be issued thereon as in other cases.

Duty of magistrate when witness refuse to attend

Sec. 259. Whenever any person who has been summoned to appear as a witness, as in section 256 provided, shall fail, neglect, or refuse to obey the subpœna served upon him, the magistrate may issue an attachment for such witness as for con-

tempt, and may cause such witness to be brought before him, and shall not discharge him thence until he shall have fully answered such proper questions as the district attorney may propound to him, and until he shall have paid such fine and costs as the magistrate may in his discretion assess against him.

When witness refuses to answer proper questions

Sec. 260. Whenever any witness, who under the provisions of this chapter, has been brought before any magistrate, shall refuse to answer any and all proper interrogations propounded to him, said magistrate must commit such witness to the custody of the sheriff of the proper county, as for a contempt, from which custody such witness shall in no case be discharged until he has fully answered such question or questions, and fully paid all costs taxed against him by reason of the legal proceedings had to compel him to testify as provided in this chapter.

Duty of attorney when defendant committed

Sec. 261. Whenever upon any preliminary examination, the defendant shall be committed or recognized by any magistrate to appear at the next term of the district court to answer for a misdemeanor, the district attorney of the proper county shall forthwith notify the defendant that unless such defendant elect to have the charge against him investigated by a grand jury, and serve notice of such election upon such district attorney three days before the first day of the next term of the district court of the proper county, there will be an information filed against him and the cause will be tried without the intervention of a grand jury.

When defendant fails to elect, duty of attorney

Sec. 262. If the defendant fail to serve notice of election as required in the last section he shall be deemed to have waived the right of intervention by a grand jury, and it shall be the duty of the district attorney to immediately file the proper information, based upon the testimony taken before the examining magistrate, upon which information the cause shall be tried as upon an indictment.

Names of witnesses endorsed on information

Sec. 263. The names of all material witnesses must be endorsed upon the back of such information.

Clerk to fix bail

Sec. 264. Upon all warrants issued upon informations, the clerk must fix and endorse the amount of bail, as in cases of indictment for bailable offenses.

CHAPTER IV.

ARRAIGNMENT OF THE DEFENDANT.

Section 265. Defendant must be arraigned in the court in which the indictment is found, or information filed, if triable therein, or if not, in that to which it is sent or removed.

266. If indictment be for felony, defendant must be present; if the information for misdemeanor, he may appear by counsel.

267. When personal appearance is necessary, if defendant be in custody, he must be brought before the court.

268. If discharged on bail, or deposit, bench warrant to issue.

269. Bench warrant, by whom and how issued.

270. Form of bench warrant.

271. Direction in bench warrant, if indictment be for misdemeanor.

272. If offense be bailable, order for bail to be endorsed on bench warrant.

273. Bench warrant, how served.

274. Proceedings on bench warrant, when defendant is brought before a magistrate of another county.

275. Ordering defendant into custody, or increasing bail, when indictment is for felony.

276. Defendant if present, to be committed, if not, bench warrant to issue.

277. Defendant appearing for arraignment without counsel, to be informed of his right to counsel.

278. Court to assign counsel for defendant.

279. Compensation allowed counsel.

280. Arraignment, how made.

281. Defendant to be informed, if the name in the indictment be not his true name, he must then declare it.

282. If he give no other name, to be proceeded against by the name in the indictment or information.

283. If he give another name, subsequent proceedings to be had by that name, referring to name in the indictment or information.

284. Time allowed defendant to answer indictment or information.

285. How defendant may answer indictment or information.

Defendant must be arraigned

Sec. 265. When the indictment or information is filed, the defendant must be arraigned thereon.

If for felony defendant must be present

Sec. 266. If the indictment be for a felony the defendant must be personally present; but if on information for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

When personal appearance is necessary

Sec. 267. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned; and the officer must do so accordingly.

If discharged on bail

Sec. 268. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned, when his personal attendance is necessary, the court in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Bench warrant, by whom issued

Sec. 269. The clerk, on the application of the district attorney may accordingly at any time after the order, whether the court be setting or not, issue a bench warrant into one or more counties.

Form of same

Sec. 270. The bench warrant upon the indictment or information, must if the offense be a felony, be substantially in the following form:

"County of Yankton, [or as the case may be.]

"In the name of the people of the Territory of Dakota.

To any sheriff, constable or marshal in this Territory:

An indictment or information having been found on the —— day of———,———[SEAL] 186 , in the district court of the county of———,[or as the case may be,] charging C. D. with the crime of [designating it generally.]

"You are therefore commanded forthwith to arrest the above named C. D., and bring him before that court, to answer the indictment; or if the court have adjourned for the term, that you deliver *him into* the custody of the sheriff of the county of Yankton.

"City [or town] of——, the ——day of——, 186 .

"By order of the court,

E. F., clerk."

Direction, if for misdemeanor

Sec. 271. If the offense be a misdemeanor, the bench warrant must be in a similar form, adding to the body thereof a direction to the following effect: "or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

If offense be bailable

Sec. 272. If the offense charged be bailable, the court, upon directing the bench warrant to issue, must fix the amount of bail; and an endorsement must be made upon the bench warrant and signed by the clerk, to the following effect:

"The defendant is to be admitted to bail in the sum of —— dollars."

How served

Sec. 273. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except, that when served in another county it need not be endorsed by a magistrate of that county.

Proceedings in certain cases

Sec. 274. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon as provided in section 121 to 124, both inclusive.

Ordering defendant into custody

Sec. 275. When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court, to which the indictment is presented, or sent or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in an increased amount, to be specified in the order.

Defendant if present to be committed

Sec. 276. If the defendant be present when the order is made, he must be forthwith committed accordingly. If he be not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

Appearing for arraignment without counsel

Sec. 277. If the defendant appear for arraignment, without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desire the aid of counsel.

Court to assign counsel

Sec. 278. Upon the arraignment of any defendant, if it appears to the court before which such arraignment is had, that the defendant is unable to procure counsel to conduct his defense, it shall be the duty of the court to assign to said defendant any member of the bar he may select as his counsel in said cause.

Compensation

Sec. 279. Attorneys so assigned shall be, by the court, allowed the following compensation:

In capital cases, fifty dollars; in all other felonies, twenty-five dollars;

In misdemeanors, fifteen dollars; which shall be paid out of the treasury of the proper county.

Arraignment, how made

Sec. 280. The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in reading the indictment to the defendant, and delivering to him, if he requires it, a copy thereof and of the endorsements thereon, including the list of witnesses endorsed on it or appended thereto, as provided in section 229, and asking him whether he pleads guilty or not guilty to the indictment.

Must be informed if name on indictment be his true name

Sec. 281. When the defendant is arraigned, he must be informed that if the name by which he is indicted be not his true name, he must then declare his true name or be proceeded against by the name in the indictment or information.

If he give no other name

Sec. 282. If he gives no other name, the court may proceed accordingly.

If he give another name

Sec. 283. If he allege that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted.

Time allowed to answer &c.

Sec. 284. If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment or information.

How answer may be made

Sec. 285. If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment or information or may demur or plead thereto.

CHAPTER V.

SETTING ASIDE THE INDICTMENT OR INFORMATION.

Section 286. Indictment or information when set aside on motion
287. Defendant, when precluded from objecting to indictment or information in any other manner.
288. Motion, when heard.
289. If denied, defendant must immediately demur or plead.
290. If granted, defendant discharged, unless the case be submitted to the same or another grand jury.
291. Effect of order for re-submission.
292. New indictment in such case, when to be found.
293. Order to set aside indictment, no bar to another prosecution.

Ind'c'ment when set aside, on motion

Sec. 286. The indictment or information must be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases:

1, When it is not found, endorsed and presented or filed as prescribed in this act;

2, When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or endorsed thereon;

3, When a person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment is under consideration, except as provided in section 224.

When precluded from objecting

Sec. 287. If the motion to set aside the indictment be not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

Motion, when heard

Sec. 288. The motion must be heard at the time of the arraignment, unless for good cause the court postpone the hearing to another time.

If denied

Sec. 289. If the motion be denied, the defendant must immediately answer the indictment or information either by demurring or pleading thereto.

Sec. 290. If the motion be granted, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him; unless it direct that the case be re-submitted to the same, or another grand jury, or that the district attorney file a new information. *If granted.*

Sec. 291. If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information. *Effect of order for resubmission.*

Sec. 292. Unless a new indictment or information be found before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, discharge the defendant. *New indictment in such case.*

Sec. 293. An order to set aside an indictment or information, as provided in this chapter, is no bar to a future prosecution for the same offense. *Order to set aside indictment no bar to future prosecution.*

CHAPTER VI.

DEMURRER.

Section 294. On'y pleading for defendant, is demurrer or plea.
295. Demurrer or plea, when put in.
296. Grounds of demurrer.
297. Demurrer, how put in, and its form.
298. When heard.
299. Judgment on demurrer.
300. If allowed, judgment a bar to another prosecution, unless direction that the case be re-submitted to the same or another grand jury.
301. If a re-submission not ordered, defendant discharged.
302. Proceedings, if re-submission ordered.
303. If demurrer disallowed, defendant may be permitted to plead. When he must do so, and effect of his omission.
304. When objections, forming ground of demurrer, may be taken at the trial, or in arrest of judgment.

Only pleading, what

Sec. 294. The only pleading on the part of the defendant is either a demurrer or a plea.

Demurrer or plea, when put in

Sec. 295. Both the demurrer and the plea must be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

Grounds of demurrer

Sec. 296. The defendant may demur to the indictment or information when it appears upon the face thereof, either:

1, That the grand jury by which it was found, or in case of an information, that the district attorney had no legal authority to inquire into the offense charged, by reason of its not being within the local jurisdiction of the county;

2, That it does not substantially conform to the requirements of this act;

3, That more than one offense is charged in the indictment or information;

4, That the facts stated do not constitute a public offense;

5, That the indictment or information contains any matter, which, if true, would constitute a legal justification or excuse of the offense charged; or other legal bar to the prosecution.

How put in

Sec. 297. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the ground of the objection to the indictment or information, or it may be disregarded.

When heard

Sec. 298. Upon the demurrer being filed, the objections presented thereby, must be heard, either immediately or at such time as the court may appoint.

Judgment

Sec. 299. Upon considering the demurrer, the court must give judgment, either sustaining or overruling it; and an order to that effect must be entered upon the minutes.

If allowed, a bar, unless

Sec. 300. If the demurrer be sustained, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection on which the demurrer is sustained may be avoided in a new indictment or information, direct the case to be re-submitted to the same or another grand jury, or in case of an information, to the district attorney.

Sec. 301. If the court do not direct the case to be re-submitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he have deposited money instead of bail, the money must be refunded to him. If a re-submission not ordered

Sec. 302. If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in this act. Proceedings, if ordered

Sec. 303. If the demurrer be overruled, the court must permit the defendant, at his election, to plead; which he must do forthwith, or at such time as the court may allow. If he do not plead, the court must enter a plea of not guilty for him and proceed to the trial of the cause. If demurrer disallowed

Sec. 304. When the objections mentioned in section 296, appear upon the face of the indictment or information, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment or information or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, and in arrest of judgment. When objections may be taken

CHAPTER VII.

PLEA.

Section 305. The different kinds of pleas.
306. Plea, how put in.
307. Its form.
308. Plea of guilty, how put in.
309. It may be withdrawn, by permission of the court.
310. What is denied by a plea of not guilty.
311. What may be given in evidence under it.
312. 313. What is deemed a former acquittal.
314. Conviction or acquittal on indictment for offense consisting of different degree, when a bar to another indictment.

Sec. 305. There are three kinds of pleas to an indictment or information. A plea of: Pleas—different kinds

1, Guilty;
2, Not guilty;

3, A former judgment of conviction or acquittal of the offense charged; which may be pleaded either with or without the plea of not guilty.

How put in

Sec. 306. Every plea must be oral, and must be entered upon the minutes of the court.

Its form

Sec. 307. The plea must be entered in substantially the following form:

1, If the defendant plead guilty:—"The defendant pleads that he is guilty of the offense charged in this indictment or information;"

2. If he plead not guilty:—"The defendant pleads that he is not guilty of the offense charged in this indictment or information;"

3, If he plead a former conviction or acquittal:—"The defendant pleads that he has already been convicted [or acquitted, as the case may be,] of the offense charged in this indictment or information, by the judgment of the ——— [naming it] rendered at ———, [naming the place,] on the ——— day of ———."

Plea of guilty, how put in

Sec. 308. A plea of guilty can in no case be put in, except by the defendant himself in open court, unless upon an indictment or information against a corporation; in which case it can be put in by counsel.

May be withdrawn—by whose permission

Sec. 309. The court may, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

What is denied by a plea of not guilty

Sec. 310. The plea of not guilty is a denial of every material allegation in the indictment or information.

Evidence under it

Sec. 311. All matters of fact, tending to establish a defense other than that specified in the third sub-division of section 305, may be given in evidence under the plea of not guilty.

What is deemed a former acquittal

Sec. 312. If the defendant were formerly acquitted on the ground of a variance between the indictment or information and the proof, or the indictment or information were dismissed upon an objection to its form or substance, without a judgment of acquittal, it is not an acquittal of the same offense.

Same

Sec. 313. When, however, he was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance in the indictment or information on which he was acquitted.

Conviction or acquittal &c.

Sec. 314. When the defendant shall have been convicted or acquitted upon an indictment or information for an offense consisting of different degrees, the conviction or acquittal is a bar to another indictment or information for the offense charged in the former, or for any inferior degree of that offense, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment or information.

CHAPTER VIII.

REMOVAL OF THE ACTION BEFORE TRIAL.

Section 315. Existing writs and proceedings to remove indictment before trial abolished.
316. When, and in what cases indictment may be removed before trial.
317. Order of removal to be filed, and pleadings and proceedings to be transmitted.
318. Proceedings on removal, if defendant be in custody.
319. Order for removal must be filed before a juror is sworn. Authority of the court to which the indictment is removed.

Existing writs and proceedings &c.

Sec. 315. All writs and other proceedings heretofore existing, for the removal of criminal actions prosecuted by indictment, from one court to another before trial, are abolished; and the *only* mode of removing a criminal action, prosecuted by indictment or information, from one court to another, before trial, is that prescribed by this chapter.

Indictment may be removed—in what cases

Sec. 316. A criminal action prosecuted by indictment or information may at any time before trial, on the application of the defendant, be removed from the court in which it is pending.

Order of removal to be filed

Sec. 317. If the court order the removal of the action, a certified copy of the order for that purpose must be delivered to

and filed by the clerk of the court where the indictment or information is pending; who must thereupon transmit the same with a certified copy of the pleadings and proceedings in the action, including the undertakings for the appearance of the defendant or of the witnesses, to the court to which the action is removed.

Proceedings on removal

Sec. 318. If the defendant be in custody, and the removal be to another county than that where the indictment or information is pending, the order must provide for the removal of the defendant, by the sheriff of the county where he is imprisoned, to the custody of the proper officer of the county to which the action is removed; and he must be removed according to the terms of such order.

Order for removal, must be filed, when

Sec. 319. An order for the removal of the action is of no effect, unless a certified copy thereof be filed, as required by section 318, before a jury is sworn to try the indictment or information. The court to which it is removed, must thereupon proceed to trial and judgment therein.

TITLE VI.

OF THE PROCEEDINGS ON THE INDICTMENT OR INFORMATION BEFORE TRIAL.

Chapter I. The mode of trial.
II. Formation of the trial jury.
III. Postponement of the trial.
IV. Challenging the jury.

CHAPTER I.

THE MODE OF TRIAL.

Section 320. Issue of fact defined.
321. How tried.
322. On trial for a misdemeanor, defendant may appear by counsel. In felony his personal appearance is necessary.

Sec. 320. An issue of fact arises: Issue of fact defined

1, Upon a plea of not guilty, or

2, Upon a plea of a former conviction or acquittal of the same offense.

Sec. 321. An issue of fact must be tried by a jury of the county in which the indictment or information was found unless the action be removed, by order of the district court, into the district court of another county. How tried

Sec. 322. If the indictment or information be for a misdemeanor, the trial may be had in the absence of the defendant if he appear by counsel; but if for a felony, he must be personally present. On trial for misdemeanor may appear by counsel—if for felony

CHAPTER II.

FORMATION OF THE TRIAL JURY.

Section 323. Jurors in district courts.
324. Ballots of the jurors returned, to be deposited in a box.
325. When indictment or information called for trial, names of jurors to be called. Proceedings as to those who are absent.
326. Drawing the jury.
327, 328. Ballots of jurors drawn, how disposed of.
329. Ballots of absent jurors, how disposed.
330. If twenty-four jurors not present, court must order sheriff to summon others.
331. Their names to be deposited in a box.
332. Drawing of a jury thereon.
333. Of whom the jury consist.
334. Talesmen how ordered and summoned.

Sec. 323. The jurors duly drawn and summoned for the trial of issues of fact in actions at law, at a district court, are also the jurors for the trial of issues of fact upon indictment or information at the district court held at the same time. Jurors in district courts

Sec. 324. At the opening of the court, the clerk must prepare separate ballots, containing the names of the persons returned as jurors, which must be folded as nearly alike as pos- Ballots

sible, and so that the same cannot be seen, and must deposit them in a sufficient box.

Names of jurors may be called

Sec. 325. When the cause is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and that an attachment issue against those who are absent; but the court may, in its discretion, wait or not, for the return of the attachment.

Drawing jury

Sec. 326. Before the name of any juror is drawn, the box must be closed and shaken, so as to intermingle the ballots therein. The clerk must then, without looking at the ballots, draw them from the box through a hole in the lid, so large only as conveniently to admit the hand.

Ballots drawn, how disposed of

Sec. 327. When the jury is completed, the ballots containing the names of the jurors sworn, must be laid aside, and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

Same

Sec. 328. After the jury are so discharged, the ballots, containing their names must be again folded and returned to the box; and so on, as often as a trial is had.

Ballots of absent jurors, how disposed of

Sec. 329. If a juror be absent when his name is drawn, or be set aside, or excused from serving on the trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn.

If twenty-four jurors not present

Sec. 330. When a jury has been duly summoned, if, upon calling the cause for trial, twenty-four of the jurors summoned do not appear, the court must order the sheriff to summon from the bystanders as many persons as it may think proper, at least sufficient to make twenty-four jurors, from whom a jury for the trial of the cause must be selected.

Names to be deposited in a box

Sec. 331. The names of the persons summoned to complete the jury must be written on distinct pieces of paper, folded each as nearly alike as possible, and so that the name cannot be seen, and must be deposited in the box mentioned in section 324.

Drawing of a jury thereon

Sec. 332. The clerk must thereupon, under the direction of the court, publicly draw out of the box so many of the ballots, one after another, as are sufficient to form the jury.

Sec. 333. The jury consists of twelve men, chosen as prescribed in this chapter, and sworn to try and determine the issue by a unanimous verdict. Of whom the jury consist

Sec. 334. If a sufficient number cannot be obtained from the box to form a jury, the court may, as often as is necessary, order the sheriff to summon from the bystanders so many persons qualified to serve as jurors as it deems sufficient to form a jury. The jurors so summoned must be called from the list returned by the sheriff, and so many of them not excused or discharged, as may be necessary to complete the jury must be impaneled and sworn. Talesman how ordered and summoned

CHAPTER III.

POSTPONEMENT OF THE TRIAL.

Section 335. When and how ordered. Affidavits to be filed.
336. If defendant appear for trial, and cause for postponement be not shown by district attorney, indictment or information to be discharged unless otherwise specially ordered.
337. Effect of the discharge.

Sec. 335. When an indictment or information is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party, direct the trial to be postponed to another day in the same term, or to another term. The affidavits read on both sides upon the application, must at the same time be filed with the clerk. When and how ordered

Affidavits to be filed

Sec. 336. If, when the cause is called for trial, the defendant appear for trial and no sufficient cause for postponing the same be shown by the district attorney, the court must order the defendant to be discharged, unless being of opinion that the public interests require the defendant to be retained for trial, it direct him to be so retained. If defendant appear for trial

Sec. 337. If the court order the defendant to be discharged, the order is not a bar to another prosecution for the same offense, unless the court so direct; in which case judgment of acquittal must be entered. Effect of discharge

CHAPTER IV.

CHALLENGING THE JURY.

Section 338. Definition and division of challenges.
339. When there are several defendants, they must unite in their challenges.
340. Challenge to the panel defined.
341. Upon what founded.
342. When and how taken.
343. If sufficiency of the facts be denied, adverse party may except. Exceptions how made and tried.
344. If exception overruled, court may allow denial of challenge. If allowed, may permit challenge to be amended.
345. Denial of challenge, how made, and trial thereof.
346. Who may be examined on trial of challenge.
347. If challenge allowed, jury to be discharged. If disallowed, jury to be impanneled.
348. Defendant to be informed of his right to challenge an individual juror.
349. Kinds of challenge to individual jurors.
350. Challenge, when taken.
351. Peremptory challenge, what, and how taken.
352. Number of peremptory challenges to which defendant is entitled.
353. Challenge for cause, by whom taken.
354. Definition and kinds of challenge for cause.
355. General cause for challenge.
356. Particular causes of challenge.
357. Grounds of challenge for implied bias.
358. Grounds of challenge for actual bias.
359. Exemption not a ground of challenge.
360. Causes of challenge, how stated.
361. Exceptions to challenge and denial thereof.
362. Challenge, how tried, if denied.
363. Triers, how appointed. Majority may decide.
364. Oath of triers.
365. Juror challenged may be examined as a witness.
366. Rules of evidence on trial of challenge.
367. Challenge for implied bias, how determined.
368. Instructions to triers on challenge for actual bias.

Section 369. Verdict of triers, and its effect.
370. Challenge, first by defendant, and then by the people, Each must exhaust challenges before the other begins.
371. Order of challenges.
372. Peremptory challenges may be taken after challenges on both sides exhausted.

Sec. 338. A challenge is an objection to the trial jurors, and is of two kinds: Definition of challenges division of

1, To the panel;

2, To an individual juror.

Sec. 339. When several defendants are tried together, they cannot sever their challenges, but must join therein. When there are several defendants

Sec. 340. A challenge to the panel is an objection made to all the trial jurors returned, and may be taken by either party. Challenge to panel, defined

Sec. 341. A challenge to the panel can be founded only on a material departure from the forms prescribed by the code of civil procedure, in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn. Upon what founded

Sec. 342. A challenge to the panel must be taken before the jury is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge. When and how taken

Sec. 343. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the court; and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true. Sufficiency

Sec. 344. If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge. If exception overruled, court may allow &c.

Sec. 345. If the challenge be denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court; and the court must proceed to try the question of fact. Denial of challenge—how made—trial thereof

Who may be examined

Sec. 346. Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

If challenge allowed

Sec. 347. If, either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury, so far as the trial of the cause in question is concerned; and another jury for the trial thereof can be summoned for the same term from the bystanders. If it be disallowed, the court must direct the jury to be impanneled.

Defendant to be informed of right

Sec. 348. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an individual juror, he must do so when the juror appears, and before he is sworn.

Kinds of challenge

Sec. 349. A challenge to an individual juror, is either:

1, Peremptory, or

2, For cause.

Challenge, when taken

Sec. 350. It must be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

Peremptory challenge—what —how taken

Sec. 351. A peremptory challenge can be taken by the defendant only, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

Number of

Sec. 352. If the offense charged be punishable with death or imprisonment in a state prison for life, the defendant is entitled to twenty peremptory challenges. In other felonies ten challenges are allowed. On a trial of any misdemeanor he is entitled to five peremptory challenges.

Challenge for cause

Sec. 353. A challenge for cause may be taken either by the people or the defendant.

Kinds of

Sec. 354. It is an objection to a particular juror, and is either:

1, General, that the juror is disqualified from serving in the case on trial;

2, Particular, that he is disqualified from serving in any case on trial.

Sec. 355. General causes of challenges are : General cause for

1, A conviction for a felony ;

2, A want of any of the qualifications prescribed by the code of civil procedure, to render a person a competent juror ;

3, Unsoundness of mind, or such defect in the faculties of the mind or organs of the body, as renders him incapable of performing the duties of a juror.

Sec. 356. Particular cause of challenge are of two kinds : Particular causes for

1, For such a bias, as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias ;

2, For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the triers, in the exercise of a sound discretion, that he cannot try the issue impartially without prejudice to the substantial rights of party challenging, and which is known in this code as actual bias.

Sec. 357. A challenge for implied bias may be taken for all or any of the following causes, and for no other: Grounds of challenge for implied bias

1, Consanguinity or affinity within the sixth degree of the civil law, inclusive, to the person alleged to be injured by whose complaint the prosecution was instituted, or to the defendant ;

2, Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages ;

3, Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution ;

4, Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment ;

5, Having served on a trial jury which has tried another person for the indentical offense charged in the indictment ;

6, Having been one of the jury formerly sworn to try the same indictment or information, and whose verdict was set

aside, or which was discharged without a verdict, after the cause was submitted to it;

7, Having served as a juror in a civil action brought against the defendant for the act charged as an offense;

8, If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Grounds of challenge for actual bias

Sec. 358. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section 356, and for no other cause.

Exemption not a ground for challenge

Sec. 359. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Causes, how stated

Sec. 360. In a challenge for implied bias, one or more of the causes stated in section 357 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section 356 must be alleged. In either cases, the challenge may be oral, but must be entered upon the minutes of the court.

Exceptions and denial

Sec. 361. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as prescribed in section 343; except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Challenge, how tried

Sec. 362. If the facts be denied, the challenge must be tried as follows:

1, If it be for implied bias, by the court;

2, If it be for actual bias, by triers.

Triers, how appointed majority may decide

Sec. 363. The triers are three impartial persons, not on the jury panel, appointed by the court. All challenges for actual bias must be tried by the triers thus appointed, a majority of whom may decide.

Oath of trier

Sec. 364. The triers must be sworn, generally, to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are true, and to decide the same according to the evidence.

Juror challenged may be examined as a witness

Sec. 365. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge; and is bound to answer every question pertinent to the inquiry therein.

Rules of evidence

Sec. 366. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues, govern the admission or exclusion of testimony, on the trial of the challenge.

Challenge for implied bias, how determined

Sec. 367. On the trial of a challenge for implied bias, the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

Instructions to triers

Sec. 368. On the trial of a challenge for actual bias, when the evidence is concluded, the court must instruct the triers that it is their duty to find the challenge true, if the evidence establishes the existence of a state of mind on the part of the juror, in reference to the case or to either party, which satisfies them in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging; and that if otherwise, they must find the challenge not true. The court can give them no other instruction.

Verdict of triers

Sec. 369. The triers must thereupon find the challenge either true or not true; and their decision is final. If they find it true the juror must be excluded.

Challenge, first by defendant then by people, each must exhaust challenges

Sec. 370. All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the people; and each party must exhaust all his challenges before the other begins.

Order of challenges

Sec. 371. The challenges of either party need not all be taken at once; but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1, To the panel;

2, To an individual juror for a general disqualification;

3, To an individual juror for implied bias;

4, To an individual juror for actual bias.

Peremptory challenges may be taken after, what

Sec. 372. If all the challenges on both sides be disallowed, the defendant may still take a peremptory challenge, unless the peremptory challenges be exhausted.

TITLE VII.

OF THE TRIAL.

Chapter I. The trial.

II. Conduct of the jury after the cause is submitted to them.

III. The verdict.

CHAPTER I.

THE TRIAL.

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387. Conviction cannot be had on testimony of accomplice, unless corroborated.

Section 388. On trial for false pretences, no evidence of pretences admissable, unless in writing. But this section not applicable to prosecution for falsely representing or personating another, and in such character receiving money or property.

389. Conviction cannot be had for abduction or seduction unless testimony of person injured be corroborated.

390. If testimony show higher offense than that charged, court may discharge jury, and hold defendant to answer a new indictment.

391. If new indictment not found, defendant to be re-tried on the original indictment.

392. Court may discharge jury, where it has no jurisdiction of the offense, or the facts do not constitute an offense.

393. Proceedings, if jury discharged for want of jurisdiction of the offense, when committed out of the territory.

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405. On indictment for libel, jury to determine law and fact.

406. In all other cases court to decide questions of law, subject to right of defendant to except.

407. In charging jury, court to state all necessary matters of law, and to inform them that they are the exclusive judges of all questions of fact.

Section 408. Jury may decide in court, or retire in the custody of officers. Oath of the officers.
409. When defendant on bail appears for trial, he may be committed.

In what order trial to proceed

Sec. 373. The jury having been impanneled and sworn, the trial must proceed in the following order:

1, If the indictment be for a felony, the clerk or district attorney must read it, and state the plea of the defendant to the jury. In all other cases, this formality may be dispensed with;

2, The district attorney, or other counsel for the people, must open the case and offer the evidence in support of the indictment or information;

3, The defendant or his counsel may then open his defense, and offer his evidence in support thereof;

4, The parties may then, respectively, offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, or to correct an evident oversight, permit them to offer evidence upon their original case;

5, When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the people shall commence, and the defendant or his counsel shall follow, then the counsel for the people shall conclude the argument to the jury;

6, The court must then charge the jury, which charge must be in writing, to which charge either party may except.

Same

Sec. 374. When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order of trial and argument prescribed in the last section may be departed from.

Number of counsel who may argue

Sec. 375. If the indictment be for an offense punishable with death, three counsel on each side may argue the cause to the jury. If it be for any other offense, the court may, in its discretion, restrict the argument to two counsel on each side.

Defendant presumed innocent in case of reasonable doubt

Sec. 376. A defendant in a criminal action is presumed to be innocent until the contrary be proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted.

Reasonable doubt of which degree

Sec. 377. When it appears that a defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only.

Separate trial of defendants

Sec. 378. When two or more defendants are jointly indicted for a felony, any defendant requiring it, must be tried separately. In other cases defendants jointly prosecuted may be tried separately or jointly in the discretion of the court.

Discharging one of several defendants before verdict

Sec. 379. When two or more persons are included in the same indictment, or information, the court may, at any time before the defendant has gone into his defense, on the application of the district attorney, direct any defendant to be discharged from the indictment or information, that he may be a witness for the people.

Same, effect of discharge

Sec. 380. When two or more persons are included in the same indictment or information, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his co-defendant. The order is an acquittal of the defendant discharged, and a bar to another prosecution for the same offense.

Rules of evidence, applicable in certain cases

Sec. 381. The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this code.

Confessions

Sec. 382. A confession of a defendant, whether in the course of judicial proceedings or to a private person, cannot be given in evidence against him when made under the influence of fear produced by threats, nor is it sufficient to warrant his conviction, without additional proof that the offense charged has been committed.

Evidence on trial for treason

Sec. 383. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or of one witness to one overt act, and another witness to a different overt act of the same treason. But if two or more distinct treasons of different kinds be alleged in the indictment, two witnesses to prove different treasons are not sufficient to warrant a conviction.

Same

Sec. 384. Upon a trial for treason evidence cannot be admitted of an overt act not expressly charged in the indictment; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

For conspiracy

Sec. 385. Upon a trial for conspiracy, in case where an overt act is necessary to constitute the offense, the defendant cannot be convicted, unless one or more acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved, but any other overt act, not alleged in the indictment, may be given in evidence.

For rape

Sec. 386. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature.

Testimony of accomplice

Sec. 387. A conviction can not be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely show the commission of the offense, or the circumstances thereof.

Trial for false pretences

Sec. 388. Upon a trial for having, with intent to cheat or defraud another designedly by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, no evidence can be admitted of a false pretense expressed orally and unaccompanied by a false token or writing unless the pretense or some note or memorandum thereof, be in writing, either subscribed by, or in the handwriting of the defendant. But this section does not apply to a prosecution for falsely representing or personating another, and in such assumed character receiving money or property.

Conviction, where had

Sec. 389. Upon a trial for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution, or aiding or assisting therein, or for having, under promise of marriage, seduced and had illicit connexion with an unmarried female of previous chaste character, the defendant can not be convicted upon the testimony of the person injured unless she is corroborated by other evidence tending to connect the defendant with the commission of the offense.

If testimony show higher offense

Sec. 390. If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment or information, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail to answer any new indictment or information which may be found against him for the higher offense.

If new indictment not found

Sec. 391. If a new prosecution be not commenced for the higher offense at or before the next term, the court must again proceed to try the defendant on the original indictment.

Court may discharge jury

Sec. 392. The court may direct the jury to be discharged, where it appears that it has not jurisdiction of the offense, or that the fact as charged in the indictment or information do not constitute an offense punishable by law.

Proceedings if jury discharged

Sec. 393. If the jury be discharged because the court has not jurisdiction of the offense charged in the indictment or information, and it appears that it was committed out of the jurisdiction of this Territory, the court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the district attorney to the chief executive officer of the State, Territory, or district, where the offense was committed.

Proceedings in such case

Sec. 394. If the offense were committed within the exclusive jurisdiction of another county of this Territory, the court must direct the defendant to be committed for such time as it deems reasonable to await a warrant from the proper county for his arrest, or if the offense be a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the undertaking.

Same

Sec. 395. In the case provided for in the last section the clerk must forthwith transmit a certified copy of the indictment

or information, and of all the papers in the action, filed with him, to the district attorney of the proper county, the expenses of which transmission is chargeable to that county.

If defendant be not arrested as provided

Sec. 396. If the defendant be not arrested, as provided in section 394, on a warrant from the proper county, he must be discharged from custody, or his bail in the action be exonerated, or money deposited instead of bail refunded, as the case may be; and the sureties in the undertaking mentioned in that section must be discharged.

If he be arrested same proceedings

Sec. 397. If he be arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

If jury be discharged &c.

Sec. 398. If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new indictment or information can be framed, upon which the defendant can be legally convicted, in which case it may direct that the case be re-submitted to the same or another grand jury, or in case of misdemeanor to the district attorney of the proper county.

Court may advise acquittal

Sec. 399. If, at any time after the evidence on either side is closed, the court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice; nor can the court, for any cause, prevent the jury from giving a verdict.

When it is proper that jury should view the place where offense is charged to have been committed

Sec. 400. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a judge of the court, or by a person appointed by the court for that purpose.

No one suffered to speak to jury

Sec. 401. The officers must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return

them into court without unnecessary delay, or at a specified time.

Knowledge of juror to be declared in court

Sec. 402. If a juror have any personal knowledge respecting a fact in controversy in a cause, he must declare it in open court, during the trial. If, during the retirement of the jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

Jurors may be permitted to separate, oath of officers

Sec. 403. The jurors sworn to try an indictment or information may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof.

Jurors not to converse together on the subject of the trial

Sec. 404. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves, or to form or express any opinion thereon, until the case is finally submitted to them.

When juror becomes unable to perform duty

Sec. 405. If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impanneled. With the consent of defendant the trial may proceed with the remaining jurors.

Court to decide questions of law

Sec. 406. The court must decide all questions of law which arise in the course of the trial.

On trial for libel

Sec. 407. On the trial for libel, the jury have the right to determine the law and the fact.

In all other cases

Sec. 408. On the trial of an indictment or information for any other offense than libel, questions of law are to be decided by the court, saving the right of the defendant to except ques-

tions of fact by the jury. And although the jury have the power to find a general verdict, they are bound, nevertheless, to receive as law what is laid down as such by the court.

In charging jury, court to state what

Sec. 409. In charging the jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it present the facts of the case, must in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

Jury may decide —when

Sec. 410. After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn, to keep them together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

When defendant on bail, appears for trial

Sec. 411. When a defendant, who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

CHAPTER II.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

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413. Accommodations for the jury, when kept together during the trial, or after retirement.

414, 415. What papers the jury may take with them.

416. May return into court for information.

417. If, after retirement a juror becomes sick or unable to act, the jury to be discharged.

Section 418. Not to be discharged in any other case, unless there is no reasonable probability that they can agree.
419. When the jury discharged or prevented from giving a verdict, cause to be again tried.
420. Court may be adjourned during the absence of jury, as to other business, but deemed open till verdict rendered or jury discharged.
421. Final adjournment of court discharges jury.

Room for jury after retirement, how provided

Sec. 412. A room must be provided by the board of commissioners of the county, [or if the trial be in a city court, by the corporate authorities of the city] for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the supervisors or corporate authorities neglect, the court may order the sheriff to do so; and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Accommodations for jury &c.

Sec. 413. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, upon the order of the court, at the expense of the county, with suitable and sufficient food.

Jury may take what papers

Sec. 414. Upon retiring for deliberation, the jury may take with them all papers [except depositions,] which have been received as evidence in the cause, or copies of such parts of public records or private documents, given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

Same

Sec. 415. The jury may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

May return into court for information

Sec. 416. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the district attorney and the defendant or his counsel.

If after retirement a juror becomes sick

Sec. 417. If, after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged.

Not to be discharged, unless

Sec. 418. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless, at the expiration of such time as the court deems proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

When discharged or prevented from giving verdict

Sec. 419. In all cases where a jury are discharged, or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the indictment or information during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term as the court may direct.

Court may adjourn during absence of jury &c.

Sec. 420. While the jury are absent the court may adjourn from time to time as to other business; but it is nevertheless deemed open for every purpose connected with the cause submitted to them, until a verdict is rendered or the jury discharged.

Final adjournment discharges jury

Sec. 421. A final adjournment of the court discharges the jury.

CHAPTER III.

THE VERDICT.

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433. Upon indictment or information for offense consisting of different degrees, jury may convict of any degree, or of an attempt to commit the offense.
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441. Defendant, when to be discharged or detained after acquittal.
442. Proceedings upon general verdict of conviction or a special verdict.
443. When defendant acquitted on the ground of insanity, the fact to be stated with the verdict. Commitment of defendant to territorial lunatic asylum.

When jury have agreed to be brought into court &c.

Sec. 422. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the cause must be again tried, at the same or another term.

In felony

Sec. 423. If the indictment be for a felony, the defendant must, before the verdict is received, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

Manner of taking verdict

Sec. 424. If the jury appear, they must be asked, by the court or the clerk, whether they have agreed upon their verdict; and if the foreman answers in the affirmative, they must, on being required, declare the same.

May be general or special

Sec. 425. The jury may either render a general verdict, or where they are in doubt as to the legal effect of the facts

proved, they may, except upon an indictment for libel, find a special verdict.

General verdict

Sec. 426. A general verdict upon a plea of not guilty, is either "guilty" or "not guilty:" which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people," or "for the defendant."

Special verdict

Sec. 427. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact, as established by the evidence to prove them; *find* [and] the conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

Special verdict, how rendered

Sec. 428. The special verdict must be reduced to writing by the jury, or in their presence, entered upon the minutes of the court, read to the jury, and agreed to by them before they are discharged.

Same

Sec. 429. The special verdict need not be in any particular form, but is sufficient if it presents intelligibly the facts found by the jury.

How argument to be brought

Sec. 430. The special verdict may be brought to argument by either party, upon two days notice to the other, at the same or another term of the court.

Judgment thereon

Sec. 431. The court must find judgment upon the special verdict as follows:

1, If the plea be not guilty, and the facts prove the defendant guilty of the offense charged in the indictment or information, or of any other offense of which he could be convicted under the indictment or information as provided in sections 433 and 434, judgment must be given accordingly; but if otherwise judgment of acquittal must be given;

2, If the plea be a former conviction or acquittal of the same offense, the court must give judgment of conviction or acquittal, according as the facts prove or fail to prove the former conviction or acquittal.

When special verdict defective new trial to be ordered

Sec. 432. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, if they find the evidence of facts mere-

ly, and not the conclusions of fact from the evidence, as established to their satisfaction, the court must order a new trial.

Upon indictment for offense of different degrees

Sec. 433. Upon an indictment or information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offense.

In other cases

Sec. 434. In all other cases, the defendant may be found guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment or information.

On indictment against several

Sec. 435. On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

In what cases court may direct a reconsideration

Sec. 436. When there is a verdict of conviction, in which it appears to the court, that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict; and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

Same

Sec. 437. If the jury render a verdict which is neither a general or a special verdict as defined in sections 426 and 427 the court may, with proper instructions as to the law, direct them to reconsider it; and it cannot be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court.

Judgment upon informal verdict

Sec. 438. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant, upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment be given against him on a special verdict.

Polling the jury

Sec. 439. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party; in which case, they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Recording verdict

Sec. 440. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and must read it to the jury and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out, but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

Defendant when to be discharged or detained

Sec. 441. If the judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given; except that when the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention to the end that a new indictment may be preferred, in the same manner and with the like effect, as provided in section 398.

Proceedings upon general or special verdict

Sec. 442. If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county, to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money be deposited instead of bail, it must be refunded to the defendant.

On ground of insanity

Sec. 443. If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state that fact with their verdict. The court may thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the care of the sheriff, until he becomes sane.

TITLE VIII.

OF THE PROCEEDINGS AFTER TRIAL, AND BEFORE JUDGMENT.

Chapter I. Bill of exceptions.
II. New trials.
III. Arrest of judgment.

CHAPTER I.

BILL OF EXCEPTIONS.

Section 444. In what cases.
445. By whom settled, and how filed.
446. To be settled at the trial, or the point noted in writing.
447, 448. When and how settled after the trial.
449. Enlarging the time therefor.
450. Effect of not serving exceptions or amendments within the time prescribed.
451. What to be contained in bill of exceptions.
452. With whom and when filed.

In what cases

Sec. 444. On the trial of an indictment or information, exceptions may be taken by the defendant to a decision of the court upon a matter of law by which his substantial rights are prejudiced, and not otherwise, in any of the following cases:

1, In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias;

2, In admitting or rejecting witnesses or testimony, or in charging the triers on the trial of a challenge to a juror for actual bias;

3, In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue.

By whom settled —how filed

Sec. 445. A bill containing the exceptions must be settled and signed by the presiding judge, and filed with the clerk.

To be settled at trial

Sec. 446. The bill of exceptions must be settled at the trial, unless the court otherwise direct. If no such direction be giv-

en, the point of the exception must be particularly stated in writing, and delivered to the court, and must immediately be corrected or added, until it is made conformable to the truth.

When and how settled

Sec. 447. If the bill of exceptions be not settled at the trial, it must be prepared and served within three days thereafter, on the district attorney, who may, within three days thereafter serve on the defendant or his counsel, amendments thereto. The defendant may then, within three days, serve the district attorney with a notice to appear before the presiding judge of the court, at a specified time, not less than five, nor more than ten days thereafter, to have the bill of exceptions settled.

Same

Sec. 448. At the time appointed the judge must settle and sign the bill of exceptions.

Enlarging the time therefor

Sec. 449. The time for preparing the bill of exceptions or the amendments thereto, or for settling the same, may be enlarged by the consent of the parties, or by the presiding judge.

Effect of not serving exceptions

Sec. 450. If the bill of exceptions be not served within the time prescribed in section 447, or within the enlarged time therefor, as prescribed in the last section, the exceptions are deemed abandoned. If it be served and the parties omit, within the time limited by section 447, the one to prepare amendments, and the other to give notice of appearance before the judge, they are respectively deemed, the one to have agreed to the bill of exceptions, and the other to the amendments.

What to be contained therein

Sec. 451. The bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken, or as may show that the decision excepted to has not prejudiced the substantial rights of the defendant; and the judge must, upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

With whom filed —when

Sec. 452. The bill of exceptions must be filed with the clerk of the court at the time of, or before, taking the appeal.

CHAPTER II.

NEW TRIALS.

Section 453. New trial defined.
454. By what court granted.
455. Its effect.
456. In what cases it may be granted.
457. Must be applied for before judgment, and only upon leave of the court.
458. Court to prescribe time and manner of making the application.

New trial defined

Sec. 453. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given.

By what court granted

Sec. 454. A new trial can be granted by the court in which the former trial was had, only in the cases provided in section 456.

Its effect

Sec. 455. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew; and the former verdict can not be used or referred to, either in evidence or in argument.

In what cases granted

Sec. 456. The court in which a new trial is had upon an issue or fact, has power to grant a new trial, when a verdict has been rendered against the defendant by which his substantial rights have been prejudiced, upon his application, in the following cases:

1, When the trial has been had in his absence, if the indictment be for a felony;

2, When the jury has received any evidence out of court other than that resulting from a view, as provided in section 400;

3, When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

4, When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5, When the court has mis-directed the jury in a matter of law, or has refused to instruct them;

6, When the verdict is contrary to law or evidence. But no more than two new trials can be granted for this cause alone.

Must be applied —when, and only

Sec. 457. The application for a new trial must be made before judgment, and can be made only upon leave granted by the court.

Court to prescribe time and manner

Sec. 458. If leave be granted, the court must prescribe the time and manner of making the application.

CHAPTER III.

ARREST OF JUDGMENT.

Section 459. Motion in arrest of judgment defined, and upon what defects founded.
460. Court may arrest judgment without motion.
461. Motion, when and how made.
462. Effect of arresting the judgment.
463. Defendant when to be held or discharged.

Motion in arrest of judgment

Sec. 459. A motion in arrest of judgment is an application on the part of the defendant, that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment or information mentioned in section 296.

Court may arrest judgment

Sec. 460. The court may also, on its own view of any of these defects, arrest the judgment without motion.

Motion, when and how made

Sec. 461. The motion must be made before or at the time when the defendant is called for judgment. If made before, it must be on notice to the district attorney, or in his presence.

Effect of

Sec. 462. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment or information was found.

Defendant when held or discharged

Sec. 463. If, from the evidence on the trial there is reasonable ground to believe the defendant guilty, and a new indictment or information can be framed upon which he may be con-

victed, the court may order him to be re-committed to the officer of the proper county, or admitted to bail anew to answer the new indictment or information. If the evidence show him guilty of another offense, he must be committed or held thereon, and in neither case is the verdict a bar to another prosecution or indictment for the same offense. But if no evidence appear sufficient to charge him with any offense, he must, if in custody, be discharged, or if admitted to bail, his bail is exonerated, or if money have been deposited instead of bail, it must be refunded to the defendant, and the arrest of judgment operates as an acquittal of the charge upon which the prosecution was founded.

Defendant when held or discharged.

TITLE IX.

OF THE JUDGMENT AND EXECUTION.

Chapter I. The judgment.
II. The execution.

CHAPTER I.

THE JUDGMENT.

Section 464, 465. Time for pronouncing judgment to be appointed by the court.
466. In felony, defendant must be present. In misdemeanor, judgment may be pronounced in his absence.
467. When defendant is in custody, how brought before the court for judgment.
468. How brought before the court when he is on bail.
469. Bench warrant to issue.
470. Form of bench warrant.
471, 472. Service of the bench warrant.
473. Arraignment of defendant for judgment.
474. What cause may be shown against the judgment.
475. If no sufficient cause shown, judgment to be pronounced.
476. Court may summarily inquire into circumstances in aggravation or mitigation of punishment.

Section 477. Testimony, how given.
478. No other testimony or representations to be received.
479. Violation of the last section, how punished.
480. On conviction of two or more offenses, judgment of imprisonment on one to commence at the expiration of the imprisonment on another.
481. Duration of imprisonment on a judgment to pay a fine.
482. The judgment roll.

Time for pronouncing judgment

Sec. 464. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not attested, or a new trial granted, the court must appoint a time for pronouncing judgment.

Same

Sec. 465. The time appointed must be at least two days after the verdict if the court intend to remain in session so long, or if not, as remote a time as can reasonably be allowed.

In misdemeanor

Sec. 466. For the purpose of judgment, if the conviction be for a misdemeanor, judgment may be pronounced in his absence.

When defendant in custody

Sec. 467. When the defendant is in custody, the court may direct the officer in whose custody he is, to bring him before it for judgment, and the officer must do so accordingly.

How brought before the court

Sec. 468. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Bench warrant to issue

Sec. 469. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be setting or not, issue a bench warrant into one or more counties.

Form of

Sec. 470. The bench warrant must be substantially in the following form:

County of ———

In the name of the people of the Territory of Dakota:

To any sheriff, constable, marshal or policeman in this territory.

A. B. having been on the ——— day of ———
[seal] 186—, duly convicted in the district court, of the crime of, [designating it generally,]

You are therefore commanded forthwith to arrest the above named A. B., and bring him before that court for judgment, or if the court have adjourned for the term, you are to deliver him into the custody of the sheriff of the county of ——— [as the case may be.]

City of ———, [or as the case be.]
the —— day of ——, 186—.

By order of the court,

E. F., Clerk.

Service of

Sec. 471. The bench warrant may be served in any county, in the same manner as a warrant of arrest; except that when served in another county, it need not be endorsed by a magistrate of that county.

Same

Sec. 472. Whether the bench warrant be served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

Arraignment of defendant

Sec. 473. When the defendant appears for judgment, he must be informed by the court, or by the clerk under its direction, of the nature of the indictment or information, and of his plea and the verdict, if any thereon; and must be asked whether he have any legal cause to show why judgment should not be pronounced against him.

Cause may be shown against judgment

Sec. 474. He may show for cause against the judgment:

1, That he is insane; and if in the opinion of the court there is reasonable ground for believing him to be insane, the question of his insanity must be tried as provided by sections 641 to 644 both inclusive. If upon the trial of that question, the jury find that he is sane, judgment must be pronounced; but if they find him insane, must be committed to territorial lunatic asylum until he becomes sane; and when notice is given of that fact, as provided in section 658, he must be brought before the court for judgment;

2, That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case the court may, in its

discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

If no sufficient cause shown

Sec. 475. If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it must thereupon be rendered.

Court may summarily inquire &c.

Sec. 476. After a plea or verdict of guilty, in a case where a discretion is conferred upon the court as to the extent of the punishment, the court upon the suggestion of either party, that there are circumstances which may be properly taken into into view, either in aggravation or mitigation of the punishment, may in its discretion, hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

Testimony, how given

Sec. 477. The circumstances must be presented, by the testimony of witnesses examined in open court; except, that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

No other testimony

Sec. 478. No affidavit, or testimony, or representation of any kind, verbal or written, can be offered to, or received by, the court, or member thereof, in aggravation or mitigation of the punishment, except as provided in the last two sections.

Violation of last section, how punished

Sec. 479. A violation of the last section is punishable as a misdemeanor, on the part of the person offering or receiving the affidavit or representation; and the person offering it may, in addition, be punished by the court for a contempt.

On conviction of two or more offenses

Sec. 480. If the defendant have been convicted of two or more offenses, before judgment on either, the judgment may be, that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

Duration of imprisonment

Sec. 481. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment; which cannot exceed one day for every two dollars of the fine.

Judgment roll

Sec. 482. When judgment of a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the

offense for which the conviction has been had; and must im- Judgment roll
mediately annex together and file the following papers, which constitute the judgment roll:

1, A copy of the minutes of a challenge interposed by the defendant to the panel of the grand jury, or to an individual grand juror, and the proceedings and decision thereon;

2, The indictment or information and a copy of the minutes of the plea or demurrer;

3, A copy of the minutes of a challenge which may have been interposed to the panel of a trial jury, or to an individual juror, and the proceedings and decision thereon;

4, A copy of the minutes of the trial;

5, A copy of the minutes of the judgment;

6, The bill of exceptions, if there be one.

CHAPTER II.

THE EXECUTION.

Section 483. Authority for the execution of a judgment except of death.

484. Commitment of the defendant.

485, 486. Judgment of imprisonment, by whom and how executed.

487. Power of sheriff to require assistance; refusal to assist him, how punished.

488. Warrant of execution upon judgment of death. Time of execution.

489. On judgment of death, presiding judge to transmit to governor a statement of the conviction, judgment and testimony.

490. Governor may require opinion of judges of court of appeals, and supreme court, and the attorney general, or any of them.

491. Judgment of death not to be reprieved or suspended except by sheriff, as provided in next seven sections.

492. If good reason to suppose defendant insane, jury to inquire into it, how and by whom ordered.

493. Duty of district attorney upon the inquisition.

494. Inquisition, how certified and filed.

Section 495, 496. Proceedings upon the finding of the jury.
497. If good reason to suppose female defendant pregnant, jury to inquire into it—how and by whom ordered. Proceedings upon the inquisition.
498, 499. Proceedings upon the finding of the jury.
500, 501. Proceedings when judgment of death, remaining in force, has not been executed.
502. Punishment of death how inflicted.
503. Execution where to take place.
504. Who to be present at the execution.
505. Certificate of the execution.
506. Certificate, how filed and published.

Authority for the execution of judgment except death

Sec. 483. When a judgment, except of death, has been pronounced, a certified copy of the entry thereof upon the minutes, must be forthwith furnished to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

Commitment

Sec. 484. If the judgment be imprisonment, or a fine and imprisonment, until such fine be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with.

Judgment of imprisonment

Sec. 485. When the judgment is imprisonment in a county jail, or a fine, and that the defendant be imprisoned until it be paid, the judgment must be executed by the sheriff of the county. In all other cases when the sentence is imprisonment, the sheriff of the county must deliver the defendant to the proper officer, in execution of the judgment.

Same

Sec. 486. If the judgment be imprisonment, except in a county jail, the sheriff must deliver a copy of the entry of the judgment upon the minutes of the court, together with the body of the defendant, to the keeper of the prison in which the defendant is to be imprisoned.

Power of sheriff

Sec. 487. The sheriff or his deputy, while conveying the defendant to the proper prison, in execution of a judgment of imprisonment, has the same authority to require the assistance of any citizen of this Territory, in securing the defendant, and in retaking him if he escape, as if the sheriff were in his own county; and every person who refuses or neglects to assist the sheriff, when so required, is punishable as if the sheriff were in his own county.

Warrant of execution. Time of

Sec. 488. When judgment of death is rendered, the judge must sign and deliver to the sheriff of the county, a warrant, stating the conviction and judgment, and appointing a day on which the judgment is to be executed, which must not be less than thirty, nor more than sixty days from the time of the judgment.

On judgment of death

Sec. 489. The judge of the court at which a conviction requiring judgment of death is had, must, immediately after the conviction, transmit to the governor, by mail, a statement of the conviction and judgment, and the testimony given at the trial.

Governor may require, what

Sec. 490. The governor may thereupon require the opinion of the judges of the supreme court upon the statement so furnished.

Judgment of death not reprieved except

Sec. 491. No judge, court or officer, other than the governor, can reprieve or suspend the execution of a judgment of death, except the sheriff in the cases provided in next eight sections.

If defendant be sane, if not

Sec. 492. If it be found by the inquisition, that the defendant is sane, the sheriff must execute the judgment; but if it be found that he is insane, the sheriff must suspend the execution of the judgment until he receive a warrant from the governor, or from a majority of the judges of the supreme court, directing the execution of the judgment.

Duty of sheriff in such case

Sec. 493. If the inquisition find that the defendant is insane, the sheriff must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

Female defendant pregnant, jury to inquire into, by whom ordered

Sec. 494. When there is good reason to suppose that a female, against whom judgment of death is rendered, is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians of the Territory to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney of the county. The provisions of sections 493 and 494 apply to the proceedings upon the inquisition.

Proceedings upon finding

Sec. 495. If it be found by the inquisition that the female is not pregnant, the sheriff must execute the judgment. If, however, it be found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the governor.

Same

Sec. 496. When the governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

When judgment has not been executed

Sec. 497. If, for any reason, a judgment of death have not been executed, and it remain in force, the supreme court, at a general term, on the application of the district attorney of the county where the conviction was had, must order the defendant to be brought before it; or, if he be at large, a warrant for his apprehension may be issued by that court, or by a judge thereof.

Same

Sec. 498. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exist against the execution of the judgment, must make an order that the sheriff of the proper county execute the judgment at a specified time. The sheriff must execute the judgment accordingly.

Punishment of death, how inflicted

Sec. 499. The punishment of death must be inflicted by hanging the defendant by the neck until he be dead.

Execution, when to take place

Sec. 500. A judgment of death must be executed within the walls of the jail of the county in which the conviction was had, or within a yard or enclosure adjoining the jail. If there be no such jail or prison in the county in which the conviction was had, or if it become unfit or unsafe for the confinement of prisoners, or be destroyed by fire or otherwise, and the jail of another county have been legally designated for the confinement of the prisoners of the county in which the conviction was had, the judgment must be executed within the walls of the prison so designated, or within a yard or enclosure adjoining the same.

Who to be present

Sec. 501. The sheriff or under-sheriff of the county must be present at the execution, and must invite the presence (by at least three days notice) of the district attorney, together with one physician and twelve reputable citizens, to be selected by

him. He must also, at the request of the defendant, permit any minister of the gospel whom the defendant may name, and any of his relatives, to attend the execution; and also such peace officers as the sheriff or under-sheriff may deem proper. But no persons other than those mentioned in this section can be present at the execution; nor can any person under age be allowed to witness the same.

Certificate of execution

Sec. 502. The sheriff or under-sheriff must prepare and sign, with their names of office, a certificate, setting forth the time and place of the execution, and that the judgment was executed upon the defendant, according to the provisions of the last three sections, and must cause the certificate to be signed by the public officers, and by at least twelve persons, not relatives of the defendant, who witnessed the execution.

How filed

Sec. 503. The sheriff or under-sheriff must cause the certificate to be filed in the office of the clerk of the county, and a copy thereof to be published in the territorial paper, and in one newspaper, if any, printed in the county.

TITLE X.

OF APPEALS.

Chapter I. Appeals, when allowed, and how taken.
II. Dismissing an appeal for irregularity.
III. Argument of the appeal.
IV. Judgment upon appeal.

CHAPTER I.

APPEALS, WHEN ALLOWED, AND HOW TAKEN.

Section 504. Writs of error and certiorari.
505. Appeals substituted as provided in this chapter.
506. Parties, how designated on appeal.
507. In what cases appeals may be taken by defendant.
508. In what cases, by the people.
509. Appeal, a matter of right.
510. Must be taken within one year after judgment.
511, 512. Appeal, how taken.

Section 513. Appeal by the people not to stay or affect the judgment until reversed.
514. Stay of proceedings on appeal to supreme court from judgment of conviction.
515. Certificate of stay not to be granted, but on notice of district attorney.
516. Effect of the stay.
517. Transmitting papers to the supreme court.

Writs of error

Sec. 504. Writs of error in criminal actions, as they have heretofore existed, are allowed; and hereafter, an additional mode of reviewing a judgment or order in a criminal action is that prescribed by this chapter.

Appeals substituted

Sec. 505. The party aggrieved, whether the people or the defendant, may appeal from a judgment in a criminal action in the cases prescribed in this chapter.

Parties, how designated

Sec. 506. The party appealing is known as the appellant, and the adverse party as the respondent. But the title of the action is not changed in consequence of the appeal.

In what cases

Sec. 507. An appeal to the supreme court may be taken by the defendant from a judgment on a conviction, and upon the appeal any actual decision of the court in an intermediate order or proceeding forming a part of the judgment roll, as prescribed by section 482, may be reviewed.

By the people

Sec. 508. An appeal to the supreme court may be taken by the people in the following cases, and no other:

1, Upon a judgment for the defendant on a demurrer to the indictment;

2, Upon an order of the court arresting the judgment;

3, From an order granting a new trial.

Appeal a matter of right

Sec. 509. An appeal may be taken as provided in the last three sections as a matter of right.

Must be taken —when

Sec. 510. An appeal must be taken within one year after the judgment was rendered.

Appeal, how taken

Sec. 511. An appeal must be taken by the service of a notice in writing on the clerk with whom the judgment roll is filed, stating that the appellant appeals from the judgment.

Same

Sec. 512. If the appeal be taken by the defendant, a similar notice must be served on the district attorney of the county in which the original judgment was rendered.

Appeal by the people

Sec. 513. If it be taken by the people, a similar notice must be served on the defendant, if he be a resident of, or is imprisoned in, the city or county; or if not, on the counsel, if any, who appeared for him on the trial, if he resides or transacts his business in the county. If the service cannot after due dilligence be made, the appellate court, upon proof thereof, may make an order for the publication of the notice, in such newspaper and for such time as it deems proper.

Stay of proceedings

Sec. 514. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal becomes perfected.

Certificate of stay, not to be granted, except

Sec. 515. An appeal taken by the people in no case stays or affects the operation of a judgment in favor of the defendant, until the judgment is reversed.

Effect of the stay

Sec. 516. An appeal to the supreme court, from a judgment of conviction, stays the execution of the judgment, upon filing, with the notice of appeal, a supersedeas bond, approved by the clerk of court, in such sum as the court or clerk may determine, and conditioned for the appearance of the defendant in the supreme court, and that such defendant will prosecute said appeal with effect and abide the judgment of the court thereon; *Provided, however*, If the defendant is under sentence of death, no bail shall in any case be allowed.

Transmitting papers to supreme court

Sec. 517. Upon the appeal being taken, the clerk with whom the notice of appeal is filed, must, within ten days thereafter, without charge, transmit a copy of the notice of appeal and of the judgment roll to the clerk of the supreme court.

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

Section 518. For what irregularity and how dismissed.
519. Dismissal for want or return.

For what irregularity, how dismissed

Sec. 518. If the appeal be irregular in a substantial particular, but not otherwise, the court may, on any day in term, on motion of the respondent, upon two days notice, with copies of the papers on which the motion was founded, order it to be dismissed.

Dismissal for want or return

Sec. 519. The court may also upon like motion dismiss the appeal, if the return be not made as provided in section 517, unless for good cause they enlarge the time for that purpose.

CHAPTER III.

ARGUMENT OF THE APPEAL.

Section 520. Appeal to supreme court, how and where brought to argument.
521. Notice of argument to counsel for defendant.
522. Papers by whom furnished, and effect of omission.
523. Judgment of affirmance may be without argument, if appellant fail to appear. Reversal, only upon argument, though respondant fail to appear.
524. Number of counsel to be heard, defendant's counsel to close the argument.
525. Defendant need not be present.

Appeal to supreme court, how and when brought

Sec. 520. An appeal to the supreme court may be brought to argument by either party on ten days notice, on any day, at a general term of the supreme court.

Notice of argument

Sec. 521. If a counsel within five days after the appeal, have given notice to the district attorney that he appears for the defendant, notice of argument must be served on him instead of the defendant; otherwise, notice must be served as the court may direct.

Papers, by whom furnished

Sec. 522. When the appeal is called for argument, the appellant must furnish the court with copies of the notice of appeal and judgment roll. If he fail to do so, the appeal must be dismissed, unless the court otherwise direct.

Judgment of affirmance —reversal

Sec. 523. Judgment of affirmance may be given, without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondant fail to appear.

Number of counsel to be heard

Sec. 524. Upon the argument of the appeal, if the offense be punishable with death, two counsel on each side must be heard, if they require it. In any other case, the court may, in its discretion, restrict the argument to one counsel on each side.

Sec. 525. The defendant need not personally appear, in the appellate court. Defendant need not be present

CHAPTER IV.

JUDGMENT UPON APPEAL.

Section 526. Court to give judgment, without regard to technical errors, defects or exceptions, not affecting substantial rights.
527. May reverse, affirm or modify the judgment, and order a new trial.
528. Defendant to be discharged on reversal of judgment againt him, where new trial is not ordered.
529. Judgment to be executed, on affirmance against the defendant.
530. Judgment of appellate court, how entered and remitted.
531. Papers returned not to be remitted.
532. Jurisdiction of appellate court cases, after judgment remitted.

Sec. 526. After hearing the appeal, the court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties. Court to give judgment without &c.

Sec. 527. The appellate court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial. May reverse, affirm or modify

Sec. 528. If a judgment against the defendant be reversed, without ordering a new trial, the appellate court must direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant. On reversal, when new trial is ordered

Sec. 529. On a judgment of affirmance against the defendant, the original judgment must be carried into execution as the appellate court may direct. Judgment on affirmance

Sec. 530. When the judgment of the appellate court is given, it must be entered in the judgment book, and a certified copy of the entry forthwith remitted to the clerk with whom the original judgment roll is filed, or if a new trial be ordered Of appellate court

in another county, to the clerk of the county, unless the judgment be rendered in the absence of the adverse party, in which case the court may direct it to be retained not exceeding ten days.

Papers returned not to be remitted

Sec. 531. The papers returned to the appellate court must there remain of record, and are not to be remitted to the court below.

Jurisdiction of appellate court ceases after what

Sec. 532. After the certificate of the judgment has been remitted as provided in section 530, the appellate court has no further jurisdiction of the appeal, or of the proceedings thereon; and all orders which may be necessary to carry the judgment into effect, must be made by the court to which the certificate is remitted.

TITLE XI.

OF MISCELLANEOUS PROCEEDINGS.

Chapter I. Bail.

II. Compelling the attendance of witnesses.

III. Examination of witnesses, conditionally.

IV. Examination of witnesses, on commission.

V. Inquiry into the insanity of the defendant, before trial, or after conviction.

VI. Compromising certain public offenses, by leave of the court.

VII. Dismissal of the action, before or after the indictment, for want of prosecution, or otherwise.

VIII. Remitting the punishment in certain cases.

IX. Proceedings against corporations.

X. Entitling affidavits.

XI. Errors and mistakes in pleadings and other proceedings.

XII. Disposal of property, stolen or embezzled.

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CHAPTER I.

BAIL.

Article I. In what cases the defendant may be admitted to bail.
II. Bail, upon being held to answer, before indictment.
III. Bail, upon an indictment, before conviction.
IV. Bail, upon an appeal.
V. Deposit, instead of bail.
VI. Surrender of the defendant.
VII. Re-commitment of the defendant, after having given bail, or deposited money instead of bail.

ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

Section 533. Admission to bail, defined.
534. Taking bail, defined.
535. Offenses not bailable.
536. In what cases defendant may be admitted to bail, before conviction.
537. In what cases he may be admitted to bail after conviction and upon appeal.
538. Nature of bail before conviction.
539. Nature of bail after conviction, and upon appeal.

Admission on bail, defined

Sec. 533. Admission to bail is the order of a competent court or magistrate, that the defendant be discharged from actual custody, upon bail.

Taking bail, defined

Sec. 534. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

Offenses not bailable

Sec. 535. The defendant cannot be admitted to bail, where he is charged:

1, With an offense punishable with death; or

2, With the infliction of a personal injury upon another, likely to produce death, under such circumstances as that if death ensue the offense would be murder.

In what cases defendant may be admitted to bail before conviction

Sec. 536. If the charge be for any other offense he may be admitted to bail, before conviction, as follows:

1, As a matter of right in cases of misdemeanor;

2, As a matter of discretion in all other cases.

After

Sec. 537. After the conviction of an offense not punishable with death, a defendant who has appealed, and when there is a stay of proceeding, but not otherwise, may be admitted to bail;

1, As a matter of right when the appeal is from a judgment imposing a fine only;

2, As a matter of discretion in all other cases.

Nature of bail before

Sec. 538. Before conviction, a defendant may be admitted to bail;

1, For his appearance before the magistrate, on the examination of the charge, before being held to answer;

2, To appear at the court to which the magistrate is required, by section 182, to return the depositions and statement upon the defendant being held to answer, after examination;

3, After indictment, either upon the bench warrant issued for his arrest, or upon an order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial.

After, upon appeal

Sec. 539. After conviction and upon an appeal the defendant may be admitted to bail, as follows:

1, If the appeal be from a judgment imposing a fine only, on the undertaking of bail, that he will pay the same or such part of it as the appellate court may direct, if the judgment be affirmed or modified or upon the appeal being dismissed;

2, If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified or upon the appeal being dismissed.

ARTICLE II.

BAIL, UPON BEING HELD TO ANSWER BEFORE INDICTMENT OR INFORMATION.

Section 540, 541. By what courts or magistrates defendant may be admitted to bail.

Section 542. At what time defendant may be admitted to bail by a magistrate.
543. In cities, if offense be felony, application for admission to bail must be on notice.
544. Form of order, if made by the court.
545. Form of order, if made by a magistrate.
546. On denial of application, by a magistrate, defendant may appeal to court.
547. Manner of taking appeal.
548. Decision of court on appeal, final.
549. Bail, by whom taken.
550. How put in, and form of the undertaking.
551. Qualifications of bail.
552, 553. Bail, how to justify.
554. Bail may be examined as to sufficiency.
555. Other testimony may be received as to their sufficiency.
556. Decision as to their sufficiency, and filing affidavits of justification and undertaking.
557. On allowance of bail, and execution of undertaking, defendant to be discharged. Form of discharge.
558. If bail disallowed, defendant to be detained until other bail be put in and justify.
559. Defendant detained if bail disallowed.

By what courts

Sec. 540. When the defendant has been held to answer, as provided in section 170, the admission to bail may be by the magistrate by whom he is so held, as follows:

1, By any of the magistrates mentioned in section 112, when the offense charged is a misdemeanor or a felony, punishable with imprisonment, not exceeding five years.

2, By a judge of the supreme court, the mayor or recorder of a city, a city judge, in all cases where bail may be taken before conviction, as provided in section 537.

Same

Sec. 541. When, by reason of the degree of the offense, the committing magistrate has not authority to admit to bail, the defendant may be admitted to bail by one of the officers having authority to admit to bail in the case, as provided in second subdivision of the last section, or by the court to which the depositions and statement are returned by the committing magistrate, as provided in section 182, if the case be triable therein, or if not, by the court to which, after indictment, it may be sent or removed for trial.

At what time defendant may be admitted

Sec. 542. The defendant may be admitted to bail by a magistrate, as provided in the last two sections, upon being held to answer, or at any time before the return of the depositions and statement to the court. After that time he can be admitted to bail only by the court in which the offense is triable, if it be sitting, or if not, by one of the magistrates mentioned in the second subdivison of section 540.

If offense be felony, must be on notice

Sec. 543. In the several cities of this Territory, if the offense charged be a felony, the application for admission to bail must be upon notice of at least two days, to the district attorney of the county; and the committing magistrate upon the like notice, in writing, requiring him to do so, must transmit the depositions and statement, or a copy thereof, to the court or magistrate to whom the application for bail is to be made.

Form of order, if made by court

Sec. 544. If the application be to the court, an order must be made, granting or denying it, and if it be granted, stating the sum in which bail may be taken.

If made by magistrate

Sec. 545. If the application be to a magistrate, he must certify, in writing, his decision granting or denying the same; and if he grant the application, must state in the certificate the sum in which bail may be taken, which certificate he must cause to be forthwith filed with the clerk of the court to which the depositions and statement are required to be sent.

On denial

Sec. 546. If the application, when made to a magistrate, be denied, the defendant may appeal from his decision to the court to which the depositions and statements are or must be sent, as provided in section 189, if the case be triable therein, or if not, to the court to which, after indictment, it must be sent for trial.

Manner of taking appeal

Sec. 547. The appeal is, by a notice in writing, to the district attorney, that the defendant appeals from the decision, and that he will apply to the court to be admitted to bail, at a time to be specified, not less than two days from the service of the notice.

Decision—final

Sec. 548. The decision of the court, granting or denying bail, either upon an original application, or upon an appeal, may be reversed in the supreme court on error or appeal.

Bail by whom taken

Sec. 549. If the defendant be admitted to bail by a magistrate, the bail must be taken by the magistrate granting the order, or by any other magistrate of the same county, city, or village. If by the court, it may be taken either by the court, or any magistrate whom it may designate, in which the defendant is committed.

How put in

Sec. 550. Bail is put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate,) and acknowledged before the court or magistrate, in substantially the following form:

"An order having been made on the day ——— of ———, 18—, by A. B., justice of the peace of the town of ——, (or as the case may be) that C. D., be held to answer upon a charge of (stating briefly the nature of the offense,) upon which he has been duly admitted to bail, in the sum of —— dollars;

"We, E. F., and G. H., hereby undertake, that the above named C. D. shall appear and answer the charge above mentioned, in the district court, and shall at all times render himself amenable to the order and process of the court, and if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the Territory of Dakota, the sum of —— dollars," (inserting the sum in which the defendant is admitted to bail.)

Qualifications

Sec. 551. The qualifications of bail are as follows:

1, Each of them must be a resident and a householder or freeholder within the Territory;

2, They must be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of two sufficient bail.

How to justify

Sec. 552. Except as prescribed in the next section, the bail may, in the exercise of a just discretion, be taken, and may justify, without notice to the district attorney, or reasonable notice may be required by the court or magistrate to be given to the district attorney of the intention to give bail. When given, the notice shall be as prescribed in the next section.

Offense charged be a felony

Sec. 553. In the several cities of this Territory, if the offense charged be a felony, a previous notice of at least two days of the time and place of giving the bail, must be served upon the district attorney of the county, stating:

1, The names, places of residence and occupations, of the proposed bail;

2, A general description of the real or personal property of the bail, in respect to which they propose to justify as to their sufficiency, with the incumbrances thereon by mortgage, judgment or otherwise, if any.

Bail, how to justify

Sec. 554. The bail must in all cases justify by affidavit taken before the court or magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in section 551.

May be examined as to sufficiency

Sec. 555. The district attorney, or the court or magistrate, may thereupon further examine the bail upon oath, concerning their sufficiency, in such manner as the court or magistrate may deem proper. The questions put to the bail and their answers, must be reduced to writing, and must be subscribed by them.

Other testimony

Sec. 556. The court or magistrate may also receive other testimony, either for or against the sufficiency of the bail, and may from time to time adjourn the taking of bail, to afford an opportunity of providing or disproving their sufficiency.

Decision, filing affidavits

Sec. 557. When the examination is closed, the court or magistrate must make an order, either allowing or disallowing the bail, and must forthwith cause the same, with the affidavits of justification, and the undertaking of bail, to be filed with the clerk of the court to which the depositions and statement must be sent, as prescribed in section 189.

On allowance of bail. Form of discharge

Sec. 558. Upon the allowing of the bail and the execution of the undertaking, the court or magistrate must make an order, signed by him, with his name of office, for the discharge of the defendant, to the following effect:

To the sheriff of the county of ————————,

A. B. who is detained by you on a commitment to answer a charge for the offense of, [designating it generally,] having giving sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody.

Sec. 559. If the bail be disallowed, the defendant must be detained in custody until other bail be put in and justify. If bail disallowed

ARTICLE III.

BAIL UPON AN INDICTMENT OR INFORMATION, BEFORE CONVICTION.

Section 560. In misdemeanor, officer to take defendant before a magistrate.
561. In felony, to deliver him into custody.
562. Taking bail, when offense is bailable.
563. Bail, how put in. Form of undertaking.
564. Sections 551 to 555, applicable to qualifications of bail, to putting in and justifying the bail, and to incidental proceedings.

Sec. 560. When the offense charged in the indictment or information is a misdemeanor, the officer serving the bench warrant must, if required, take the defendant before a magistrate in the county in which it is, or in which he is arrested, for the purpose of giving bail as prescribed in sections 271 and 274. In misdemeanor

Sec. 561. If the offense charged in the indictment be a felony, the officer arresting the defendant must deliver him into custody, according to the command of the bench warrant, as prescribed in section 270. In felony

Sec. 562. When the defendant is so delivered into custody, if the felony charged be bailable, and the amount of bail has been fixed by the court as provided in section 272, bail may be taken by the court in which the indictment was found, or to which it is sent or removed, or by any magistrate in the county having authority to admit a defendant to bail, upon being held to answer before indictment, as provided in sections 540 and 541. Taking bail

Sec. 563. The bail must be put in by a written undertaking, executed by two sufficient sureties, with or without the defendant, in the discretion of the court or magistrate, acknowledged before the court or magistrate, in substantially the following form: How put in.

Form of undertaking.

An indictment or information having been found filed on the ——— day of ———, 186—, in the district court of the county of ——— charging A. B., with the crime of, [designating it generally,] and he having been duly admitted to bail in the sum of ——— dollars;

We, C. D., of [stating his place of residence and occupation,] and E. F., of [stating his place of residence and occupation,] hereby undertake that the above named A. B., shall appear and answer the indictment or information above mentioned, at the next term of the district court of ——— county, and shall at all times render himself amenable to the orders and process of the court, and if convicted shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the Territory of Dakota the sum of ——— dollars, [inserting the sum in which the defendant is admitted to bail.]

Sections applicable to qualifications

Sec. 564. The provisions contained in sections 550 to 559, both inclusive, apply to the qualifications of the bail, and to all the proceedings representing the putting in and justifying of bail, and incidental thereto.

ARTICLE IV.

BAIL UPON AN APPEAL.

Section 565. Who may admit to bail.
566. Notice of the application, when required.
567. Qualifications of bail, and how put in.

Who may admit to bail

Sec. 565. In the cases in which the defendant may be admitted to bail upon an appeal, as provided in section 547, the order admitting him to bail may be made either by the court from which the appeal is taken or the presiding judge thereof, or by the appellate court or a judge thereof.

Notice of application when required

Sec. 566. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered, may require such notice of the application therefor, as he deems reasonable, to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

Sec. 567. The bail must possess the qualifications, and must be put in in all respects in the manner prescribed by sections 551 to 559, both inclusive; except that the defendant will, in all respects, abide the orders and judgment of the appellate court upon the appeal. Qualifications of bail, how put in

ARTICLE V.

DEPOSIT INSTEAD OF BAIL

Section 568. Deposit when and how made.
569. May be made after bail given, and before forfeiture; and in such case bail discharged.
570. Bail may be given after deposit; and in such case money deposited to be refunded.
571. Deposit to be applied to payment of judgment of fine, and surplus to be refunded.

Sec. 568. The defendant at any time after an order admitting him to bail, instead of giving bail may deposit with the clerk of the county in which he is held to answer the sum mentioned in the order; and upon delivering to the officer in whose custody he is a certificate of the deposit, he must be discharged from custody. Deposit

Sec. 569. If the defendant have given bail, he may at any time before the forfeiture of their undertaking, in like manner deposit the sum mentioned in the undertaking, and upon the deposit being made, the bail is exonerated. May be made, when

Sec. 570. If money be deposited, as provided in the last section, bail may be given in the same manner as if it had been originally given upon the order for admission to bail, at any time before the forfeiture of the deposit. The court or magistrate before whom the bail is taken, must thereupon direct, in the order of allowance, that the money deposited be refunded by the county clerk to the defendant, and it must be refunded accordingly. Bail may be given after

Sec. 571. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the county treasurer must, under direction of the court, apply the money in satisfaction thereof, and after satisfying the fine, must refund the surplus if any to the defendant. Deposit to be applied to what

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

Section 572. Surrender, by whom, when and how made.
573. By whom, when and where, defendant may be arrested for the purpose of a surrender.
574. On surrender before forfeiture, money deposited to be refunded. Order therefor, how obtained.

Surrender, by whom, when, how

Sec. 572. At any time before the forfeiture of the undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1, A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing, acknowledge the surrender;

2, Upon the undertaking and the certificate of the officer, the court in which the indictment or information, or the appeal, as the case may be, is pending, may upon a notice of two days to the district attorney of the county, with a copy of the undertaking and certificate, order that the bail be exonerated; and on filing the order and the papers used on the application, they are exonerated accordingly.

By whom

Sec. 573. For the purpose of surrendering the defendant, the bail, at any time before they are finally charged, and at any place within the Territory, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

On surrender before forfeiture

Sec. 574. If money have been deposited instead of bail, and the defendant at any time before the forfeiture thereof, surrender himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL, OR OF THE DEPOSIT OF MONEY.

Section 575. In what cases and how ordered.
576. When and how forfeiture may be discharged.
577. Forfeiture of bail, to be enforced by action.
578. Deposit of money when forfeited, how disposed of.
579. Remission of forfeiture.
580. Application therefor, how made and on what terms granted.

In what cases

Sec. 575. If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion where his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes; and the undertaking of his bail, or the money deposited instead of bail, as the case may be, is thereupon forfeited.

May be discharged, when and how

Sec. 576. If at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or deposit to be discharged upon such terms as are just.

Forfeiture of bail

Sec. 577. If the forfeiture be not discharged, as provided in the last section, the district attorney may, at any time after the adjournment of the court, proceed by action only against the bail upon their undertaking.

Deposit of money when forfeited how disposed of

Sec. 578. If, by reason of the neglect of the defendant to appear, as provided in section 575, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in sections 576 and 577, the county treasurer with whom it is deposited, may at any time after the final adjournment of the court, apply the money deposited to the use of the county.

Remission

Sec. 579. After the forfeiture of the undertaking or deposit, as provided in this chapter, the district court of the county may, upon good cause shown, remit the forfeiture or any part thereof, upon such terms as are just.

Application thereof, how made

Sec. 580. The application must be upon at least five days notice to the district attorney of the county, with copies of the affidavits and papers on which it is founded; and can be granted only upon payment of the costs and expenses incurred in the proceedings for the enforcement of the forfeiture.

ARTICLE VIII.

RE-COMMITMENT OF THE DEFENDANT AFTER HAVING GIVEN BAIL, OR DEPOSITED MONEY INSTEAD OF BAIL.

Section 581. In what cases.
582. Contents of the order.
583. Defendant may be arrested in the county.
584. If for failure to appear for judgment, defendant must be committed.
585. If for other cause, he may be admitted to bail.
586. Bail in such case, by whom taken.
587. Form of the undertaking:
588. Qualifications of bail, and how put in.

In what cases

Sec. 581. The court to which the committing magistrate returns the deposition and statement, or in which an indictment or information, or an appeal is pending, or to which a judgment on an appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant, and his commitment to the officer to whose custody he was committed at the time he was admitted to bail, and his detention, until legally discharged, in the following cases:

1, When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section 575;

2, When it satisfactorily appears to the court that his bondsmen, or either of them, are dead, or insufficient, or have removed from the Territory;

3, Upon an indictment being found in the cases provided in section 264,

Contents of the order

Sec. 582. The order for the re-commitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant be arrested by any sheriff, con-

stable or marshal in this Territory, and committed to the officer to whose custody he was committed at the time he was admitted to bail, to be detained until legally discharged.

Defendant may be arrested whe

Sec. 583. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except, that when arrested in another county, the order need not be endorsed by a magistrate of that county.

If for failure to appear &c.

Sec. 584. If the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

If for other cause

Sec. 585. If the order be made for any other cause, and the offense be bailable, the court may fix the amount of bail, and may direct in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

Bail in such case, by whom taken

Sec. 586. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority, in a similar case, to admit to bail upon the holding of the defendant to answer before indictment, as prescribed in sections 539 and 540, or by any other magistrate to be designated by the court.

Form of undertaking

Sec. 587. When bail is taken upon the re-commitment of the defendant, the undertaking of bail must be in substantially the following form:

"An order having been made on ——— day of ———, 18—, by the court of (naming the court,) that A. B., be admitted to bail in the sum of ——— dollars, in an action pending in that court against him in behalf of the people of the Territory of Dakota, upon an [information, presentment, indictment, or appeal, as the case may be,]

"We, C. D., of [stating his place of residence and occupation,] and E. F., of [stating his place of residence and occupation,] hereby undertake that the above named A. B., shall appear in the district court of ——— county, upon that [information, presentment, indictment, or appeal, as the case may be,] and shall at all times render himself amenable to its orders and process, and appear for judgment, and surrender himself

in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the Territory of Dakota, the sum of ——— dollars," [inserting the sum in which the defendant is admitted to bail.]

Qualifications

Sec. 588. The bail must possess the qualifications, and must be put in in all respects, in the manner prescribed by sections 551 to 559, both inclusive.

CHAPTER II.

COMPELLING THE ATTENDANCE OF WITNESSES.

Section 589. Subpœna defined.
590. Magistrates may issue subpœnas on information or presentment.
591. District attorney may issue subpœnas for witnesses before grand jury.
592. He may also issue subpœnas for the people, on trial of an indictment.
593. Clerk may issue blank subpœnas for witnesses for defendant on trial.
594. Form of subpœna.
595. Requirements in subpœna to produce books, papers and documents.
596. Subpœna, by whom served.
597. How served.
598, 599. Payment of expenses of witness when he is from without the county, or is poor.
600. Witnesses residing or served with subpœna out of the county, when and how compelled to attend.
601. Disobedience to subpœna, or refusal to be sworn or to testify, how punished.
602. Witness for defendant, disobeying a subpœna, to forfeit fifty dollars.

Subpœna defined

Sec. 589. The process by which the attendance of a witness, before a court or magistrate is required, is a subpœna.

Magistrates may issue

Sec. 590. A magistrate before whom an information is laid, or to whom a presentment of a grand jury is sent, may issue subpœnas, subscribed by him, for witnesses within the Territory, either on behalf of the people or the defendant.

District attorney may issue

Sec. 591. The district attorney of the county may issue subpœnas, subscribed by him, for witnesses within the Territory, in support of the prosecution, or for such other witnesses as the grand jury may direct, to appear before the grand jury upon an investigation before them.

Who may issue for people

Sec. 592. The district attorney may in like manner issue subpœnas for witnesses within the Territory, in support of an indictment, to appear before the court at which it is to be tried.

Clerk may issue blank subpœna

Sec. 593. The clerk of the court at which an indictment is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, under the seal of the court and subscribed by him as clerk, for witnesses within the Territory, as may be required by the defendant.

Form of

Sec. 594. A subpœna authorized by the last four sections must be substantially in the following form:

"In the name of the people of the Territory of Dakota:
To A. B.

"You are commanded to appear before C. D., a justice of the peace at the town of ———, [or "the grand jury of the county of ———," or "the district court ——," or as the case may be,] on [stating the day and hour,] as a witness in a criminal action prosecuted by the people of the Territory of Dakota against E. F.

Dated at the town of ———, [as the case may be,] the — — day of ———, 18—.

"G. H., justice of the peace," or "I. K., district attorney," or "By order of the court, L. M., clerk," [as the case may be.]

Requirements

Sec. 595. If books, papers or documents be required, a direction to the following effect must be contained in the subpœnas: "And you are required also to bring with you the following," [describe intelligibly the books, papers or documents required.]

By whom served

Sec. 596. A peace officer must serve in his county, city, town or village, as the case may be, any subpœna delivered to him for service, either on the part of the people or of the defendant; and must make a written return of the service, subscribed by him, stating the time and place of service without delay. A subpœna may, however, be served by any other person.

How

Sec. 597. A subpœna is served by delivering it, or by showing it, and delivering a copy thereof to the witnesses personally.

Witness expenses

Sec. 598. When a person attends before a magistrate, grand jury, or court, as a witness on behalf of the people, upon a subpœna, or pursuant to an undertaking, and it appears that he has come from a place out of the county, or that he is poor, the court, if the attendance of a witness be upon a trial, by an order entered upon its minutes, or in any other case, the district judge, by a written order, may direct the county treasurer to pay the witness a reasonable sum, to be specified in the order for his expenses.

Same

Sec. 599. Upon the production of the order, or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury.

Witness residing out of county

Sec. 600. No person is obliged to attend as a witness, before a court or magistrate out of the county where the witness resides or is served with the subpœna, unless the judge of the court in which the offense is triable, upon an affidavit of the prosecutor or district attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness material, and his attendance at the examination or trial necessary, shall endorse on the subpœna an order for the attendance of the witness.

Disobedience to subpœna

Sec. 601. Disobedience to a subpœna, or a refusal to be sworn or to testify, may be punished by the court or magistrate, as for a criminal contempt, in the manner provided in the code of civil procedure.

Witness for defendant disobeying &c.

Sec. 602. A witness disobeying a subpœna issued on the part of the defendant, also forfeits to the defendants the sum of fifty dollars, which may be recoved in a civil action.

CHAPTER III.

EXAMINATION OF WITNESSES CONDITIONALLY.

Section 603. Witnesses to be examined conditionally for the defendant, as provided in this chapter.
604. In what cases defendant may apply for order.

Section 605. Application, on what facts to be founded.
606. If during term, to be made to the court.
607. If not during term, to whom to be made.
608. The order, when granted and what to contain.
609. If made by the court, may direct examination before a judge or magistrate. If made by a judge, examination to be before him.
610. On proof of service, if district attorney absent, examation to proceed.
611. If facts on which order was founded, be disproved, examination not to proceed.
612. Testimony, how taken and authenticated.
613. Deposition, how, by whom, and when filed.
614. When it may be read in evidence.
615. When to be excluded.
616. On reading the deposition, on trial, what objections may be taken.
617. Attendance of witness for examination, how compelled.
618. Disobedience of witness, how punished.

Witnesses to be examined conditionally

Sec. 603. When a defendant has been held to answer a charge for a public offense, he may, either before or after indictment or information, have witnesses examined conditionally on his behalf, as prescribed in this chapter and not otherwise.

May apply for order, in what cases

Sec. 604. When a material witness for the defendant is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Application.

Sec. 605. The application must be made upon affidavit, showing:

1, The nature of the offense charged;

2, The state of the proceedings in the action;

3, The name and residence of the witness, and that his testimony is material to the defense of the action; and

4, That the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial.

If during term

Sec. 606. The application if made during the term must be made to the court.

If not during term

Sec. 607. If not made during the term, it may be made as follows:

1, When the indictment is pending in the district court.

Order, when granted

Sec. 608. If the court or officer be satisfied that the examination of the witnesses is necessary to the attainment of justice, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order, and of the affidavit on which it was granted, be served on the district attorney, within a specified time before that fixed for the examination.

If made by court may direct what

Sec. 609. If the order be made by the court, it may direct that the examination be taken before a judge thereof, or before a magistrate in the county, to be named in the order.

Proof of service

Sec. 610. On proof being furnished to the officer before whom the examination is appointed, of the service upon the district attorney of a copy of the order, and of the affidavit on which it was granted, if no counsel appear on the part of the people, the examination must proceed.

If facts on which order was founded be disapproved, examination &c.

Sec. 611. If the district attorney or other counsel appear on the part of the people, and it be shown to the satisfaction of the court or officer, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the Territory, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

Testimony, how taken

Sec. 612. The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information, as prescribed in section 165.

Deposition, how, by whom, when filed

Sec. 613. The deposition must be retained by the officer taking it, and filed by him in the office of the clerk of the court without unnecessary delay.

May be read in evidence, when

Sec. 614. The deposition or certified copy thereof may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the Territory.

When to be excluded

Sec. 615. The deposition cannot, however, be read, if it appear that the copy of the order and of the affidavit on which it was founded, was not served on the district attorney as directed, or that the examination was in any respect unfair or not conducted as prescribed in this chapter.

Reading deposition, on trial, objections

Sec. 616. Upon the reading of the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court.

Attendance of witnesses, how compelled

Sec. 617. The attendance of the witness may be enforced by a subpœna subscribed by the officer, or issued under the seal of the court.

Disobedience of witness, how punished

Sec 618. Disobedience to the subpœna, or refusal to be sworn or to testify, may be punished by the court or officer as for a criminal contempt in the manner provided in the code of civil procedure; and the witness also forfeits to the defendant the sum of fifty dollars, which may be recovered in a civil action.

CHAPTER IV.

EXAMINATION OF WITNESSES ON COMMISSION.

Section 619. Witness residing out of the territory, to be examined for defendant, as provided in this chapter.
620. In what case defendant may apply for order to examine witnesses on commission.
621. Commission defined.
622. Application for commission, on what facts to be founded.
623. If during term, to be made to the court.
624. If not during term, to whom to be made.
625. Notice of application, when required and how given.
626. Order for commission, when granted.
627. Trial to be stayed until execution and return of commission.
628. Interrogatories and notice of settlement.
629. Cross interrogatories, and notice of settlement.
630, 631. What may be inserted in interrogatories.
632. Directions as to return of commission.

Section 633. Commission, how executed.
634. Copy of last section to be annexed to commission.
635, 636. Commission, how returned, when delivered to agent for that purpose.
637. When and how filed.
638. Commission returned by mail, how disposed of.
639. Commission and return to be open for inspection, and copies to be furnished.
640. Deposition to be read in evidence. What objection may be taken thereto.

Witnesses residing out of territory

Sec. 619. When an issue of fact is joined upon an indictment or information, the defendant may have any material witness residing out of the Territory, examined in his behalf, as prescribed in this chapter, and not otherwise.

In what cases defendant may apply for orders

Sec. 620. When a material witness for the defendant resides out of the Territory, the defendant may apply for an order that the witness be examined on a commission.

Commission defined

Sec. 621. A commission is a process issued under the seal of the court, and the signature of the clerk, directed to one or more persons, designated as commissioners, authorizing them to examine the witness upon oath, on interrogatories annexed thereto, and to take and return the depositions of the witness, according to the directions given, with the commission.

Application for

Sec. 622. The application must be made upon affidavit, showing:

1, The nature of the offense charged;

2, The state of proceedings in the action, and that issue of fact has been joined therein;

3, The name of the witness, and what the party expects to prove by him, which must be material to the defence of the action;

4, That the witness resides out of the Territory;

5, That the application is made in good faith and for the furtherance of justice.

If during term

Sec. 623. The application, if made during the term, must be made to the court.

If not during term

Sec. 624. If not made during the term, the application may be made to the judge of the district court of the proper district.

Notice of application, how given

Sec. 625. If the application be made to the court, it may be without notice to the district attorney, unless the court direct notice to be given, in which case it must prescribe the manner of giving the same.

Order for commission

Sec. 626. If the court or officer to whom the application be made, be satisfied that the witness resides out of the Territory, and that his examination is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and that the people be permitted to join in the commission and examine witnesses in support of the indictment.

Trial to be stayed

Sec. 627. If the application for a commission be granted, the court or judge must insert in the order therefor a direction that the trial of the cause be stayed for a specified time reasonably sufficient for the execution and return of the commission.

Interrogatories

Sec. 628. When the commission is ordered, the defendant must serve upon the district attorney, and the district attorney, if he intend to join in the commission and examine witnesses in support of the indictment, must serve upon the defendant or his counsel a copy of the interrogatories to be annexed thereto, with a notice of two days of their settlement, before an officer who might have granted the order out of term, as provided in section 624.

Cross interrogatories

Sec. 629. The district attorney, and the defendant, may, in the same manner serve cross-interrogatories, to be annexed to the commission with the like notice of the settlement thereof.

What may be inserted therein

Sec. 630. In the interrogatories, either party may insert any question pertinent to the issue.

Same

Sec. 631. Upon the settlement of the interrogatories the judge must expunge every question not pertinent to the issue, and modify the questions so as to conform them to rules of evidence, and when settled, must endorse upon them his allowance and annex them to the commission.

Directions to &c.

Sec. 632. Unless the parties otherwise consent, by an endorsement upon the commission, the officer must endorse thereon a direction, as to the manner in which it must be returned, and may in his discretion, direct that it be returned by mail or

otherwise, addressed to the clerk of the court in which the indictment is pending, designating his name and the place where his office is kept.

Commissions, how executed

Sec. 633. The commissioners or any one of them, unless otherwise specially directed, may execute the commission as follows:

1, They must publicly administer an oath to the witness, that his answers given to the interrogatories, shall be the truth, the whole truth, and nothing but the truth;

2, They must cause the examination of the witness to be reduced to writing;

3, They must write the answers of the witness as nearly as possible in the language in which he gives them and read to him each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth;

4, If the witness declines answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated;

5, If papers or documents are produced before them, and proved by the witness, they must be annexed to his deposition, and be subscribed by the witness, and certified by the commissioners;

6, The commissioners must subscribe their names to each sheet of the deposition, and annex the deposition, with the papers or documents provided by the witness, to the commission, and must close it up under seal, and address it as directed thereon;

7, If there be a direction on the commission, to return it by mail, the commissioners must immediately deposit it in the nearest post office. If any other direction be made, by the written consent of the parties, or by the officer on the commission, as to its return, they must comply with the direction.

Copy to be annexed

Sec. 634. A copy of the last section must be annexed to the commission.

Commission, how returned

Sec. 635. If the commission and return be delivered by the commissioners to an agent, he must deliver it to the clerk to whom it is directed, or to a judge of the court in which the indictment is pending, by whom it may be received and opened, upon the affidavit of the agent that he received it from the

hands of one of the commissioners and that it has not been opened or altered since he received it.

Same

Sec. 636. If the agent be dead, or from sickness or other casualty, unable to deliver the commission and return as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty, unable to deliver it, that it has not been opened or altered since the person making the affidavit received it, and that he believes it has not been opened or altered since it came from the hands of the commissioners.

When filed, how

Sec. 637. The clerk or judge receiving and opening the commission and return, must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

Commission returned by mail

Sec. 638. If the commission and return be transmitted by mail, the clerk to whom it is addressed, must receive it from the post office, and open and file it in his office, where it must remain, unless the court otherwise direct.

To be open for inspection, copies to be furnished

Sec. 639. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same, or of any part thereof, on payment of his fees at the rate of ten cents for every hundred words.

Deposition to be read in evidence. What objection may be made thereto

Sec. 640. The deposition, taken under the commission, may be read in evidence by either party on the trial, and the same objections may be taken to a question in the interrogatories, or to an answer in the depositions, as if the witness had been examined orally in court.

CHAPTER V.

INQUIRY INTO THE INSANITY OF THE DEFENDANT, BEFORE TRIAL, OR AFTER CONVICTION.

Section 641. An insane person cannot be tried, sentenced or punished, for public offense.

642. When doubt arises as to sanity of defendant, on calling indictment for trial, or defendant for judgment, jury to be ordered and impanneled, to try the question.

Section 643. Trial or judgment to be suspended until question of insanity determined.

644. Order of the trial of the question of insanity.

645. Charge of the court.

646. If defendant found sane, trial to proceed, or judgment to be pronounced.

647. If found insane, trial or judgment suspended, and defendant to be committed to territorial lunatic asylum if his discharge be dangerous to the public peace or safety.

648. If defendant committed, bail exonerated or deposit of money refunded.

649. Detention of defendant in asylum, and proceedings on his becoming sane.

650. Expenses incident to sending defendant to asylum, how paid.

An insane person cannot be tried &c.

Sec. 641. An act done by a person in a state of insanity cannot be punished as a public offense; nor can a person be tried, adjudged to punishment, or punished for a public offense, while he is insane.

When doubt arises

Sec. 642. When an indictment or information is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt arise as to the sanity of the defendant, the court must order a jury to be impanneled, from the jurors summoned and returned for the term, or who may be summoned by direction of the court as provided in sections 340 to 345, both inclusive, to inquire into the fact.

Trial of judgment to be suspended

Sec. 643. The trial of the indictment or information or the pronouncing the judgment, as the case may be, must be suspended until the question of insanity is determined by the verdict of the jury.

Order of the trial of the question

Sec. 644. The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity;

2. The counsel for the people may then open their case and offer evidence in support thereof;

3, The parties may then respectively offer rebutting testimony only, unless the court for good reason, in furtherance of justice, permit them to offer evidence upon their original case;

4, When the evidence is concluded, unless the case is submitted to the jury on either side or on both sides, without argument, the counsel for the people must commence, and the defendant or his counsel may conclude, the argument to the jury;

5, If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury; in which case they must do so alternately. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side;

6, The court must then charge the jury.

Charge of court

Sec. 645. The provisions of sections 406 and 408, in respect to the duty of the court upon questions of law, and of the jury upon questions of fact, and the provisions of section 409, in respect to the charge of the court to the jury, upon the trial of an indictment or information, apply to the question of insanity.

If found sane, trial to proceed

Sec. 646. If the jury find the defendant sane, the trial of the indictment or information must proceed, or judgment may be pronounced, as the case may be.

If found insane

Sec. 647. If the jury find the defendant is insane, the trial or judgment must be suspended until he become sane; and the court, if it deem his discharge dangerous to the public peace or safety, may order that he be, in the mean time, committed to the care of the sheriff until he becomes sane.

If committed, bail

Sec. 648. The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorised to receive the property of the defendant, to a return of money he may have deposited instead of bail.

Detention in asylum

Sec. 649. When he becomes sane, the sheriff must thereupon without delay, place him in the proper custody until he be brought to trial or judgment, as the case may be, or be legally discharged.

Expenses

Sec. 650. The expenses of keeping the defendant are in the first instance chargeable to the county; but the county may recover them from the estate of the defendant, if he have any, or from a relative.

CHAPTER VI.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT.

Section 651. Certain offenses, for which the party injured has a civil action, may be compromised.
652. Compromise to be by the permission of the court. Order thereon.
653. Order a bar to another prosecution.
654. No public offense to be compromised except as provided in this chapter.

Certain offenses

Sec. 651. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense, has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed :

1, By or upon an officer of justice while in the execution of the duties of his office ;

2, Riotously ; or

3, With an intent to commit a felony.

Compromise to be by permission

Sec. 652. If the party injured appear before the court to which the depositions and statement are required by section 180 to be returned, at any time before trial on an indictment for the offense, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. But in that case the reasons for the order must be set forth therein and entered upon the minutes.

Order to bar

Sec. 653. The order authorized by the last section is a bar to another prosecution for same offense.

No public offense to be compromised except

Sec. 654. No public offense can be compromised, nor can any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in sections 651 and 652.

CHAPTER VII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT OR INFORMATION FOR WANT OF A PROSECUTION OR OTHERWISE.

Section 655. Dismissal when a person held to answer is not indicted at the next term thereafter.
656. When a person indicted is not brought to trial at the next term thereafter.
657. Court may order action to be continued, and in the meantime discharge the defendant from custody, on his own undertaking or on bail.
658. If action dismissed, defendant to be discharged from custody, or his bail exonerated, or deposit of money refunded.
659. Court may, of its own motion, or on application of district attorney, order indictment to be dismissed. Order to state reasons.
660. *Nolle prosequi* abolished. No indictment to be dismissed or abandoned, except according to this chapter.
661. Dismissal a bar in misdemeanor; but not in felony.

Dismissal

Sec. 655. When a person has been held to answer for a public offense, if an indictment or information be not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

When court must order prosecution to be dismissed

Sec. 656. If a defendant, prosecuted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment or information is triable after it is found, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

Court may order action to be continued in the meantime

Sec. 657. If the defendant be not prosecuted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking or on the undertaking of bail for his appearance to answer the charge at the time to which the action is contained.

If action dismissed, bail exonerated money refunded

Sec. 658. If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

Court may on its own motion, order Nolle prosequi abolished

Sec. 659. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order an action after indictment or information to be dismissed; but in that case the reasons of the dismissal must be set forth in the order which must be entered upon the minutes.

Dismissal a bar, in what case

Sec. 660. The entry of a *nolle prosequi* is abolished, and the district attorney can not discontinue or abandon a prosecution for a public offense, except as provided in the last section.

Against a corporation

Sec. 661. An order for the dismissal of the action as provided in this chapter, is a bar to another prosecution for the same offense, if it be a misdemeanor; but it is not a bar if the offense charged be a felony.

CHAPTER VIII.

PROCEEDINGS AGAINST CORPORATIONS.

Section 662. Summons upon an information or presentment against a corporation, by whom issued, and when returnable.
663. Form of the summons.
664. When and how served.
665. Examination of the charge.
666. Certificate of the magistrate and return thereof with the depositions.
667. If the magistrate certify that there is sufficient cause to believe the corporation guilty, grand jury may proceed as in the case of a natural person.
668. Appearance and plea to indictment, and proceedings thereon.
669. Fine on conviction, how collected.

Sec. 662. Upon an information or presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place, to answer the

charge. The time to be not less than ten days after the issuing of the summons.

Sec. 663. The summons must be in substantially the following form: Form of summons

County of ———

In the name of the people of the Territory of Dakota:
To the [naming the corporation]:

You are hereby summoned to appear before me, at [naming the place,] on [specifying the day and hour,] to answer to the charge made against you, upon the information of A. B., [or, the presentment of the grand jury of the county of Yankton,] [or as the case may be,] for [designating the offense generally.]

Dated at the city, [or town,] of ————, the ———— day of ————, 18—.

G. H.,
Justice of the Peace,
[or as the case may be.]

Sec. 664. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof. When and how served

Sec. 665. At the time appointed in the summons the magistrate must investigate the charge in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable. Examination of charge

Sec. 666. After hearing the proofs the magistrate must certify upon the depositions, either that there is, or is not, sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate in the same manner prescribed in section 181. Certificate of magistrate

Sec. 667. If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer. If magistrate certify grand jury may proceed

Sec. 668. If an indictment be found, the corporation may appear by counsel to answer the same. If they do not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases. Appearance and plea

Time on conviction, how collected

Sec. 669. When a fine is imposed upon a corporation, on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of their real and personal property, in the same manner as upon an execution.

CHAPTER IX.

ENTITLING AFFIDAVITS.

Section 670. Affidavits defectively entitled, valid.

Affidavits, defectively entitled valid

Sec. 670. It is not necessary to entitle an affidavit or deposition, in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceedings, indictment or appeal in which it is made.

CHAPTER X.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

Section 671. No departure from the forms prescribed by this code, or error or mistake in a pleading or proceedings, material, unless it prejudice or tend to prejudice a substantial right.

Neither departure from form prescribed nor error renders it invalid

Sec. 671. Neither a departure from the form or mode prescribed by this code in respect to any pleadings or proceedings, nor an error or mistake therein, renders it invalid, unless it have actually prejudiced the defendant, or tend to his prejudice, in respect to a substantial right.

CHAPTER XI.

DISPOSALS OF PROPERTY STOLEN OR EMBEZZLED.

Section 672. When property alleged to be stolen or embezzled comes into custody of peace officer, he must hold it subject to order of magistrate.

673. Order for its delivery to owner.

Section 674. When it comes into custody of magistrate he must deliver it to its owner on proof of title and payment of expenses.

675. Court in which trial is had for stealing or embezzling it, may order it to be delivered to owner.

676. If not claimed in six months, to be delivered to county superintendent of the poor.

677. Receipt for money or property taken from a person arrested for public offense.

Property alledged to be stolen, in custody

Sec. 672. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Order for its delivery

Sec. 673. On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

When in custody of magistrate, he must deliver, proof

Sec. 674. If property stolen or embezzled came into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Court may deliver, by order

Sec. 675. If property stolen or embezzled have not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

If not claimed in six months

Sec. 676. If property stolen or embezzled, be not claimed by the owner before the expiration of six months from the conviction of a person of stealing or embezzling it, the magistrate or other officer having it in his custody, must, on payment of the necessary expenses incurred in its preservation, deliver it to the county commissioners to be paid into the county treasury.

Receipt for property taken from person arrested

Sec. 677. When money or other property is taken from a defendant, arrested upon a charge of public offense, the officer taking it, must at the time, give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken. One of which receipts he must deliver to the defendant, and the other of which he must file with the clerk of the court to which the depositions and statement must be sent, as provided in section 181.

CHAPTER XII.

REPRIEVES, COMMUTATIONS AND PARDONS.

Section 678. Power of governor to grant reprieves, commutations and pardons.
679. His power in respect to conviction for treason. Duty of the legislature in such cases.
680. Governor to communicate annually to legislature, reprieves, commutations and pardons.
681. Report of case, how, and from whom required.
682. Notice to district attorney of application for pardon.
683. Publication of notice.
684. Papers relating to application to be filed with secretary of territory.

Power of Governor to grant reprieves &c.

Sec. 678. The governor has power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to the regulations provided in this chapter.

In respect to conviction for treason, duty of legislature

Sec 679. He may also suspend the execution of the sentence upon a conviction for treason, until the case can be reported to the legislature, at the next meeting, when the legislature must either pardon or commute the sentence, direct the execution thereof, or grant a further reprieve.

Same

Sec. 680. He must annually communicate to the legislature, each case of reprieve, commutation or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Report of cases how and from whom required

Sec. 681. When an application is made to the governor for a pardon, he may require the presiding judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish him, without delay, with the statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting the pardon.

Notice to district attorney of application for pardon

Sec. 682. At least ten days before the governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the person applying, must be served upon the district attorney of the county where the conviction was had, and proof by affidavit of the service, must be presented by the governor; *Provided*, Such application is not signed by such district attorney.

Publication of notice

Sec. 683. Unless dispensed with by the governor, a copy of the notice must also be published for thirty days from the first publication, in the territorial paper, and a paper in the county in which the conviction was had, nearest the place of conviction.

Papers relating to.

Sec. 684. When the governor grants a reprieve, commutation or pardon, he must within ten days thereafter, file all the papers presented to him in relation thereto, in the office of the secretary of the Territory, by whom they must be kept as records, open to public inspection.

PART V.

OF PROCEEDINGS IN THE POLICE COURTS.

Title I. Of the proceedings in justices courts.
II. Of appeals from the justices courts.

TITLE I.

OF THE PROCEEDINGS IN JUSTICES COURTS.

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Section 686. The plea, and how put in.
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Charge to be read

Sec. 685. In the cases in which the justice courts have jurisdiction, as provided in section 31, when the defendant is brought before the magistrate, the charge against him must be distinctly read to him, and he must be required to plead thereto.

Plea, how put in

Sec. 686. The defendant may plead the same pleas as upon an indictment, as provided in section 305. His plea must be oral, and entered upon the minutes of the magistrate.

Issue, how tried

Sec. 687. Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the magistrate must proceed to try the issue.

May demand trial by jury

Sec. 688. Before the magistrate hears any testimony upon the trial the defendant may demand a trial by jury.

Jury, how drawn

Sec. 689. If a trial by jury be demanded, the magistrate must, in the presence of the defendant, draw from the justice's jury box twelve ballots containing the names of persons to form the jury.

Magistrate to deliver list, with direction to summons

Sec. 690. The magistrate must thereupon deliver a list of the jurors drawn, to a peace officer of the town or city, with an endorsement thereon signed by him, with his name of office, to the following effect:

"The peace officer of the town [or "city"] of ————, to whom this is delivered, is required to summon the persons named in the within list to appear before me, at [naming the place,] on [naming the day and hour,] to serve as jurors at a a justice court for the trial of a criminal charge against A. B.

"Dated at the town [or "city"] of ————, on the ———— day of ————, 18—.

C. D.,
Justice of the Peace,
Of the town [or "city"] of ————, [as the case may be."]

Summoning jury.

Sec. 691. The officer to whom the list is delivered must forthwith summon each of the jurors named therein, personally, or by leaving a written notice at his place of residence, with some person of suitable age and discretion. He must also, at or before the time named therein, return the list to the magistrate, specifying the persons summoned, and the manner of service in respect to each of them.

Depositing ballots

Sec. 692. The names of the persons returned as jurors must be written on separate ballots folded as nearly alike as possible, and so that the name can not be seen, and must, under the direction of the magistrate, be deposited in a box or other convenient thing.

Drawing jury.

Sec. 693. The magistrate must then draw out six of the ballots successively, and if any of the persons whose names are drawn do not appear, or are challenged and set aside, such further number must be drawn as will make a jury of six after all legal challenges have been allowed.

Challenges.

Sec. 694. The same challenges may be taken by either party to the panel of jurors, or to an individual juror, as on the trial of an indictment for a misdemeanor, so far as applicable, except that the challenge must, in all cases, be tried by the magistrate.

Talesman, when and how ordered and summoned

Sec. 695. If six of the jurors summoned do not attend, or be not obtained, the magistrate may direct the officer to summon any of the bystanders, or others who may be competent, and against whom there is no sufficient cause of challenge to act as jurors.

Punishing officer for not returning his.

Sec. 696. If the officer to whom the order is delivered do not return it, as required by section 691, he may be punished by the magistrate as for a contempt, and the magistrate must issue a new order for the summoning of the same jurors in substantially the same form, upon which the same proceedings must be had, as upon the one first issued.

Jury, how constituted

Sec. 697. When six jurors appear and are accepted, they constitute the jury.

Oath

Sec. 698. The magistrate must thereupon administer to the jury the following oath or affirmation: "You do swear," [or "you do solemnly affirm," as the case may be,] that you will well and truly try this issue between people of the Territory of Dakota, and A. B., the defendant, and a true verdict give according to the evidence."

Trial, how conducted

Sec. 699. After the jury are sworn they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant.

Jury may decide —when

Sec. 700. After hearing the proofs and allegations, the jury may either decide in court or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; that you will not permit any person to speak to or communicate with them, nor do so yourself unless it be to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed, or when ordered by the court.

Delivering verdict

Sec. 701. When the jury have agreed on their verdict they must deliver it publicly to the magistrate, who must enter it in his minutes.

Discharge without verdict

Sec. 702. The jury can not be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict, unless for good cause the magistrate sooner discharge them.

In such case

Sec. 703. If the jury be discharged, as provided in the last section, the magistrate may proceed again to the trial in the same manner as upon the first trial, and so on, until a verdict is rendered.

Judgment on conviction

Sec. 704. When the defendant pleads guilty, or is convicted either by the magistrate or by a jury, the magistrate must render judgment thereon of fine or imprisonment, or both, as the case may require; but the fine cannot exceed fifty dollars, nor the imprisonment six months.

Imprisonment until fine paid

Sec. 705. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which can not exceed one day for every two dollars of the fine.

On acquittal, costs

Sec. 706. When the defendant is acquitted, either by the magistrate or by a jury, he must be immediately discharged; and if the magistrate certify upon his minutes, or the jury find that the prosecution was malicious or without probable cause, the magistrate must order the prosecutor to pay the costs of the proceedings, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

Against prosecutor for costs

Sec. 707. If the prosecutor do not pay the costs or give security therefor, the magistrate may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered by a justice's court, held by a justice of the peace.

Certificate of conviction, form

Sec. 708. When a conviction is had upon a plea of guilty or upon a trial, the magistrate must make and sign, with his name of office, a certificate in substantially the following form:

"Justice's court,
"County of Union, Town of Big Sioux,
[or as the case may be.]

"The people of the Territory of Dakota,
against
A. B.

January 1, 18—.

"The above named A. B., having been brought before me, C. D., a justice of the peace of the town [or city,] of [as the case may be,] charged with [briefly designating the offense,] and having requested to be tried by a justice court, [or "having been required by me to give bail for his appearance at the next district court of this county, and having omitted to do so for twenty-four hours after being so required," as the case may be.]

"And the above named A. B., having thereupon pleaded not guilty, [or as the case may be,] and demanded [or "failed to demand," as the case may be,] a jury, and having been thereupon duly tried, and upon such trial duly convicted,

"I have adjudged—That he be imprisoned in the jail of this county, ——— days, [or "pay a fine of ——— dollars, and be imprisoned until it be paid not exceeding ——— days," or both, as the case may be.]

"Dated at the town [or "city"] of ———, ——— day of ———, 18—.

"C. D.,
Justice of the Peace of the town [or "city,]
of ———" [as the case may be.]

Same

Sec. 709. If the defendant have pleaded guilty, instead of the second paragraph, the certificate must state substantially as follows: "And the above named A. B., having been thereupon duly convicted upon a plea of guilty."

Certificate, when filed

Sec. 710. Within twenty days after the conviction, the magistrate must cause the certificate to be filed in the office of the clerk of the district court of the county.

Certificate, conclusive evidence

Sec. 711. The certificate, made and filed as prescribed in the last two sections, or a certified copy thereof, is conclusive evidence of the facts therein.

Judgment, by whom executed

Sec. 712. The judgment must be executed by the sheriff of the county, or by a constable, marshal or policeman of the city, village or town in which the conviction is had, upon receiving a copy of the certificate prescribed in section 708, certified by the magistrate or the county clerk.

Fine, by whom received, how applied

Sec. 713. If a fine imposed be paid before commitment, it must be received by the magistrate, and be applied to the payment of the expenses of the prosecution. The residue, if any, must be paid by the magistrate within thirty days after its receipt into the county treasury.

After commitment

Sec. 714. If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person, who must, in like manner, within thirty days after the receipt thereof, pay it into the county treasury, as provided in the last section.

Proceedings against officer on neglect to pay fines into treasury

Sec. 715. If the magistrate or sheriff receiving the fine, fail to pay it, or such part of it as is so payable, into the county treasury, the county treasurer must immediately commence an action against him therefor, in the name of the county.

Subpœna for witnesses, disobedience

Sec. 716. The magistrate may issue subpœnas for witnesses, as provided in section 590, and punish disobedience thereof, as provided in section 601.

Punishing jurors for non attendance

Sec. 717. If a person summoned as a juror fail to appear, he may be punished by a fine not exceeding five dollars imposed by the magistrate, by an order entered in his minutes, but such fine shall not be imposed until the defaulting juror shall have had an opportunity of showing cause why the same should not be imposed. The order is deemed a judgment in his minutes. The order is deemed a judgment, in all respects, in favor of the county, to be paid into the treasury.

No fees to jurors

Sec. 718. Fees of witnesses and jurors shall be recovered in all cases of conviction as in civil cases.

Trial by a justice court

Sec. 719. When the defendant, upon being brought before the magistrate, requests a trial by a justice's court, the preliminary examination of the case is dispensed with; *Provided*, The charge against him is within the jurisdiction of the justice.

During time allowed for bail, what

Sec. 720. During the twenty-four hours allowed to the defendant to give bail, as provided in the second subdivision of section 31, and until judgment is given, he may be continued in the custody of the officer, or committed to the jail of the county to answer the charge, as the magistrate may direct.

Form of commitment

Sec. 721. The commitment must be signed by the magistrate, by his name of office, and must be in substantially the following form;

"The sheriff of the county of ———, is required to receive and detain A. B., who stands charged before me for [designating the offense generally,] to answer the charge before a police court in the town [or city] of ———, [as the case may be,]

"Dated at the town [or city] of ———,
the ——— day of ———, 18—.

"C. D.,
Justice of the peace of the town [or city] of——,"
[as the case may be,]

By whom executed

Sec. 722. When committed, the defendant must be delivered to the custody of the proper officer, by any peace officer in the county to whom the magistrate may deliver the commitment.

Sec. 723. Either before or after his committal, or upon being committed, the defendant must, if he require it, be admitted to bail. May be admitted to bail

Sec. 724. The bail must be taken by a magistrate, by a written undertaking, executed by the defendant, with one or more sufficient sureties approved by the magistrate, in a sum not exceeding two hundred dollars. Bail, how taken, by whom

Sec. 725. The undertaking must be in substantially the following form: Form of undertaking

"A. B., having been duly charged before C. D., a justice of the peace in the town [or city] of ———, [as the case may be,] with the offense of [designating the offense generally,]

"We undertake that he shall appear thereon, from time to time, until judgment, at a police court in the town [or city] of ———, [as the case may be,] held by the justice above named, or that he will pay to the county of ———, [naming the county in which the court is held,] the sum of ——— dollars, [inserting the sum fixed by the magistrate,]

"Dated at the town [or city] of———,"

[as the case may be.]

Sec. 726. If the defendant fail to appear according to the undertaking, the magistrate, unless a sufficient excuse be shown, must declare the undertaking of bail forfeited, and the county treasurer must immediately commence an action for the recovery of the sum mentioned therein, in the name of the county. When forfeited, action thereon

Sec. 727. The district court of the county may remit the forfeiture or any part thereof, in the cases and in the manner provided in the code of civil procedure. How and by whom remitted

TITLE III.

OF APPEALS FROM THE JUSTICES COURTS.

Section 728. Judgment of justice court reviewable only upon appeal to the district court.
729. Appeal, for what causes allowed.
730. Appeal, how taken.
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736. Proceedings to carry judgment upon appeal into effect, to be had in district court.
737. On judgment of district court, defendant may appeal to supreme court. His admission to bail.
738. Judgment of supreme court upon appeal, final.
739. Proceedings to carry into effect judgment of the supreme court.

Judgment of justice court reviewable, only

Sec. 728. A judgment upon conviction, rendered by a justice court, may be reviewed by the district court of the county, upon an appeal, as prescribed by this title, and not otherwise.

Appeal, for what causes allowed

Sec. 729. An appeal cannot be allowed for any other cause than the erroneous decision of the court in the course of the proceedings before it, or in the determination of the cause; and in no case be allowed upon the ground that the verdict was against evidence, when the action was tried by a jury.

Appeal, how taken

Sec. 730. For the purpose of appealing, the defendant or some one on his behalf, must within ten days after the judgment, make an affidavit, stating generally that the judgment against him is erroneous, and that he is aggrieved thereby. And shall file an undertaking in such sum as the magistrate shall direct, with sureties to be approved by such magistrate, conditioned that he will prosecute his said appeal to final judgment, and that he will personally appear at the next term of the district court of the proper county, and not depart thence without leave, and in all respects abide the judgment thereof.

Return, how made, when

Sec. 731. The magistrate or court rendering the judgment, must make a return of all the original papers in the cause, and cause the same to be filed in the office of the clerk of the district court ten days before the next term thereof.

Compelling return

Sec. 732. If the return be not made within the time prescribed in the last section, the district court or the presiding judge thereof, may order that a return be made within a specified time which may be deemed reasonable, and the court may, by attachment, compel a compliance with the order.

Sec. 733. If the return be defective, a further or amended return may be ordered, and the order may be enforced in the manner provided in the last section. If return be defective

Sec. 734. Appeals shall be docketed and tried in the district court in the same manner as other criminal cases. Shall be docketed

Sec. 735. The defendant must serve upon the district attorney a notice of such appeal at least five days before the first day of the term at which the same stands for trial. Must serve notice, on whom

Sec. 736. If any proceedings be necessary to carry the judgment upon the appeal into effect, they must be had in the district court. Proceedings to carry judgment

Sec. 737. If the judgment upon the appeal be against the defendant, he may appeal therefrom to the supreme court in the same manner as from a judgment in action prosecuted by indictment, and may be admitted to bail upon the appeal, in like manner. On judgment of district court

Sec. 738. The judgment of the supreme court upon the appeal is final. Judgment final

Sec. 739. The same proceedings must be had to carry into effect the judgment of the supreme court upon the appeal, as if it had been taken upon a judgment in an action prosecuted by indictment. Same proceedings

PART VI.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

Title I. Of coroners' inquests, and the duties of coroners.
II. Of search warrants.
III. Of the outlawry of persons convicted of treason.
IV. Of proceedings against fugitives from justice.
V. Of proceedings respecting persons held to labor or service in a State or Territory of the United States, and escaping into this Territory.
VI. Of proceedings respecting bastards.
VII. Of proceedings respecting vagrants.
VIII. Of proceedings respecting disorderly persons.
IX. Of proceedings respecting the support of poor persons.

Title X. Of proceedings respecting masters, apprentices and servants.
XI. Of criminal statistics.
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TITLE I.

OF CORONERS' INQUESTS, AND THE DUTIES OF CORONERS.

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In what cases coroner to summon jury, number of

Sec. 740. When a coroner is informed that a person has been killed, or has suddenly died, under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, or has committed suicide, he must go to the place where the person is, and forthwith summon six persons qualified by law to serve as jurors, to appear before him forthwith, at a specified place, to inquire into the cause of the death or wound.

To be sworn

Sec. 741. When six or more of the jurors appear, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon according to the evidence offered to them, or arising from the inspection of the body.

Witnesses

Sec. 742. The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint. He must summon and examine as witnesses every person who, in his opinion, or that of any of the jury, has any knowledge of the facts; and he must summon as a witness a surgeon or physician, who must, in the presence of the jury inspect the body, and give a professional opinion as to the cause of the death or wounding.

Compelling attendance

Sec. 743. A witness served with a subpœna may be compelled to attend and testify, or punished by the coroner for disobedience, as upon a subpœna issued by a magistrate, as provided in sections 590 and 591.

Verdict

Sec. 744. And after inspecting the body and hearing the testimony, the jury must render their verdict and certify it by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means, he came to his death, and if he were killed, or if his death were occasioned by the act of another, by criminal means, who is guilty thereof.

Testimony, how taken

Sec. 745. The testimony of the witnesses examined before the coroner's jury, must be reduced to writing by the coroner, or under his direction, and must be forthwith filed by him, with the inquisition, in the office of the clerk of the district court of the county, or of a city court having power to inquire into the offense by the intervention of a grand jury.

Statement taken

Sec. 746. If, however, the defendant be arrested before the inquisition can be filed, the coroner must deliver it with the testimony to the magistrate before whom the defendant is brought, as provided in section 748, who must return it with the depositions and statement taken before him, in the manner prescribed in section 181.

Warrant for arrest

Sec. 747. If the jury find that the person was killed or wounded by another, under circumstances not excusable or justifiable in law, or that his death was occasioned by the act of another by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the coroner must issue a warrant signed by him, with his name of office, into one or more counties as may be necessary for the arrest of the person charged.

Form of warrant

Sec. 748. The coroner's warrant must be in substantially the following form:

"County of Yankton, [or as the case may be.]

"In the name of the people of the Territory of Dakota: To any sheriff, constable, marshal, or policeman in this Territory:

"An inquisition having been this day found by a coroner's jury before me, stating that A. B. has come to his death by the unlawful act of C. D., [or as the case may be, as found by the inquisition:]

"You are therefore commanded forthwith to arrest the above named C. D., and take him before the nearest and most accessible magistrate in this county, to be dealt with according to law."

"Dated at the city of Yankton, [or as the case may be,] the ———— day of ————, 18—.

E. F.,
Coroner of the county of Yankton,"
[or as the case may be.]

How executed

Sec. 749. The coroner's warrant may be served in any county, and the officer serving it must proceed thereon in all respects, as upon a warrant of arrest on an information, except that when served in another county it need not be endorsed by a magistrate of that county.

Proceedings of magistrate

Sec. 750. The magistrate, when the defendant is brought before him, must proceed to examine the charge contained in the inquisition, and hold the defendant to answer, or discharge him therefrom, in the same manner in all respects as upon a preliminary examination.

Clerk to furnish magistrate with copy

Sec. 751. Upon the arrest of the defendant, the clerk with whom the inquisition is filed, must, without delay, furnish to the magistrate a certified copy of it, and of the testimony returned therewith.

Coroner to deliver money or property &c.

Sec. 752. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against him for its recovery, by a civil action in the name of the county.

Duty of county Treasurer

Sec. 753. Upon the delivery of money to the treasurer, he must place it to the credit of the county. If it be other property, he must, within thirty days, sell it at public auction, upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

Money, when and how paid

Sec. 754. If the money in the treasury be demanded within six years, by the legal representatives of the deceased, the treasurer must pay it to them after deducting the fees and expenses of the coroner and of the county in relation to the matter; or it may be paid at any time thereafter upon the order of the board of county commissioners or supervisors.

Supervisor to require statement

Sec. 755. Before auditing and allowing the account of the coroner, the board of county commissioners or supervisors must require from him a statement in writing of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

Compensation to coroners.

Sec. 756. The coroner is entitled, for his services, in holding inquests and performing any other duty incidental thereto, to such compensation as may be fixed by the board of county

commissioners, and can receive for those services no other compensation or fees whatever.

TITLE II.

OF SEARCH WARRANTS.

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768. Property, when delivered to magistrate, how disposed of.
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770. Magistrate to deliver copy of inventory to the person from whose possession property is taken, and to applicant for warrant.
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772. Testimony, how taken and authenticated.
773. Property, when to be restored to person from whom it was taken.
774. Depositions, search warrant, return and inventory, to be returned to court of district or city court, having jurisdiction of offense.
775. Maliciously, and without probable cause, procuring search warrant, a misdemeanor.

Section 776. Peace officer, exceeding his authority or exercising it with unnecessary severity, guilty of a misdemeanor.

777. If person charged with felony be supposed to have a dangerous weapon, or anything which may be used as evidence of commission of offense, magistrate may direct him to be searched, and the weapon or other thing retained, subject to his order or the order of the court.

Search warrant defined

Sec. 757. A search warrant is an order in writing in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

May be issued, on what grounds

Sec. 758. It may be issued upon either of the following grounds:

1, When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be;

2, When it was used as the means of committing a felony, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be;

3, When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered. In which case it may be taken on the warrant, from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

It can not be issued, but

Sec. 759. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property, and the place to be searched.

Before issuing warrant, duty of magistrate

Sec. 760. The magistrate must, before issuing the warrant, take, on oath, the complaint of the prosecuting witness in writing, which must set forth the facts tending to establish the

grounds of the application, or probable cause for believing that they exist.

When to issue warrant

Sec. 761. If the magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law.

Form of warrant

Sec. 762. The warrant must be in substantially the following form:

"County of Yankton, [or as the case may be,]

"In the name of the people of the Territory of Dakota: To any sheriff, constable, marshal or policeman in the county of Yankton, [or as the case may be,]

"Proof, by affidavit having been this day made before me, by [naming every person whose affidavit has been taken,] the [stating the particular grounds of the application according to section 758; or if the affidavit be not positive,] "that there is probable cause for believing that," [stating the grounds of the application in the same manner,]

"You are therefore commanded, in the day time, [or "at any time of the day or night," as the case may be, according to section 766,] to make immediate search on the person of C. D., [or "in the house situated"—describing it, or any other place to be searched, with reasonable particularity, as the case may be,] for the following property, [describing it with reasonable particularity,] and if you find the same or any part thereof, to bring it forthwith before me, at [stating the place.]

"Dated at the city of Yankton, [or as the case may be]
the ——— day of ———, 18—,

E. F.,
Justice of the peace of the city,
[or town] of [or as the case may be.]

By whom served

Sec. 763. A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other

person except in aid of the officer, on his requiring it, he being present and acting in its execution.

Officer may break open door &c

Sec. 764. The officer may break open an outer or inner door or window of a house, or any part of the house, or any thing therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Same

Sec. 765. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

May be served in night time, when

Sec. 766. The magistrate must insert a direction in the warrant, that it be served in the day time, unless the affidavits be positive that the property is on the person, or in the place to be searched. In which case he may insert a direction that it be served at any time of the day or night.

Executed and returned

Sec. 767. A search warrant must be executed and returned to the magistrate by whom it was issued, within ten days. After the expiration of these times respectively, the warrant, unless executed, is void.

Property, when delivered, how disposed of

Sec. 768. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections 675 to 677, both inclusive. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of section 769, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken, is triable.

Return of warrant

Sec. 769. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly, or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the magistrate, to the following effect:

"I, A. B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Copy of inventory

Sec. 770. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

Grounds for warrant controverted, what

Sec. 771. If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

Testimony, how taken

Sec. 772. The testimony given by each witness must be reduced to writing and authenticated in the manner prescribed in section 166.

Property, when to be restored

Sec. 773. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

Depositions &c. to be returned

Sec. 774. The magistrate must annex together the depositions, the search warrant and return, and the inventory, and then return them to the next district court of the county having power to inquire into the offense in respect to which the search warrant was issued, by the intervention of a grand jury, at or before its opening on the first day.

Maliciously, and without cause, procuring warrant, what

Sec. 775. A person who maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

Peace officer exceeding, authority

Sec. 776. A peace officer in executing a search warrant, who willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

Searching defendant in presence of magistrate in certain cases

Sec. 777. When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

TITLE III.

OF PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Chapter I. Fugitives from another State or Territory, into this Territory.
II. Fugitives from this Territory, into another State or Territory.

CHAPTER I.

FUGITIVES FROM ANOTHER STATE OR TERRITORY, INTO THIS TERRITORY.

Section 778. To be delivered up by the governor on demand of the executive authority of the State or Territory from which they have fled.
779. Magistrate to issue warrant.
780. Proceedings for arrest and commitment of the person charged.
781. When, and for what time to be committed.
782. His admission to bail.
783. Magistrate to give notice to the district attorney, of the name of the person and the cause of his arrest.
784. District attorney to give notice to executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the city or county therein, having jurisdiction of the offense.
785. Person arrested to be discharged unless surrendered within the time limited.
786. Magistrate to return his proceedings to the next district court. Proceedings thereon.

Delivery on requisition

Sec. 778. A person charged in any State or Territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found in this Territory, must on demand of the executive authority of the State or Territory from which he fled, be delivered up by the governor of this Territory, to be removed to the State or Territory having jurisdiction of the crime.

Magistrate to issue warrant

Sec. 779. A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found within this Territory.

Proceedings

Sec. 780. The proceedings for the arrest and commitment of a person charged, are in all respects similar to those provided in this code for the arrest and commitment of a person charged with a public offense committed in this Territory. Except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the State or Territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

When and for what time to be committed

Sec. 781. If from the examination, it appear that the person charged has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody for a time, specified in the warrant, which the magistrate deems reasonable to enable the arrest of the fugitive under the warrant of the executive of this Territory, on the requisition of the executive authority of the State or Territory in which he committed the offense, unless he give bail, as provided in the next section, or until he be legally discharged.

His admission to bail

Sec. 782. The magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the governor of this Territory.

Magistrate to give notice

Sec. 783. Immediately upon the arrest of the person charged, the magistrate must give notice to the district attorney.

Duty of district attorney in such case

Sec. 784. The district attorney must immediately thereafter, give notice to the executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the criminal court of the city or county therein, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

Person arrested to be discharged unless

Sec. 785. The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of this Territory.

Sec. 786. The magistrate must return his proceedings to the next district court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged; and if he be in custody, or the time for his arrest have not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or continue his detention for a longer time, or re-admit him to bail, to appear and surrender himself within a time specified in the undertaking. Magistrate to return his proceedings, when

CHAPTER II.

FUGITIVES FROM THIS TERRITORY INTO ANOTHER STATE OR TERRITORY.

Section 787. Accounts of persons employed in procuring the surrender of fugitives from this Territory to be paid out of the territorial treasury.

788. No public officer of this Territory to receive compensation for procuring demand or surrender of fugitive, or conveying him to, or detaining him in this Territory.

789. Violation of the last section, a misdemeanor.

Sec. 787. When the governor shall demand from the executive authority of a State or Territory of the United States, or of a foreign government, the surrender to the authorities of this Territory, of a fugitive from justice, the accounts of the persons employed by him for that purpose must be paid out of the territorial treasury. Accounts of persons

Sec. 788. No compensation, fee, or reward of any kind, can be paid to, or received by a public officer of this Territory, for a service rendered or expense incurred in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this Territory, or detaining him herein, except as provided in section 787. No compensation allowed, when

Sec. 789. A violation of the last section is a misdemeanor. Violation of, what

CHAPTER III.

GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THIS CODE.

Section 790. Rules of construction of this code.
791. No part of this code retroactive, unless expressly so declared.
792. Present tense includes future. Masculine includes feminine and neuter. Singular includes the plural and the plural the singular. Persons includes corporations.
793. Definition of writing.
794. Definition of oath.
795. Definition of signature.
796. Definition of magistrate.
797. Definition of peace officers.
798. To what actions and proceedings this code applies.
799. Former modes of procedure in criminal cases abrogated.
800. Fines paid for use of common school fund.
801. This code to take effect after its passage.

Rules of construction

Sec. 790. The rule of common law that penal statutes are to be strictly construed, has no application to this code. This code establishes the law of this Territory respecting the subjects to which it relates; and its provisions, and all proceedings under it are to be liberally construed, with a view to promote its objects, and in furtherance of justice.

Not retroactive, unless

Sec. 791. No part of this code is retroactive unless expressly so declared.

Words of Code, how construed

Sec. 792. Unless when otherwise provided, words used in this code in the present tense includes the future as well as the present. Words used in the masculine gender comprehend as well the feminine and neuter. The singular number includes the plural and the plural the singular. And the word person includes a corporation, as well as a natural person.

Definition of writing

Sec. 793. The term writing includes printing.

Of oath

Sec. 794. The term oath includes an affirmation.

Sec. 795. The term signature includes a mark when the person cannot write; his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient. Of signature

Sec. 796. Unless when otherwise provided, the term "magistrate" signifies any one of the officers mentioned in section ——. Of magistrate

Sec. 797. Unless when otherwise provided, the term "peace officer" signifies any one of the officers mentioned in section ——. Of peace officers

Sec. 798. This code applies to criminal actions and to all other proceedings in criminal cases which are herein provided for, from the time when it takes effect. And all such actions and proceedings heretofore commenced must be concluded in the same manner as if this code had not been passed. To what actions Code applies

Sec. 799. All modes of procedure in criminal cases heretofore enacted in this Territory, shall, upon the taking effect of this act, be entirely abrogated, and from thence abolished; *Provided, however*, That all proceedings of every kind or character whatsoever, therein commenced, and pending, shall not by reason of any thing in this act contained, be deemed to have abated. Former modes of procedure, abrogated, in criminal cases

Sec. 800. All fines collected by virtue of this act shall be paid into the county treasurer of the county, when collected, for the use of the common school fund of said county. Fines paid

Sec. 801. This act shall take effect on the first day of February next. Code to take effect, when

Approved, Jan. 12, 1869.