ACTS

OF THE

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF WASHINGTON;

CONTAINING, ALSO, THE

MEMORIALS AND RESOLUTIONS

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LAWS

OF THE

TERRITORY OF WASHINGTON.

AN ACT

TO REGULATE THE PRACTICE AND PROCEEDINGS IN CIVIL ACTIONS IN DISTRICT COURTS.

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CHAPTER I.

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SEC. 1 *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all common law forms of action, and all distinctions between law and equity, are hereby abolished; and hereafter there shall be in this territory but one form of action to establish and enforce private rights, which shall be called a civil action.

SEC. 2. The party commencing the action shall be known as the plaintiff, and the opposite party the defendant.

SEC. 3. Every action shall be presented in the name of the real party in interest, except as is otherwise provided by law; but in all cases where the action is brought by an assignee, the same defense may be set up as could be done, were the suit brought in the name of the original party for the use of the assignee, except in cases where the action is upon a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration before due.

SEC. 4. An executor or administrator, or guardian of a minor or lunatic; a trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the suit is prosecuted.

SEC. 5. When a married woman is a party, her husband must be joined with her, except when the action is between her husband and herself, when she may sue and be sued alone.

SEC. 6. When an infant is a party, he shall appear by guardian, and if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act.

SEC. 7. The guardian shall be appointed as follows:

1st—When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relative or friend of the infant.

2d—When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply on the first day of the return term; if he be under the age of fourteen, or neglect to apply,

then upon the application of any other party to the action, or of a relative or friend of the infant.

SEC. 8. All persons interested in the cause of action, or necessary to the complete determination of the questions involved, shall, unless otherwise provided by law, be joined as plaintiffs, when their interest is in common with the party making the complaint; and as defendants, when their interest is adverse to the plaintiff: *Provided*, That where good cause exists, which shall be made to appear in the complaint, why a party who should be a plaintiff cannot, from a want of consent on his part, or otherwise, be made such complainant, he shall be made a defendant.

SEC. 9. When the question is one of common or general interest to many persons, or where the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

SEC. 10. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the plaintiff.

SEC. 11. No action shall abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue; but the court may, on motion, allow the action to be continued by or against his representatives or successor in interest.

SEC. 12. A defendant against whom an action is pending upon a contract, or for specific, real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person, and the adverse party apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property, or its value, to such person as the court may direct; and the court may, in its discretion, make the order.

SEC. 13. Any person shall be entitled to intervene in an action who has an interest in the final determination thereof. An intervention takes place when a third person is permitted to become a a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant.

SEC. 14. The intervention shall be by petition or complaint filed n the court in which the action is pending, and must set forth the grounds on which it is based, and a copy thereof be served upon the party or par-

ties, against whom anything is demanded, who shall thereupon be required to answer it, as if it were an original complaint in the action. The court shall determine upon the intervention at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention.

CHAPTER II.

OF VENUE OF CIVIL ACTIONS.

SEC. 15. Causes, in which the action shall be commenced in county in which the *subject*, or some part thereof, is situated.
16. Causes, in which the action shall be tried in the district or county where the *cause*, or some part thereof, arose.
17. All other actions to be tried where defendant served with process.
A change of venue may be had; when.

SEC. 15. Actions for the following causes shall be commenced in the county in which the subject of the aetion, or some part thereof, is situated:

1st—For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage, on or for the determination of all questions affecting the title, or for any injuries to real property.

2d—All questions involving the rights to the possession or title to any specific article of personal property; in which last mentioned class of cases, damages may also be awarded for the detention and for injury to such personal property.

SEC. 16. Actions for the following causes shall be tried in the district or county where the cause, or some part thereof, arose:

1st—For the recovery of the penalty or forfeiture imposed by statute.

2d—Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person, who, by his command, or in his aid, shall do anything touching the duties of such officer.

SEC. 17. In all other cases, the action shall be tried in the district or county in which the defendant may be served with process: *Provided*, that nothing contained in any of the foregoing sections shall be so construed as to prevent a change in the place of trial to the adjoining county or district, when it shall be made to appear to the satisfaction of the court, that a fair trial cannot be had in the district or county in which such action may be brought.

CHAPTER III.

MANNER OF COMMENCING CIVIL ACTIONS.

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19. Under what date, clerk to file complaint.
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21. Notice, upon whom to be served.
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A voluntary appearance of defendant equivalent to personal service.

SEC. 18. Writs of summons are abolished, and civil actions in the several district courts of this territory shall be commenced by the service upon the defendant of a copy of a complaint, and a notice; which notice shall be signed by the plaintiff, or his attorney, and the copies shall be certified to be correct by the officer or person making the service. The notice shall be substantially as follows:

Territory of Washington,
County of ————:

To ————: You are hereby notified, that unless you appear in the district court of the —— judicial district, on the first day of the next term thereof, which shall commence twenty days or more after the service of this complaint, the same will be taken as confessed, and the prayer thereof granted.

Dated, ———— 18—.

SEC. 19. The clerk shall file all complaints, where service of notice is had, as of the day they are received by him; and no complaint shall be heard at any term except by consent of parties, which shall not have been received and placed on file before the second day of the term, or which shall not appear to have been served on the defendant twenty days or more before the commencement of the term.

SEC 20. In all cases, except where the service is made by publication, as is hereinafter provided for, the notice shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person other than the plaintiff, specially appointed by the judge of the court where the action is brought. Such appointments shall, prior to the service, be made in writing, endorsed upon the notice, and signed by the party making them. The notice shall be returned to the office of the district clerk, with the return of the sheriff, or his deputy, endorsed thereon; or, if served by a person specially appointed, his affidavit.

SEC. 21. The notice shall be served by delivering a copy thereof, together with a certified copy of the complaint, as follows:

1st—If the suit be against a corporation, to the president or other head of the corporation, secretary, cashier, or managing agent thereof.

2d—If against any county in this territory, to the county auditor.

3d—If against a minor, under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian; or, if there be none within this territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4th—If against a person for whom a guardian has been appointed for any cause, to such guardian and to the defendant personally.

5th—In all other cases to the defendant personally, or, if he be not found, to some suitable person of the family, above the age of fourteen years, at the dwelling house or usual place of abode of the defendant.

SEC. 22. In case personal service cannot be had, by reason of the absence of the defendant, and the defendant is a proper party to an action where actual personal notice is not required by law, or is a proper party to an action relating to real estate in the district, it shall be proper to publish the notice, with a brief statement of the object and prayer of the petition or complaint, in some weekly newspaper published in this territory, or in Portland, Oregon: which notice shall be published not less than once a week for three months prior to the commencement of the the term of the court when such cause shall be heard. Said notice may be substantially as follows:

Territory of Washington,
County of ————:

In the district court of the —— judicial district:—

To ————: You are hereby notified, that —— ———— has filed a complaint against you in said court, which will come on to be heard at the first term of the court, which shall commence more than three months after the (here insert the date of the first publication,) and unless

you appear at said term and answer, the same will be taken as confessed, and the prayer thereof granted. The object and prayer of said complaint is, (here insert a brief statement).

(Signature of plaintiff or his attorney.)

(Date of filing complaint.)

Before publication is made, the complaint shall be filed with the clerk of the court where the action is to be tried, and forthwith, upon publication, the party shall cause a copy of the notice and complaint, certified by the clerk, to be deposited in the post office, directed to the defendant, at his place of residence, unless it shall appear that such residence is not known to, or cannot, with reasonable diligence, be ascertained by the party; and before hearing the case, the court shall be satisfied, by affidavit or other proof, that all the provisions herein contained have been complied with; and a printed copy of the notice published, with the affidavit of the printer or publisher of the newspaper, that it has been published the requisite length of time, and as is herein provided, shall be placed upon file:—*Provided*, That personal service out of the district or territory shall be equivalent to publication. In either case, service shall be complete at the expiration of the period prescribed for publication. Nothing in this section contained shall be construed as enlarging the venue in civil actions, beyond the bounds now provided by law.

SEC. 23. The defendant against whom publication is made, or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action; and, except in an action for divorce, the defendant against whom publication is made, or his representatives, may, in like manner, upon good cause shown, be allowed to defend after judgment, and within one year after the rendition of such judgment, on such terms as may be just; and if the defense be successful, and the judgment, or any part thereof, have been collected, or otherwise enforced, such restitution may thereupon be compelled as the court shall direct: *Provided*, That in all cases before the defendant shall be allowed to defend, he shall make an affidavit that he has, as he believes, a good defense to the action, or to some part thereof.

SEC. 24. Whenever it shall appear by the return of the sheriff, or his deputy, or the person appointed to serve a notice, that he has not served it upon the defendants as prescribed, the plaintiffs may issue another notice, and so on till service be had; or, the plaintiff may proceed by publication in the manner before stated, at his election.

SEC. 25. When the action is against two or more defendants, upon a joint contract or liability, and one or more cannot be served with notice, the plaintiff may proceed to judgment against the defendant served; and

at any time thereafter, while such judgment remains unsatisfied, the plaintiff, or his attorney, may issue a notice to the defendant not served, and upon the service thereof, with a copy of the complaint, upon such defendant, the same proceedings shall be had as though he had been originally served. When the action is against the defendants severally and jointly, or severally liable, he may proceed against the defendants served, in the same manner as though they were the only defendants.

SEC. 26. Proof of the service of the notice and complaint shall be as follows:

1st—If served by the sheriff, or his deputy, the return of such sheriff or deputy; or,

2d—If by any other person, his affidavit thereof; or,

3d—In case of publication, the affidavit of the printer, or his foreman or principal clerk, showing the same; and an affidavit of a deposit of a copy of the notice and complaint in the post office, if the same shall have been deposited; or,

4th—The written admission of the defendant.

In case of service, otherwise than by publication, the certificate, affidavit, or admission, must state the time, place, and manner of service.

SEC. 27. The court shall be deemed to have obtained possession of the case from the time the complaint is filed with the clerk, and shall have control of all subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service.

CHAPTER IV.

OF PLEADINGS.

SEC. 28. All forms of pleadings inconsistent with this act abolished, and the rules to determine sufficiency of pleadings, shall be those prescribed by statute.
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30. First pleading must be the complaint.
31. What the complaint shall contain.
32. When the defendant may demur.
33. What the demurrer shall specify.
34. When objection may be taken by answer.
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36. What the answer shall contain.
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38. Defendant may demur and answer.
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40. When the plaintiff may reply; and how.
41. When judgment and a writ of damages may issue.
42. When defendant may demur to a reply.
43. Court to prescribe time for filing pleadings subsequent to complaint.

SEC. 28. All the forms of pleadings heretofore existing in civil actions, inconsistent with the provisions of this act, are abolished; and hereafter the forms of pleading, and the rules by which the sufficiency of the pleadings is to be determined, shall be those prescribed by statute.

SEC. 29. The only pleadings on the part of the plaintiff, shall be: 1st—The complaint; 2d—the demurrer; or 3d—the reply. And on the part of the defendant: 1st—the demurrer; or, 2d—the answer.

SEC. 30. The first pleading on the part of the plaintiff, shall be the complaint.

SEC. 31. The complaint shall contain:

1st—The title of the cause, specifying the name of the court, and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant.

2d—A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.

3d—A demand for the relief which the plaintiff claims; if the recovery of money, or damages be demanded, the amount thereof shall be stated.

SEC. 32. The defendant may demur to the complaint, when it shall appear upon the face thereof, either:

1st—That the court has no jurisdiction; or

2d—That the plaintiff has no legal capacity to sue; or

3d—That there is another action pending between the same parties, for the same cause; or

4th—That there is a defect of parties, plaintiff or defendant; or

5th—That several causes of action have been improperly united; or

6th—That the complaint does not state facts sufficient to constitute a cause of action.

SEC. 33. The demurrer shall distinctly specify the grounds of objection to the complaint; unless it does so, it may be disregarded; it may be taken to the whole complaint, or to any of the alleged causes of action stated therein.

SEC. 34. When any of the matters enumerated in section forty, [thirty-two,] do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 35. If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 36. The answer of the defendant shall contain:—

1st—A specific denial of each material allegation of the complaint, controverted by the defendant, according to his knowledge, information,

or belief, or of any knowledge or information thereof, sufficient to form a belief.

2d—A plain, concise statement of any new matter constituting a defence or set-off, without unnecessary repetition.

SEC. 37. The defendant may set forth, by answer, as many defenses as he may have. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in any manner by which they may be intelligibly distinguished.

SEC. 38. The defendant may demur to one or more of several causes of action, stated in the complaint, and answer the residue.

SEC. 39. Sham and irrelevant pleadings may be stricken out, on motion, and upon such terms as the court may in its discretion impose.

SEC. 40. When the answer contains new matter, constituting a defense or set-off, the plaintiff may reply to such new matter, denying specifically each allegation, controverted by him according to his knowledge or information thereof, sufficient to form a belief; and he may allege in a plain and concise manner, without unnecessary repetition, any new matter not inconsistant with the complaint, constituting a defense to such new matter in the answer; or he may demur to the same for insufficiency, stating in his demurrer the grounds thereof, and the plaintiff may demur to one or more of several defenses or set-offs in the answer, and reply to the residue.

SEC. 41. If the answer contain a statement of new matter constituting a defense, and the plaintiff fails to reply or demur thereto, within the time prescribed by law, the defendant may move in court for such judgment as he shall be entitled to upon such statement, and if the case require it, a writ of damages may be issued.

SEC. 42. If a reply of the plaintiff to any defense set up by the answer of the defendant, be insufficient, the defendant may demur thereto, and shall state the grounds thereof.

SEC. 43. The court shall establish the rules prescribing the time in which pleadings subsequent to the complaint shall be filed.

CHAPTER V.

VERIFICATION OF PLEADINGS.

SEC. 44. Pleadings must be signed and verified.
45. Verification of pleadings; how made, and by whom.

SEC. 44. Every pleading shall be subscribed by the party, or his attorney, and except a demurrer shall also be verified by affidavit, as set forth in the next section.

SEC. 45. The verification shall be to the effect that the same is true, except as to matters stated on information, and as to those matters, that he believes them to be true. The affidavit shall be made by the party; or if there be several parties united in interest, and pleading jointly, by one of such parties, if he be within the county in which the action is brought, and capable of making the affidavit; if he be not within the county, or from any cause be unable to verify the same, it may be made by the agent, attorney, or any other person having a knowledge of the facts; and when the affidavit shall be made by another than the party, he shall set forth in it his knowledge of the grounds of his belief, and the reason why it is not made by the party. When a corporation is a party, verification may be made by any officer thereof; and when the Territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts. No pleading shall be used, in a criminal prosecution against the party, as proof of a fact alleged in such pleading.

CHAPTER VI.

GENERAL RULES OF PLEADING.

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55. Joinder of causes of action.
56. Material allegation defined.
57. Material variances; how provided for.
58. Immaterial variances; how provided for.
59. What to be deemed a failure of proof.
60. Plaintiff in action for recovery of personal property, failing to establish his ownership, shall be permitted to amend complaint.

SEC. 46. It shall not be necessary for a party to set forth in pleading, a copy of the instrument of writing, or the items of an account therein alleged; but unless he file a verified copy thereof with such pleadings, and serve the same on the adverse party, he shall, within ten days after a demand thereof, in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or a judge

thereof, may order a further account, when the one delivered is defective; and the court may, in all cases, order a bill of particulars of the claim of either party to be furnished.

SEC. 47. In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantiate justice between the parties.

SEC. 48. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain, that the precise nature of the charge or defense is not apparant, the court may require the pleading to be made definite and certain, by amendment, or may dismiss the same.

SEC. 49. In pleading a judgment or other determination of a court or office of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial, the facts conferring jurisdiction.

SEC. 50. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated, generally, that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish on the trial, the facts showing such performance.

SEC. 51. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

SEC. 52. In an action for libel or slander, it shall not be necessary to state in the complaint any intrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state, generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish on trial that it was so published or spoken.

SEC. 53. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter, charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 54. In an action to recover the possession of property distrained, doing damage, an answer that the defendant, or person by whose

command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing the damage thereon, shall be good, without setting forth the title to such real property.

SEC. 55. The plaintiff may unite several causes of action in the same complaint, when they shall arise out of—

1st—Contract, express or implied; or,

2d—Injuries, with or without force, to the person; or,

3d—With or without force, to property; or,

4th—Injuries to character; or,

5th—Claims to recover real property, or any interest therein, with or without damages for withholding thereof, and the rents and profits of the same; or,

6th—Claims to recover personal property, or any interest therein, with or without damages for the withholding thereof; or,

7th—Claims against a trustee by virtue of a contract, or by operation of law.

But the causes of action so united must all belong to one only of these classes, and must effect all the parties to the action, and not require different places of trial, and must be separately stated.

SEC. 56. A material allegation in a pleading is one essential to the claim or defence, and which could not be stricken from the pleading without leaving it insufficient.

SEC. 57. No variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually misled the adverse party to his prejudice in maintaining his action or defence upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as shall be just.

SEC. 58. When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

SEC. 59. When, however, the allegation of the cause of action or defense, to which the proof is directed, is not proved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

SEC 60. Where the plaintiff in action to recover the possession of personal property, on a claim of being the owner thereof, shall fail to establish on the trial such ownership, but shall prove that he is entitled to the possession thereof, by virtue of a special property therein, he shall

not thereby be defeated of his action, but shall be permitted to amend, on reasonable terms, his complaint, and be entitled to judgment according to the proof in the case.

CHAPTER VII.

AMENDMENTS OF PLEADINGS.

SEC. 61. Court may order pleadings to be amended any time before judgment, and may relieve a party from judgment taken against him through mistake, &c.
62. Sueing a party by a fictitious name; when allowed.
63. Error in pleading; when to be disregarded.
64. Supplemental proceedings.

SEC. 61. At any time before judgment, the court, on motion, may authorize any of the pleadings to be amended, on such terms as shall be deemed reasonable; and at any time before the close of the next term of the court, after the term in which any judgment, order, or other proceeding is had, the court, on motion, and upon good cause shown, after reasonable notice to the adverse party, or his attorney, may relieve a party from such judgment, order, or proceeding, taken against him, through his mistake, inadvertance, surprise, or excusable neglect, and supply an omission in any proceedings.

SEC. 62. When the plaintiff shall be ignorant of the name of the defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

SEC. 63. The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not effect the substantial rights of the adverse party; and no judgment shall be reversed or effected by reason of such error or defect.

SEC. 64. The court may, on motion, allow supplemental proceedings, showing facts which occurred after the former pleadings were filed.

CHAPTER VIII.

ARREST IN CIVIL ACTIONS.

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67. Before making order of arrest, court to be satisfied that case is one in which an arrest is provided for.
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89. Sheriff when liable as bail.
His discharge from liability.
90. Proceedings, in case judgment be recovered against sheriff.
91. Bail, when liable to sheriff.

SEC. 65. No person shall be arrested or held to bail in any action except upon the order of the court where the action is brought, or a judge of the supreme court.

SEC. 66. The defendant may be arrested as is hereinafter provided, in the following cases and for the following causes only:—

1st—When the action is upon a contract to recover damages, and the defendant has money or property, and is about to abscond from the territory with, or conceal, or dispose of the same, with intent to defraud his creditors.

2d—When the action is to recover possession of specific articles of personal property, or any instrument of writing, and the defendant conceals, or is about to conceal, destroy, or dispose of the subject matter of the suit, with intent to defraud the plaintiff.

3d—When the action is to prevent threatened injury to, or destruction of property, in which the party bringing the action has some right, interest or title, which will be impaired or destroyed by such injury or destruction, and the danger is imminent that such property will be destroyed, or its value impaired, to the injury of the plaintiff.

4th—On the final judgment or order of any court in this territory,

while the same remains in force, when the defendant, having no property subject to execution, or not sufficient to satisfy such judgment, has money which he ought to apply in payment upon such judgment, and which he refuses to apply, with intent to defraud the plaintiff; or, when he refuses to comply with a legal order of the court, with intent to defraud the plaintiff; or, when any one or more of the causes exist for which an arrest is allowed in the first class of cases mentioned in this section.

SEC. 67. The court or judge making the order, shall first be satisfied, by the affidavit of the party and other proof, or by other proof, that the case is one in which an arrest is provided for in section sixty-six, and that one or more of the prescribed causes exist, which proof shall be in writing, and, together with the order, be filed with the clerk, before he shall issue any warrant for the arrest.

SEC. 68. The court or judge making the order shall, in all cases, specify therein the amount in which the defendant shall be held to bail, which shall in no case exceed the demand of the plaintiff, and one hundred dollars in addition thereto, which amount the clerk shall endorse upon the writ, and the court shall also in the order, fix the amount of the bond to be given by the plaintiff, as provided in the next succeeding section, which amount shall in no case be less than one hundred dollars.

SEC. 69. Before any clerk shall issue a warrant for the arrest of the defendant, he shall require the plaintiff to place on file in his office a copy of the order granting the warrant, unless the same was made in open court, and appears in the minutes: the original affidavit and proofs upon which the order was made, and a bond on behalf of the plaintiff, in such an amount as the court or judge shall have fixed in the order, with sureties to the satisfaction of the clerk, conditioned to pay to the defendant all damages which he shall suffer, and all expenses he shall incur by reason of such arrest or imprisonment, if the order shall be vacated in the manner provided for in the next succeeding section, or if the plaintiff fail to recover in his action.

SEC. 70. The defendant may, on motion, apply to the court to vacate the order of arrest, on the ground of insufficiency of the proof, or he may show that the facts alledged, upon which the order issued, are untrue, or he may apply to have the amount of bail reduced. If the court, upon any such motion, shall vacate the order, the defendant shall be discharged from the arrest, and any bond he may have given shall be cancelled, but the action, unless dismissed for other cause, shall be conducted in the same manner as in cases where complaint and notice were duly served and filed.

SEC. 71. When an order of an arrest is granted prior to the filing of the complaint, the warrant shall not issue until the complaint is filed

with the clerk, and a copy of said warrant shall be served on the defendant, with the warrant; but an order of arrest may be granted at any time after the action is commenced, and before judgment is satisfied, when the party seeking the order shall comply with the preceding provisions in regard to arrests.

SEC. 72. The warrant must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy thereof.

SEC. 73. The sheriff shall execute the warrant by arresting the defendant and keeping him in custody until discharged by law. And the plaintiff, in first instance, shall be liable for the sheriff's fees, for the food and maintenance of any person under arrest, which, if required by the sheriff, shall be paid weekly in advance And such fees, so paid, shall be added to the costs taxed or accruing in the case, and be collected as other costs. And if the plaintiff shall neglect to pay such fees for three days after a demand, in writing, upon the plaintiff or his attorney, for payment, the sheriff may discharge the defendant out of custody.

SEC. 74. The defendant may give bail by causing a bond to be executed by two or more sufficient sureties, stating their places of residence and occupations, conditioned that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment rendered therein; or, if he be arrested for the cause mentioned in the second subdivision of section sixty-six, it shall be further conditioned, that the specific article of property or instrument of writing which is the subject matter of the writ, shall be forthcoming, to abide any order which shall be made therein; or, if he be arrested for the cause mentioned in the third subdivision of said section, it shall be farther conditioned that he will not commit the injury or destruction alledged to be threatened in the affidavit or proofs on which the arrest is ordered.

SEC. 75. The warrant shall, in all cases, contain a short statement of the alledged causes for which the order was granted, and also the amount for which bail is required.

SEC. 76. At any time before a failure to comply with their bond, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:—

1st—A certified copy of the bail bond shall be delivered to the sheriff, who shall retain the defendant in his custody thereon, as upon an order of arrest, and, by a certificate in writing, acknowledge the surrender.

2d—Upon the production of a copy of the bail bond and sheriff's certificate, a judge of the district court may, upon a notice to the plaintiff

of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on such application, they shall be exonerated accordingly. But this section does not apply to an arrest for the cause mentioned in the third subdivision of section sixty-seven.

SEC. 77. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally discharged, may themselves arrest him, or, by written authority, indorsed on a certified copy of the bond, may empower any person of suitable age and discretion to do so.

SEC. 78. In case of failure to comply with the condition of the bond, the bail can be proceeded against by action only.

SEC. 79. The bail may be exonerated either by the death of the defendant, or his imprisonment in a penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in exoneration thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the court.

SEC. 80. Within the time limited for that purpose, the sheriff must deliver the order of arrest to the clerk, with his return endorsed thereon, and the bond of the bail, or a copy thereof. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he must be deemed to have accepted it, and the sheriff shall be exonerated from liability.

SEC. 81. On the receipt of the notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff, or his attorney, notice of the justification of the same, or other bail, (specifying the places of residence and occupations of the latter,) before a judge of the court or justice of the peace, at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case other bail be given, there must be a new bond, in the form prescribed in section seventy-four.

SEC. 82. The qualifications of bail shall be as follows: 1st—Each of them shall be a resident of the territory; but no counselor or attorney at law, sheriff, clerk of the district court, or other officer of such court, shall be permitted to become bail in any action. 2d—Each of the bail shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced, as provided in this act, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge or justice, on justification, may allow more than two sureties to justify, severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 83. For the purpose of justification, each of the bail must attend before the judge or justice of the peace, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or justice of the peace, in his discretion, may think proper. The examination must be reduced to writing, and subscribed by the bail, if required by the plaintiff.

SEC. 84. If the judge or justice find the bail sufficient, he shall annex the examination to the bond, indorse his allowance thereon, and cause them to be filed with the clerk: and the sheriff shall thereupon be exonerated from liability.

SEC. 85. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order.—The sheriff must thereupon give the defendant a certificate of deposit, and the defendant shall be discharged out of custody.

SEC. 86. The sheriff shall, within ten days after the deposit, pay the same into court, and take from the officer receiving the same two certificates of such payment, the one of which he must deliver to the plaintiff and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited, as in other cases of delinquency.

SEC. 87. If money deposited, as provided in the last two sections, bail may be given and justified, upon notice as hereinbefore provided, at any time before judgment; and thereupon, the judge before whom justification is had, shall direct in the order of allowance that the money deposited be refunded by the sheriff or clerk to the defendant: and it shall be refunded accordingly.

SEC. 88. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and, after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

SEC. 89. If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the sheriff shall himself be liable as bail; but he may discharge himself from such liability by the giving and justification of bail, as is hereinbefore provided may be done by the defendant, at any time before process against the person of the defendant to enforce an order or judgment in the action.

SEC. 90. If a judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the sheriff to collect the deficiency, as in other cases of delinquency.

SEC. 91. The bail taken on the arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff, by action, for the damages which he may sustain by reason of such omission.

CHAPTER IX.

CLAIM TO RECOVER PERSONAL PROPERTY.

SEC. 92. Plaintiff may claim delivery of personal property.
93. When delivery claimed; what affidavit must be made.
94. Security on the part of the plaintiff.
95. Exception to sureties, and proceedings thereon, or on failure to except.
96. Defendant; when entitled to re-delivery.
97. Justification of defendant's sureties.
98. Qualification and justification of sureties.
99. Sheriff to take property concealed; how.
100. Sheriff to keep property thus taken, and deliver the same; to whom and when.
101. Claim of property by other than the defendant or his agent.
102. Sheriff to file affidavit with proceedings thereon; with whom and when.

SEC. 92. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the notice, or at any time before answer, claim the immediate delivery of such property as herein provided.

SEC. 93. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing—

1st—That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.

2d—That the property is wrongfully detained by the defendant.

3d—That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment, against the property of the plaintiff; or if so seized, that it is by law exempt from such seizure. And,

4th—The actual value of the property.

SEC. 94. Upon the receipt of the affidavit and a bond to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the

return of property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit and bond, by delivering the same to him personally, if he can be found, or his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the postoffice, directed to the defendant, at the postoffice nearest his place of residence.

SEC. 95. The defendant may, within three days after the service of a copy of the affidavit and bond, give notice to the sheriff that he excepts to the sufficiency of the sureties; if he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

SEC. 96. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a bond, executed by one or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and one.

SEC. 97. The defendant's sureties, upon a notice to the plaintiff or his attorney, of not less than two or more than six days, shall justify in the same manner as upon bail upon arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed, or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

SEC. 98. The qualification of sureties and their justification, shall be as prescribed in respect to bail upon an order of arrest.

SEC. 99. If the property, or any part thereof, be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

SEC. 100. When the sheriff shall have taken the property as herein provided, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 101. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or delivery it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim by a bond, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 102. The sheriff shall file the affidavit, with the proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein; or, if the clerk reside in another county, shall mail or forward the same within that time.

CHAPTER X.

INJUNCTIONS AND RESTRAINING ORDERS.

SEC. 103. Restraining orders and injunctions; by whom granted.
104. When an injunction may be granted—temporary injunction.
105. At what time an injunction may be granted.
106. Not to be granted until it shall appear that opposite party has had notice. Restraining order granted in emergency.
107. On hearing of application for, parties may read affidavits.
108. Terms may be imposed on party obtaining.
109. Bond to be given before injunction granted.

SEC. 110. When injunction granted after restraining order, second bond not necessary, unless, &c.
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112. Plaintiff to endorse release upon application to stay proceedings.
113. Who an injunction shall bind.
114. When it is necessary to serve an order of injunction.
115. Money collected on a judgement after injunction, subject to the order of the court.
116. An attachment for contempt; when granted; by whom issued and served.
117. Proceedings on an attachment for contempt.
118. Person arrested for contempt to give bond.
119. Motion to dissolve or modify injunctions.
120. When and what damages a court may award after an injunction is dissolved.
121. When an injunction is dissolved, what the damages shall include.
122. Injunction being dissolved, the court may reinstate the same.

SEC. 103. Restraining orders and injunctions may be granted by the district court in term time, or by any judge of the supreme court in vacation.

SEC. 104. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property.

SEC. 105. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment in that proceeding.

SEC. 106. No injunction shall be granted until it shall appear to the court or judge granting it, that some one or more of the opposite party concerned, has had reasonable notice of the time and place of making the application, except that in cases of emergency, to be shown in the complaint, the court may grant a restraining order, until notice can be given, and hearing thereon.

SEC. 107. On the hearing of an application for an injunction, each party may read affidavits.

SEC. 108. Upon the granting or continuing an injunction, such terms and conditions may be imposed upon the party obtaining it, as may be deemed equitable.

SEC. 109. No injunction or restraining order shall be granted until the party asking it shall enter into bond, in such a sum as shall be fixed by the court or judge granting the order, with surety to the satisfaction of the clerk of the district court, to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify in like manner as bail upon an arrest, and until they so justify, the clerk shall be responsible for their sufficiency.

SEC. 110. When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be required to enter into a second bond, unless the former shall be deemed insufficient, but the plaintiff and his surety shall remain liable upon his original bond.

SEC. 111. It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order of injunction duly certified by him, which shall be forthwith served by delivering the same to the adverse party.

SEC. 112. In application to stay proceedings after judgment, the plaintiff shall indorse upon his complaint a release of errors in the judgment whenever required to do so by the judge or court.

SEC. 113. An order of injunction shall bind every person and officer restrained from the time he is informed thereof.

SEC. 114. When notice of the application for an injunction has been served upon the adverse party, it shall not be necessary to serve the order upon him, but he shall be bound by the injunction as soon as the bond required of the plaintiff is executed and delivered to the proper officer.

SEC. 115. Money collected upon a judgment afterward enjoined, remaining in the hands of the collecting officer, shall be paid to the clerk of the court granting the injunctions, subject to the order of the court.

SEC. 116. Whenever it shall appear to any court granting an order of injunction, or judge thereof in vacation, by affidavit, that any person has willfully disobeyed the order after notice thereof, such court or judge shall award an attachment for contempt against the party charged, or a rule to show cause why it should not issue. The attachment or rule shall be issued by the clerk of the court and directed to the sheriff, and shall be served by him.

SEC. 117. The attachment for contempt shall be immediately served,

by arresting the party charged, and bringing him into court, if in session, to be dealt with as in other cases of contempt, and the court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises.

SEC. 118. If the court is not in session, the officer making the arrest shall cause the person to enter into a bond, with surety to be approved by the officer, conditioned that he personally appear in open court, on the first day of the next term thereof, to answer such contempt, and that he will pay to the plaintiff all his damages and costs occasioned by the breach of the order; and in default thereof, he shall be committed to the jail of the county until he shall enter into such bond with surety, or be otherwise legally discharged.

SEC. 119. Motions to dissolve or modify injunctions may be made in open court, at any time after the adverse party has had reasonable notice.

SEC. 120. When an injunction to stay proceedings after judgment for debt or damages, shall be dissolved, the court shall award such damages, not exceeding ten per cent. on the judgment, as the court may deem right, against the party in whose favor the injunction issued.

SEC. 121. If an injunction to stay proceedings after verdict or judgment in an action for the recovery of real estate, or the possession thereof, be dissolved, the damages assessed against the party obtaining the injunction shall include the reasonable rents and profits of the lands recovered, and all waste committed after granting the injunction.

SEC. 122. Upon an order being made dissolving or modifying an order of injunction, the plaintiff may move the court to reinstate the order, and the court may, in its discretion, allow the motion, and appoint a time for hearing the same before the court, or a time and place for hearing before some judge thereof, and upon the hearing the parties may produce such additional affidavits or depositions as the court shall direct, and the order of injunction shall be dissolved, modified, or reinstated as the court or judge may deem right. Until the hearing of the motion to reinstate the order of injunction, the order to dissolve or modify, it shall be suspended.

CHAPTER XI.

OF ATTACHMENTS.

SEC. 123. How an attachment may issue.
124. When a writ of attachment may issue.
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SEC. 126. What shall be deemed an attempt to conceal the absence of an individual.
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139. When an attachment may be dismissed.
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Sheriff may sell same; when.
142. Sheriff to be allowed expenses for keeping attached property.
Proceedings if such expense is not paid.
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144. Garnishee accountable from date of service of summons.
145. Duty of garnishee when served with summons.
When he may be required to give information on oath.
146. Proceedings on failure of a garnishee to appear.
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148. Final judgment against a garnishee.
Garnishee may recover his costs.
149. Return of "no property found," not to affect proceedings against garnishee.
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151. A garnishee only bound as to the defendant.
152. A garnishee may pay over moneys and be released, and not be liable for costs.
153. Examination of garnishee, and bond thereof.
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155. Defendant may move a discharge of attachment.
Judgment on attachment stands against a person as other judgment.
Plaintiff may file an additional bond.
156. When judgment is rendered for defendant.
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159. Money realized from attachment to be paid over to creditors, after paying costs.
160. Defendant entitled to an action on plaintiff's bond.
Set-off against judgment on bond.
161. Return by sheriff of order of attachment.

SEC. 123. In an action for the recovery of money, the plaintiff, at the time of commencing suit, by placing in the hands of the sheriff of the proper county, the complaint and notice, or at any time afterwards, may have the property of the defendant attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 124. A writ of attachment shall be issued by the clerk of the court in which the action is brought, whenever the plaintiff, his agent or attorney shall make affidavit that a cause of action exists against such defendant, specifying the amount of such claim over and above all legal set-offs, and the nature thereof; that suit thereon has been commenced, and that, as the affiant verily believes, the defendant is either:

1st—A foreign corporation; or

2d—A non-resident of this Territory; or

3d—Is secretly leaving, or has left the Territory, with intent to hinder, defraud, or delay his creditors; or

4th—Is about to sell, convey, or otherwise dispose of his property, with like intent; or

5th—Is removing, or about to remove his property, subject to execution, or a material part thereof, out of this Territory, not leaving enough therein to satisfy the claim of the plaintiff; or

6th—Has concealed, or is attempting to conceal himself, so that the ordinary process of law cannot be served upon him.

SEC. 125. No attachment for the causes mentioned in the second and third clauses of the preceding section, shall issue against any debtor while his family remains settled within the county where he usually resided, prior to his absence, if he shall not continue absent from the territory more than one year after he shall have absented himself, unless an attempt be made to conceal his absence.

SEC. 126. If the wife or family of the debtor shall refuse, or be unable to give an account of the cause of his absence, or the place where he may be found, or shall give a false account of either, such refusal, inability, or false account, shall be deemed an attempt to conceal his absence.

SEC. 127. The plaintiff, or some one in his behalf, shall, before the writ issues, execute a bond in a sum equal to the amount claimed, with sufficient surety, to be approved by the clerk, payable to the defendant, to the effect that the plaintiff will duly prosecute his proceeding in attachment, and will pay all damages which may be sustained by the defendant, if the proceedings of the plaintiff shall be wrongful and oppressive.

SEC. 128. The writ shall be directed and delivered to the sheriff. It shall require him to seize and take into his possession, the property of

the defendant in his county, not exempt from execution, or sufficient thereof to satisfy the amount of the plaintiff's claim and costs.

SEC 129. Writs of attachment may be issued to the sheriff of any other country, and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but the costs only of such as have been executed, in whole or in part, shall be recovered against the defendant, unless otherwise directed by the court. The plaintiff shall not have judgment in any such action, except in some one of the following cases, viz:

1st—When the defendant shall have been personally served with process; or,

2d—When property of the defendant shall have been attached in the district or county where the action is brought; or,

3d—When a garnishee shall have been summoned in the district or county where the action is brought, who shall be found to be indebted to the defendant, or to have property or assets in his hands subject to the attachment.

SEC. 130. A writ of attachment may be issued and executed on Sunday, if the plaintiff will show in his affidavit that the defendant is about to abscond on that day to the injury of the plaintiff.

SEC. 131. The sheriff shall proceed, with the assistance of a disinterested and credible householder of the county, to attach the lands and tenements, goods and chattels of the defendant, subject to execution, and shall, with the assistance of such householder, make an inventory and appraisement thereof, and return the same with the writ.

SEC. 132. A writ of attachment binds the defendant's property from the time it is served.

SEC. 133. The defendant's personal property shall be first taken under an attachment; if enough thereof is not found to satisfy the plaintiff's claim and costs of the action, then his real estate. If, after a writ of attachment is placed in the hands of the sheriff, any property of the defendant is removed from the county, the sheriff may pursue and seize the same in any county within three days after the removal thereof.

SEC. 134. The estate, property, and interest descended to non-resident heirs or devisees, or vested in non-resident executors or administrators of decedents, shall be liable to an attachment for debt, or other demands against decedent's estate.

SEC. 135. The defendant, or other person, having possession of property attached, may have the same, or any part thereof, delivered to him, by executing and delivering to the sheriff a bond, with surety approved by the sheriff, payable to the plaintiff, to the effect that such prop-

erty shall be properly kept and taken care of, and shall be delivered to the sheriff on demand, or so much thereof as may be required to be sold on execution, to satisfy any judgment which may be recovered against him in the action, or that he will pay the appraised value of the property, not exceeding the amount of the judgment and costs.

SEC. 136. Whenever any person, other than the defendant, shall claim any property attached, the right of property may be tried, as in cases of property taken in execution, and the claimant, having notice of the attachment, shall be bound to prosecute his claim, as in such cases, or be barred of his right against the officer or person serving the writ.

SEC. 137. The defendant or claimant of any attached property, may be required by the court to attend before it, and give information, on oath, respecting the property.

SEC. 138. An attachment shall only bind the interest of the defendant, subject to the rights existing at the time of the attachment, of any other person to the property.

SEC. 139. If the defendant, at any time before judgment, shall appear and answer to the complaint of the plaintiff, and shall satisfy the court or judge in vacation, that the cause alleged in the affidavit did not exist at the time the writ issued, the attachment shall be dismissed at the cost of the plaintiff, who shall also be liable to the defendant; and the attachment shall also be dismissed at any time after answer before judgment, when the defendant shall satisfy the court, or judge in vacation, that the alleged causes upon which the writ issued, have ceased to exist; in this case the costs to abide the issue of the action, and in case the attachment shall be dismissed as above, the action may be further prosecuted to final judgment, as in cases where the summons has been served.

SEC. 140. If the defendant, or other person in his behalf, at any time before judgment, shall execute a bond to the plaintiff, and to each plaintiff who has filed his complaint under the attachment, with sufficient surety, to be approved by the court, clerk, or sheriff, to the effect that the defendant will appear to the action, and will perform the judgment of the court, the attachment shall be discharged, and restitution made of any property taken under it, or the proceeds thereof.

SEC. 141. When personal property attached is of a perishable nature, or its keeping expensive, the court may direct the sheriff to sell it at public auction, on reasonable notice. If the property is liable to immediate damages, the sheriff, in vacation, may sell it, by giving ten day's notice, without an order of court, and the proceeds of all sales shall be deposited with the clerk.

SEC. 142. The sheriff shall be allowed his reasonable and necessary

expenses for keeping attached property, to be paid by the plaintiff and taxed in the bill of costs; and if the plaintiff shall fail to pay such expenses, as they accrue, or advance them to the sheriff, the sheriff may give the plaintiff written notice, that unless so paid or advanced, he will release the property, and after the expiration of forty-eight hours from the service of such notice upon the plaintiff or his attorney, the sheriff may, if such expenses are not paid or advanced, return, at the cost of the plaintiff, said property to the person from whom, or to the place where it was taken; and if all the property so attached shall be so returned, the action shall be dismissed at the cost of the plaintiff.

SEC. 143. If at the time a writ of attachment issues, or at any time afterwards, the plaintiff, or other person in his behalf, shall file with the clerk an affidavit, that he has good reason to believe that any person (naming him) has property of the defendant, of any description, in his possession or under his control, which the sheriff cannot attach by virtue of such writ; or that such person is indebted to the defendant, or has the control or agency of any property, moneys, credits, or effects; or that the defendant has any shares or interest in the stock of any association or corporation, the clerk shall issue a summons, notifying such person, corporation or association, to appear at the ensuing term of the court, and answer a garnishee in the action. The summons shall be directed to the sheriff, and served and returned by him in the same manner as notice is served and returned in the commencement of civil actions.

SEC. 144. From the day of the service of the summons, as provided in section 143, the garnishee shall be accountable to the plaintiff in the action, for the amount of money, property, or credits in his hands, or due and owing from him to the defendant.

SEC. 145. It shall be the duty of any officer or agent of an association or corporation, and of every other person summoned as a garnishee, when served, or within fifteen days afterwards, to furnish the sheriff with a certificate of the number of shares or rights of the defendants in the stock of such corporation or association, or a description of the property held by such corporation, association, or person belonging to or for the benefit of the defendant, or the amount of the debt owing to the defendant by such association, corporation, or person, whether due or not; which certificate shall be returned by the sheriff with the summons. If such officer, agent, or person refuse so to do, he may be required by the court to attend before it, and be examined on oath concerning the same, and obedience to the orders may be enforced by attachment, as for contempt.

SEC. 146. Whenever any garnishee, being duly summoned, fail to appear and make discovery as required by law, or fails to answer or demur

to the matters set forth against him in the affidavit, or additional complaint or interrogatories, such matters may be taken for confessed, or judgment entered by default, as the case may require, or he may be examined under oath touching all the matters charged in the affidavit or additional complaint; and all such proceedings, pleadings and process shall be had according to the practice in other cases, as shall be necessary to determine the rights of the parties under a final judgment.

SEC. 147. If any plaintiff, or other person in his behalf, shall satisfy the court or judge in the manner required in this act, of the existence of any of the causes authorizing an arrest in civil action against any garnishee, he may have an order for a warrant of arrest, which shall be issued, and the same proceedings had thereon as in ordinary cases of arrest in civil actions.

SEC. 148. Final judgment shall not be rendered against a garnishee until the action against the defendant in attachment is determined; and if the plaintiff fails to recover judgment either against the defendant or the garnishee, the garnishee shall be discharged, and recover his costs.

SEC. 149. The return of "no property found," upon the writ of attachment, shall not affect the proceedings against the garnishee.

SEC. 150. If the plaintiff recover judgment against the defendant, and the garnishee deliver up to the sheriff, before judgment against him, all the defendant's goods and chattels, or other effects in his possession, subject to execution, or a sufficient amount thereof to satisfy the plaintiff's judgment, or an inventory thereof, and pay to the sheriff, or into court, all moneys due from him or belonging to the defendant, or a sufficient amount thereof to satisfy the plaintiff's judgment, the costs in the proceeding against the garnishee shall be paid by the defendant; but if the garnishee shall not appear, or if appearing, shall refuse truly to confess the matter alleged, and on the trial the plaintiff shall recover judgment against him, or if he admit that he has moneys, credits, or effects belonging to the defendant in his hands, and shall refuse to pay or deliver the same as above provided, he shall pay costs.

SEC. 151. A garnishee in attachment shall not be compelled in any case, to pay or perform any contract in any other manner, or at any other time, than he would be bound to do for the defendant in attachment.

SEC. 152. A garnishee may pay the moneys owing to the defendant by him, to the sheriff, or into court, and shall be discharged from liability to the defendant for money so paid, not exceeding the plaintiff's claim; and not be liable for costs if paid at or before the first term after the writ or notice is served upon the garnishee, or as soon as the same shall be done.

SEC. 153. A garnishee, or officer of a corporation summoned as a

garnishee, at any time after fifteen days from the service of the summons, may be examined in open court on oath, and if it be discovered on such examination that at the time, or after the service of the summons upon him, he or the corporation was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property, and the payment of any such indebtedness into court, or the execution of a bond by the garnishee, with sufficient sureties, to be approved by the court, payable to the plaintiff, to the effect that the indebtedness shall be paid, or the property forthcoming, as the court shall direct.

SEC. 154. Any creditor of the defendant upon commencing his suit, or afterwards, upon filing bond and affidavit as hereinbefore required, shall have a writ of attachment issued, or any person summoned as garnishee, or held to bail, and propound interrogatories to the garnishee, and enforce answer thereto, in like manner as the first attaching creditor.

SEC. 155. Any defendant against whom a writ of attachment has been issued, may, after appearing to the action, move to have the attachment discharged and restitution awarded of any property taken under it; but an appearance to the action shall not operate to discharge the attachment, unless a bond be filed as required in section one hundred and forty. If the defendant appear and judgment be rendered in favor of the plaintiff, and any part thereof remain unsatisfied, after exhausting the property attached, such judgment shall be deemed a judgment against the defendant personally, and shall have the same effect as other judgments, and execution shall issue thereon accordingly for the collection of such residue. If the plaintiff's bond be insufficient, he shall have a reasonable time to file an additional one.

SEC. 156. If the judgment in the action is rendered for the defendant, the attachment shall be discharged, and the property attached or its proceeds returned to him.

SEC. 157. If judgment in the action be rendered for the plaintiff, or one or more of several plaintiffs, and sufficient proof be made of the goods, chattels, rights, credits, moneys and effects in possession of the garnishee, the court shall also give judgment in favor of the plaintiff, or plaintiffs, against the garnishee, or the property of the defendant, or both, as the case may require, which may be enforced by execution.

SEC. 158. After judgment for the plaintiff, or one or more of several plaintiffs, property attached and remaining unsold may be sold on execution, as in other cases.

SEC. 159. The money realized from the attachment and garnishee, shall, under the direction of the court, after paying all costs and expenses, and the debt of the creditor who commenced the attachment, provided

sufficient shall have been attached on writs issued by him, be paid to the several creditors, in proportion to the amount of their several claims as adjusted, and the surplus, if any, shall be paid to the defendant.

SEC. 160. Every defendant shall be entitled to an action on the bond of the plaintiff or creditor, by whose proceedings in attachment he shall have been aggrieved, if it shall appear that the proceedings were wrongful and oppressive, and he shall recover damages at the discretion of a jury: *Provided*, if the plaintiff shall have recovered judgment against the defendant in the original suit, the amount of such judgment may be set off against any judgment recovered on the bond.

SEC. 161. When an order of attachment is fully executed, or discharged, the sheriff shall return the same, with his proceedings thereon, to the court.

CHAPTER XII.

OF RECEIVER, AND DEPOSITS IN COURT.

SEC. 162. When a receiver may be appointed by the court.
163. No attorney, or party interested, to be appointed.
164. Receiver must take oath and give bond.
165. Court to control certain fund.
166. Court may order sheriff to compel obedience to its orders.
167. Money deposited in court not to be loaned, unless by consent of all parties.
168. Powers of the receiver.
169. When part of a claim admitted, court may order defendant to satisfy same.

SEC. 162. A receiver may be appointed by the court in the following cases:—1st, In an action by a vender to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim. 2d, In actions between partners, or other persons jointly interested in any property or fund. 3d, In all actions where it is shown that the property, fund, or rent and profits in controversy is in danger of being lost, removed, or materially injured. 4th, In actions by a mortgager, for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; or when such property is insufficient to discharge the mortgage debt, to secure the application of the rents and profits accruing, before a sale can be had. 5th, When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights. 6th, And in such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

SEC. 163. No party, or attorney, or other person interested in an action, shall be appointed receiver therein.

SEC. 164. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court, execute a bond, to such person as the court may direct, conditioned that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

SEC. 165. When it is admitted, by the pleading or examination of a party, that he has in his possession or under his control any money, or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court.

SEC. 166. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it in conformity with the direction of the court.

SEC. 167. Money deposited or paid into court in an action, shall not be loaned out, unless with the consent of all parties having an interest in, or making claim to the same.

SEC. 168. The receiver shall have power, under the control of the court, to bring and defend actions; to take and keep possession of the property; to receive rents; collect debts; and, generally, to do such acts respecting the property as the court may authorize.

SEC. 169. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order by execution or attachment.

CHAPTER XIII.

OF ISSUES IN CIVIL ACTIONS.

SEC. 170. Issues arise, when. Are of two kinds.
171. Issue of law.
172. Issue of fact.
173. Issues of law and fact in same action. Which to be first tried.

SEC. 170. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party, and controverted by the other, and are of two kinds—1st, of law, and 2d, of fact.

SEC. 171. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

SEC. 172. An issue of fact arises—1st, upon a material allegation in the complaint, controverted by the answer; or 2d, upon new matter, or a set-off, controverted by the reply; or, 3d, upon new matter in the reply.

SEC. 173. Issues, both of law and of fact, may arise upon different parts of the pleadings in the same action. In such cases, the issues of law shall be first tried, unless the court otherwise direct.

CHAPTER XIV.

OF THE TRIAL OF CIVIL ACTIONS.

SEC. 174. How tried.
175. Affidavit required to grant a continuance.
Trial not to be continued, when.
176. Jury, how impanneled.
177. Challenge of jurors.
178. On what ground challenges for cause may be taken.
179. How tried.
180. Oath of jurors.
181. Ballots to be returned to jury box.
182. Jury to be kept together.
May be permitted to separate, when.
183. Proceedings when a juror is taken sick.
184. Address of counsel; charge of court; exception to charge.
Exception not to be regarded by supreme court, unless it specify particulars.
185. Either party may request charge to be made in writing.
May ask instructions, and if not given, may except.
186. Deliberations of the jury, where to take place.
Duty of officer in charge.
187. Jury may take with them certrin papers.
188. Jury may ask information after retiring.
189. The court always open for purposes connected with the pending cause.
A final adjournment of the court discharges the jury.

SEC. 174. An issue of law shall be tried by the court, unless referred upon consent, as provided in this act. An issue of fact shall be tried by a jury, unless a jury trial be waived, or a reference be ordered, as provided in this act.

SEC. 175. A motion to continue a trial on the ground of the absence of evidence, shall only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has

been used to procure it. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued.

SEC. 176. When the action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned, who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots [become] exhausted before the jury is complete, or if, from any cause, a juror or jurors be excused or discharged, the sheriff, under the direction of the court, shall summon from the bystanders, citizens of the county, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three, and such consent shall be entered by the clerk on the minutes of the trial.

SEC. 177. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and shall be peremptory or for cause. Each party shall be entitled to three peremptory challenges.

SEC. 178. Challenges for cause may be taken on one or more of the following grounds:—1st, A want of any of the qualifications prescribed by law to render a person competent as a juror. 2d, Consanguinity or affinity within the third degree to either party. 3d, Standing in relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any bond for either party. 4th, Interest on the part of the juror in the event of the action, or in the main question involved in the action. 5th, Having formed or expressed an unqualified opinion or belief as to the merits of the action. 6th, The existence of a state of mind in the juror evincing enmity against either party, or under bias, in favor of either party.

SEC. 179. Challenges for cause shall be tried by the court. The juror challenged, and any other person as a witness, may be examined on the trial of the challenge.

SEC. 180. As soon as the jury is full, an oath or affirmation shall be administered to the jurors, in substance, that they will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give, according to the evidence.

SEC. 181. When the jury is full and sworn, the ballots containing the names of the jurors sworn shall be laid aside till the jury so sworn is discharged, and then they shall be returned to the box; and every ballot drawn containing the name of a juror not so sworn, shall be returned to the box as soon as the jury is completed.

SEC. 182. The jurors may be kept together, in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the case to the jury, be permitted to separate. In either case, they may be admonished by the court that it is their duty not to converse with any person, or allow any other person to converse with them, or among themselves on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

SEC. 183. If, after the impanneling of the jury, and before a verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn, and the trial began anew; or the jury may be discharged, and a new jury, then or afterwards, impanneled.

SEC. 184. When the evidence is completed, the plaintiff or party having the burden of proof, may, by himself or counsel, address the court and jury upon the law and facts of the case; after which the other party may address the court and jury in like manner, and be followed by the party first addressing the court, by himself or one counsel. The court shall then proceed to charge the jury upon the law in the case, to which charge, or any part thereof, at any time before the jury return their verdict, either party shall have the right to except; but no exception shall be regarded by the supreme court, unless the same shall specify the particular parts excepted to.

SEC. 185. Either party shall have the privilege of requesting said charge to be made in writing, and may also ask the court to give instructions, and if the court refuse to give such instructions, the party asking the same may except.

SEC. 186. The jury may either decide in the court room, or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons. He shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their

deliberations, or the verdict agreed upon.

SEC. 187. Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers, except depositions, which have been received as evidence on the trial, or copies of such parts of the 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.

SEC. 188. 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 any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the parties or counsel.

SEC. 189. While the jury are absent, the court may adjourn from time to time, in respect to other business; but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged. A final adjournment of the court discharges the jury.

CHAPTER XV.

OF THE VERDICT.

SEC. 190. General and special verdicts defined.
191. When and how jury may assess value of property, and damages.
192. When a verdict may be general or special at discretion of jury, and when at that of the court.
193. A special shall control a general verdict; when.
194. When jury may assess amount of verdict.
195. Verdict may be corrected by jury.
Jury fee to be paid before verdict recorded.

SEC. 190. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounces generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

SEC. 191. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof; and may at the same time assess the damages, if any are claimed in the com-

plaint or answer, which the prevailing party has sustained by reason of the detention, or taking and withholding such property.

SEC. 192. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of facts, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered upon the minutes.

SEC. 193. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

SEC. 194. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a set-off for the recovery of money is established beyond the amount of the plaintiff's claim established, the jury shall also assess the amount of the recovery when the court give judgment for the plaintiff on the answer.

SEC. 195. If the verdict be informal, it may be corrected by the jury under the advice of the court, or the jury may be again sent out. When rendered, the party in whose favor the verdict shall be, shall, before the same is recorded, pay to the clerk the sum of twelve dollars as a jury fee, which shall be taxed against the opposite party as a part of the costs, and no other jury fee shall be taxed in the case.

CHAPTER XVI.

TRIAL BY THE COURT.

SEC. 196. When trial by jury may be waived.
197. Decision of court to be filed; how given.

SEC 196. Trial by jury may, with the assent of the court, be waived by the several parties, in the manner following:

1st—By failing to appear at the trial.

2d—By written consent, in person or by attorney, filed with the clerk.

3d—By oral consent in open court, entered in the minutes.

SEC. 197. Upon the trial of an issue of fact by the court, its decision shall be given in writing, and filed with the clerk. In giving the decision, the facts found, and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

CHAPTER XVII.

TRIAL OF REFEREES.

SEC. 198. Issues may be referred by consent of parties.
199. When a reference may be directed, without consent.
200. Reference may be ordered to any person or persons, not exceeding three.
201. Qualification of a referee.
202. How trial by referees shall be conducted.
203. Exceptions defined.
What exceptions shall be disregarded.
204. Exceptions to be in writing, and may be signed by judge, and filed with clerk.
205. No particular form required.
206. When notice of exception not necessary.

SEC. 198. All or any of the issues in the action, whether of fact or law, or both, may be referred, upon the written consent of the parties.

SEC. 199. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1st—When the trial of an issue of fact shall require the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or to report any specific question of fact involved therein; or

2d—When the taking of an account shall be necessary for the information of the court, before judgment upon an issue at law, or for carrying a judgment or order into effect; or

3d—When a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of the action; or

4th—When it is necessary for the information of the court in a special proceeding.

SEC. 200. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three, who reside in the county in which the action is brought, or the proceedings is triable.

SEC. 201. When the appointment of referees is made by the court or judge, each referee shall be:

1st—Qualified as a juror, as provided by statute.

2d—Competent as a juror between the parties.

SEC. 202. The trial by referees shall be conducted in the same manner as a trial by the court. They shall first be sworn well and faithfully to discharge their duties as such referees, and shall have the same power to administer oaths to witnesses, and to grant continuances as the court

upon such trial. They shall state the facts found and the conclusions of law, separately, and their decision shall be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon at the next term of the court after the decision is made, in the same manner as if the action had been tried by the court. When the reference to report the fact, the report shall have the effect of a special verdict.

SEC. 203. An exception is an objection taken at the trial to a decision upon matter of law, whether such trial be by jury, court or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and effect the substantial rights of the parties.

SEC. 204. The point of exception shall be taken at the time when the decision is made; be particularly stated in writing, and may be signed by the judge and filed with the clerk, or may, by order of the court, be entered at large upon the journal.

SEC. 205. No particular form of exception shall be required. The objection shall be stated, with so much of the evidence or other matter as is necessary to explain it, but no more.

SEC. 206. When a cause has been tried by the court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on a motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

CHAPTER XVIII.

NEW TRIAL.

SEC. 207. A new trial defined.
208. Causes for which a new trial may be granted.
209. When facts on application for, to be stated by affidavit. When by written statement.
210. Notice of motion for; when to be given.
211. When counter affidavits may be used; when to be filed.

SEC. 207. A new trial is a re-examination of an issue, in the same court, after a trial and decision by a jury, court or referees.

SEC. 208. The former verdict or other decision may be vacated

and a new trial granted, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

1st—Irregularity in the proeeedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial.

2d—Misconduct of the jury or prevailing party.

3d—Accident or surprise, which ordinary prudence could not have guarded against.

4th—Newly discovered evidence, material for the party making the application which he could not with reasonable diligence have discovered and produced at the trial.

5th—Excessive damages, appearing to have been given under the influence of passion or prejudice.

6th—Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

SEC. 209. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last preceding section, the facts upon which it is based shall be made to appear by affidavit. For any other cause, it shall be made upon a written statement.

SEC. 210. Notice of an intended motion for a new trial shall be on the day when the verdict is rendered, or within two days thereafter; and all motions shall be made during the term at which a cause is tried, unless for good cause the court allow further time.

SEC. 211. If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing; but such counter affidavits shall be filed with the clerk previous to the hearing.

CHAPTER XIX.

JUDGMENT IN GENERAL.

SEC. 212. A gment defined.
213. Against whom judgment may he given; extent thereof.
214. In action against several defendants, court may separate judgment.
215. When action may be dismissed or non-suit entered.
216. In all other cases, judgment to be rendered on the merits.

SEC. 212. A judgment is the final determination of the rights of the parties to the action.

SEC. 213. Judgment may be given for one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

SEC. 214. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

SEC. 215. An action may be dismissed, or a judgment of non-suit entered in the following cases:

1st—By the plaintiff himself, at any time, either in term time or in vacation, before the jury retire to consider of their verdict, unless set-off be interposed as a defense, or unless the defendant sets up a counter claim to the specific property or thing which is the subject matter of the action.

2d—By either party, upon the written consent of the other.

3d—By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

4th—By the court, when upon the trial and before the final submission of the case the plaintiff abandons it.

5th—By the court, on the refusal or neglect of the plaintiff to make the necessary parties after having been ordered by the court.

6th—By the court, on the application of some of the defendants, where there are others, whom the plaintiff fails to prosecute with diligence.

7th—By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action.

8th—By the court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient cause for the jury.

SEC. 216. In every case, other than those mentioned in the last section, the judgment shall be rendered on the merits.

CHAPTER XX.

JUDGMENT BY DEFAULT.

SEC. 217. When judgment may be had on failure to answer.

SEC. 217. Judgment may be had on proof of the service of the complaint and notice, if the defendant fail to answer the complaint as follows:

1st—In an action arising upon a contract for the recovery of money only; if no answer be filed with the clerk of the court within the time prescribed by law, or such further time as may have been granted, the court, upon the application of the plaintiff, may direct the clerk to enter the default of the defendant, and immediately thereafter enter judgment

for the amount mentioned in the complaint, including the costs against the defendant, or against one or more of several defendants, in the cases provided for in section twenty-five of this act.

2d—In other actions, if no answer be filed with the clerk of the court within the time prescribed by law, or such further time as may have been granted, the court shall, in like manner, direct the clerk to enter the default of the defendant; and thereafter, the plaintiff may apply at that, or any subsequent term of the court, for the relief demanded in the complaint. If the taking of an account, or other proof of any fact, be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And when the action is for the recovery of damages only, or of specific, real, or personal property, with damages for the withholding thereof, the court may order the damages to be assessed by a jury; or, if to determine the amount of damages, the examination of a long account be necessary, by a reference, as above provided.

3d—In actions when the service shall be by publication, the plaintiff may in like manner apply for judgment, and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the territory, shall require the plaintiff or his agent to be examined, on oath, respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment, the court may, in its discretion, require the plaintiff to cause to be filed satisfactory security to abide the order of the court, touching the restitution of any property, collected or received under the judgment, in case the defendant or his representatives shall be admitted to defend the action, and succeed in the defence.

4th—The court may, in its discretion, before final judgment, set aside any default upon affidavit, showing good and sufficient cause, and upon such terms as may be deemed reasonable.

CHAPTER XXI.

JUDGMENT BY CONFESSION.

SEC. 218. Clerk's duty upon confession of judgment.
His fee.
What the docket shall show.
219. Effect of judgments by confession.
From what time a lien.

SEC. 218. It shall be the duty of any clerk of a district court in this Territory, on the application of any person being the original holder, or assignee of such holder, of a note, bond, or other instrument of writing, in which judgment is confessed, or containing a warrant to any attorney or other person to confess a judgment, to enter judgment against the person or persons who executed the same, for the amount which from the face of said instrument may appear to be due, without the agency of an attorney, or complaint or notice filed; said judgment to bear the rate of interest specified in said note, bond or instrument of writing, and if no rate of interest is specified therein, the legal rate of interest, with such stay of execution as may be mentioned therein; for which entry, said clerk shall be entitled to receive from said defendant a fee of one dollar. Said clerk shall particularly enter on his docket the date and tenor of the instrument of writing on which said judgment is founded, which shall have the same force and effect as if complaint and notice had been duly served and filed, or judgment obtained in open court, and in term time; and the defendant shall not be liable for any other costs upon said judgment, other than the costs of enforcing the collection thereof.

SEC. 219. Judgments confessed in accordance with the preceeding section shall be similar in all respects to other judgments, and shall take effect and be a lien from the day upon which they are rendered: *Provided*, That a certified transcript thereof shall be filed in the office of the auditor of the county in which property may be situated, before such judgment shall be a lien thereon.

CHAPTER XXII.

OF THE MODE OF TAKING AND ENTERING JUDGMENTS.

SEC. 220. Judgment in trials by jury, when to be entered.
221. When case is reserved for argument, by whom and when it may be brought up.
222. Judgment for excess.
223. Judgment for possession.
Judgment for return.
224. Clerk to keep all the papers in the case.
225. Each clerk to keep an execution docket.
226. Within what time, and what to be entered therein.
227. Further entries therein.
228. *Ib.*
229. Clerk to prefix index to docket.
230. County auditors to keep record of transcript of judgment from supreme or district courts.
What records to contain.

SEC. 231. Sheriff to present execution and all proceedings had thereon, to auditor, for record.
232. Clerk to keep book of levies.
What to be entered.
Index to be prefixed, &c.

SEC. 220. When a trial by jury has been had, judgment shall be entered in conformity to the verdict, at the term during which it is rendered, unless an affidavit or statement of grounds for a new trial shall be filed, or unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

SEC. 221. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument, at the first term thereafter.

SEC. 222. If a set-off, established at the trial, exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

SEC. 223. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

SEC. 224. Immediately after entering the judgment, the clerk shall attach together all the papers in the case, and carefully keep them in his office.

SEC. 225. Every clerk shall keep in his office a well-bound book, to be called the execution docket, which shall be a public record, and open during the usual business hours, to all persons desirous of inspecting it.

SEC. 226. Within twenty days after the close of any term of the court, the clerk shall enter in said execution docket, a statement of each final judgment rendered at such term, containing:

1st—The names, at length, of all the parties.

2d—The date of the judgment, and against whom rendered.

3d—The amount or nature of the judgment and costs.

4th—An abstract of the costs of each party, and to whom belonging.

SEC. 227. The clerk shall also enter in his execution docket, a minute, in like manner, of any transcript of a judgment from the supreme court, or from any other district court of the Territory, or from a justice

of the peace, when the same are presented to him for that purpose, as shall be provided for by law.

SEC. 228. He shall leave space, on the same page if practicable, with each case, in which he shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in said case, until its final satisfaction, including the time when and to what county the execution is issued, and when returned, and the return or substance thereof. When the execution is levied on personal property which is returned unsold, the entry shall be: "levied (noting the date) on personal property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate, or any judgment, the minutes of which are entered in his execution docket, the entry shall be: "levied upon real estate," noting the date, and shall refer to the page upon the book of levies where the same is entered, as is hereinafter provided. When any execution issued to any other county, is returned, levied upon real estate in such county, the entry in the execution docket shall be "levied on real estate of ———, in ——— county," noting the date, county, and defendant, whose estate is levied upon; and when the money is made, or any part thereof, the amount and time when made shall be entered; also, when a writ of error has been taken, or the judgment is appealed, reversed, modified, discharged, or in any manner satisfied, the facts in respect thereto, shall be entered. The parties indebted may also assign or discharge such judgment on such execution docket; when the judgment is fully satisfied, in any way, the clerk shall write the word "satisfied," in large letters, across the face of the entry of such judgment.

SEC. 229. The clerk shall prefix to the execution docket, a full and correct alphabetical index, containing the names of all persons, parties to judgements, plantiffs and defendants, in seperate columns.

SEC. 230. The auditor of each county shall keep in his office, a well-bound book, which shall be a public record, open to inspection at all reasonable hours, in which he shall enter, whenever a transcript of a judgment from the supreme or district courts, or an execution shall be presented to him for that purpose:

1st—The names at length of all the parties, plaintiffs and defendants.

2d—The date of the judgment, and against whom rendered.

3d—The amount, or nature of the judgment and costs.

4th—An abstract of the costs of each party, and to whom belonging, leaving room in connection with each case, if practicable, to enter all the subsequent proceedings upon the execution, levies, sales, &c., and when a judgment is satisfied, he shall write across the face in large letters the word "satisfied."

SEC. 231. It shall be the duty of every sheriff into whose hands an execution may come from the district or supreme courts, before he shall proceed to execute the same, to present it to the auditor of the county for record in the "execution docket." And he shall also present to the auditor, for a like purpose, copies of all levies and proceedings made and had by him under and by virtue of said execution.

SEC. 232. The clerk shall also keep in his office a well bound book, to be called the book of levies, which shall be a public record, and open during the usual business hours to all persons desirous of inspecting the same, in which he shall enter all levies upon real estate in his county, when delivered to him by the sheriff, as is provided by law. An alphabetical index shall be prefixed to the book of levies, containing the names of all persons upon whose real estate such levies have been made, and when such levies are discharged in any manner, an entry thereof shall be made in the margin of the book of levies, where the levy is recorded.

CHAPTER XXIII.

LIEN OF JUDGMENTS.

SEC. 233. Rate of interest which judgments shall bear.
234. Judgment a lien on real estate.
Duration of lien.
Lien to be suspended, when.
Appeal, &c., not to affect lien.
235. Personal property, from what time to be held.

SEC. 233. Judgments shall bear the legal rate of interest from date thereof, except when rendered upon an express contract in writing, wherein a different rate of interest is agreed upon by the parties, in which case the judgment shall, until paid and satisfied, bear the same rate of interest specified in such written contract.

SEC. 234. The real estate of any judgment debtor, and such as he may acquire, shall be held and bound to satisfy any judgment of the district or supreme court, or any judgment of a justice of the peace, authorized by law to be levied upon real estate, for the period of five years from the day on which said judgment was rendered: *Provided*, That unless a certified transcript of the said judgment be lodged with the county auditor of the county where the lands lie, or unless a copy of an execution, directed to the sheriff of said county, be presented to said auditor for entry in his execution docket, within twenty days after the close of the term at which it is rendered, the lien upon real estate in that county shall be suspended, until the transcript of said judgment is so lodged for entry, or

the execution so presented. An appeal to the supreme court, writ of error, or stay of execution shall not affect any existing lien; and in all cases of an appeal or writ of error, the date of final judgment in the supreme court shall be the time from which said five years shall commence to run.

SEC. 235. Personal property shall only be held from the time it is actually levied upon.

CHAPTER XXIV.

OF EXECUTIONS.

SEC. 236. Execution within five years.
237. After five years, execution to issue only by leave of court.
238. How judgments may be enforced.
239. Four kinds of executions. Order to collect costs.
240. In what name, and form, execution to issue.
241. To what counties executions may be issued.
242. Returnable within ninety days.
243. Execution against the person, in what cases issued. Sheriff not to arrest, when.
244. Where, and at whose expense, persons arrested to be kept.
245. What property liable to execution.

SEC. 236. The party in whose favor judgment is given, may, at any time within five years thereafter, issue a writ of execution for its enforcement, as prescribed by law.

SEC. 237. After the lapse of five years from the date of the judgment, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent or non-resident, or cannot be found, in which case it may be given by publication, or in such other manner as the court shall direct. Such leave shall not be given unless it be established by the oath of the party, or other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due.

SEC. 238. When a judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this act. When it requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given, or the person or officer who is required thereby, or by law, to obey the same, and a writ shall be issued commanding him to obey or enforce the same. If he refuses, he may be punished by the court as for a contempt.

SEC. 239. There shall be four kinds of executions: one against the property of the judgment debtor; another against his person; the third

for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same; and the fourth commanding the enforcement of, or obedience to, any special order of the court. And in all cases there shall be an order to collect the costs.

SEC. 240. The writ of execution shall be issued in the name of the United States, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff of the county in which the property is situated, or coroner, when the sheriff is a party or interested, and shall intelligibly refer to the judgment, stating the court, the district or county where the judgment was rendered, the names of the parties, the amount of the judgment, if it be for money, and the amount actually due thereon, and shall require the sheriff, substantially, as follows :

1st.—If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of the debtor, and if sufficient personal property cannot be found, out of his real property, upon which the judgment is a lien.

2d.—If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property.

3d.—If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county until he shall pay the judgment, with interest, or be discharged according to law.

4th.—If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any charges, damages, or rents and profits, recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein. If a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of his real property. When it is to enforce obedience to any special order, it shall particularly command what is required to be done or to be omitted. When the nature of the case shall require it, the execution may embrace one or more of the requirements above mentioned. And in all cases the execution shall require the collection of all interest, costs, and increased costs thereon.

SEC. 241. When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in this Territory, but it shall not be issued, in the first instance, to the sheriff of any

county out of the district in which the judgment is rendered, unless the plaintiff or his attorney shall first make and file with the clerk an affidavit that the defendant has not, subject to execution, sufficient property, real or personal, in any county in said district to satisfy the judgment, but that he has property subject to execution in some other county or counties. But after an execution has been returned "no property found," in the district or county in which judgment was rendered, an execution may be issued to any county out of said district, upon the plaintiff or his attorney making oath that the defendant has property subject to execution in such county. When it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated.

SEC. 242. The sheriff shall endorse upon a writ of execution the time when he received the same, and such execution shall be returnable within ninety days after its date, to the clerk who issued the same.

SEC. 243. If the action be one in which the defendant may be arrested, as provided by law, an execution against the person of the judgment debtor may be issued to any county in the territory: *Provided*, That the sheriff shall not arrest the defendant, if he shall deliver to him property subject to levy, sufficient to satisfy said judgment.

SEC. 244. A person arrested on execution shall be imprisoned within the jail, or the liberties thereof, and kept at his own expense, until satisfaction of the execution or his legal discharge; but the plaintiff shall be liable to the sheriff, in the first instance, for such expense, as in other cases of arrest, in the same manner, and to the same extent, as herein prescribed.

SEC. 245. All property, real and personal, of the judgment debtor, not exempt by law, shall be liable to execution.

CHAPTER XXV.

EXEMPTION.

SEC. 246. Property of wife exempt.
Proviso.
247. What property exempt from execution.
248. Defendant may select property exempt.
249. Mode of ascertaining what property is exempt.

SEC. 246. All real and personal estate to which any married woman shall hereafter become entitled to in her own right, and all which may at the time of her marriage belong to her, and all the issues, rents and profits of such real estate shall not be liable to attachment for, or execu-

tion upon, any liability of a judgment against the husband so long as she, or any minor heir of her body shall be living: *Provided*, That her seperate property shall not be exempt from attachment or execution when the debts were owing by the wife previous to marriage, or may have been contracted for her benefit.

SEC. 247. The following property shall be exempt from execution, except as herein otherwise specially provided: 1st, Dwellings and other buildings, to the value of five hundred dollars; all private libraries; all articles of clothing of married women and children under twenty-one years of age; and to each family, kitchen and cupboard ware to the amount of one hundred and fifty dollars; one bed for every two persons in the family; two cows; two horses or two yoke of oxen; one wagon; two hogs; farming utensils actually used by the family; produce raised upon the farm or garden sufficient for six months consumption, and all tools of mechanics used to carry on their trade. But no article of property mentioned in this section shall be exempt from an execution issued on a judgment recovered for its price, or upon a mortgage thereon, or for any tax levied thereon.

SEC. 248. In all cases the defendant himself may select the property which is exempt.

SEC. 249. When a sheriff or other officer has levied upon or attached, or is about to levy upon or attach, personal property which is claimed to be by law exempt from execution or attachment, the sheriff or other officer shall, if required by the person claiming, forthwith summon three discreet and disinterested men having the qualifications of jurors, being householders and resident in the vicinity where the property is found, and administer to them an oath impartially to examine and determine how much, if any, of said property is so exempt. Such persons shall have full power to summon witnesses, administer the necessary oaths, and adjourn from time to time not longer than three days in all. They shall also have power to appraise the property claimed, and the other property of the claimant, so far as may be necessary to determine what portion, if any, is so exempt. They shall deliver their decision to the sheriff in writing, and he shall forthwith deliver to the person claiming, such property as is by them decided exempt from execution; but nothing in this section contained shall prevent the person claiming the property from giving a bond and trying his right before the district court, as is provided in cases for trying the rights of property claimed by other persons than the judgment debtor.

CHAPTER XXVI.

CLAIM TO PROPERTY LEVIED UPON OR ATTACHED.

SEC. 250. How adverse claim may be made.
251. Said claim to be placed on docket and tried in court.
252. Who shall be plaintiff, and who defendant.
253. Trial of the case and judgment.

SEC. 250. When any other person than the judgment debtor shall claim property levied upon or attached, he may have the right to demand and receive the same from the sheriff or other officer making the attachment or levy, upon his making an affidavit that the property is his, or that he has a right to the immediate possession thereof, stating on oath the value thereof, and giving to the sheriff or officer a bond with sureties in double the value of such property, conditioned that he will appear at the next term of the district court in which the property was seized, which shall commence ten days or more after the bond is accepted by the sheriff or other officer, and make good his title to the same, or that he will return the property or pay its value to the said sheriff or other officer. If the sheriff or other officer require it, the sureties shall justify as in other cases, and in case they do not so justify when required, the sheriff or officer shall retain the property, if the sheriff or officer do not require the bail to justify he shall stand good for their sufficiency. He shall date and endorse his acceptance upon the bond.

SEC. 251. The officer shall return the affidavit, bond and justification, if any, to the office of the clerk of the district court, and the clerk shall place the same upon his trial docket at the first term, which shall commence ten days or more after it was accepted by the sheriff or officer as above provided for, and it shall stand for trial at that term.

SEC. 252. The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution defendants.

SEC. 253. If the claimant makes good his title to the property, the bond shall be cancelled; if to a portion thereof, a like proportion of the bond shall be cancelled; but if he shall not maintain his title, judgment shall be rendered against him and his sureties for the value of the property, or for such a less amount as shall not exceed the amount due on the original execution or attachment. Where the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs; where the claimant recovers all the property, judgment shall be given in favor of the claimant for costs; where the claimant recovers a portion of the property

only, the costs shall be apportioned. When the plaintiff prevails, the costs may be taxed against the defendant who was plaintiff in the execution or attachment, or the court may, if they shall be of opinion that the sheriff attached or levied upon said property without the exercise of due caution, adjudge him to pay the costs or any portion thereof.

CHAPTER XXVII.

SALES OF PROPERTY UNDER EXECUTION.

SEC. 254. Notice of sale shall be given—how.
255. When, where and how sales under execution shall be made.
256. Form and manner of the sale of real estate.
257. Land sold by the acre, how to be measured off.
258. Land sold by tract or parcel not to be measured.
259. Land to go to highest bidder; money to be returned, &c.
260. Proceedings upon the return of sale of real estate.
261. Perfection of title to real estate sold under execution.
262. Personal property levied on may be retained by defendant on giving bond.
263. Postponement of sale by sheriff.
264. Delivery of personal property to purchaser.
265. Lease and sale when confirmed, absolute.
266. When undue proportion of judgment levied on property of one of several parties &c., contribution may be compelled.

SEC. 254. Before the sale of property on execution, notice thereof shall be given as follows:

1st—In case of personal property, by posting written or printed notice of the time and place of sale, in three public places of the county where the sale is to take place, not less than fifteen days before the day of sale.

2d—In case of real property, by posting a similar notice, particularly describing the property, in three public places of the county where the property is situated, one of which shall be where the property is to be sold, for four weeks prior to the day of sale, and publishing a copy thereof once a week for the same period, in a newspaper of the county, if there be one, or if there be none, then in a newspaper of the Territory published nearest the place of sale.

SEC. 255. All sales of property under execution, shall be made by auction, between nine o'clock in the morning and four in the afternoon; after sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser, or be interested in any purchase at such sale; when the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and

be sold in such parcels as are likely to bring the highest price, and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or where a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. Sales of real property shall be made on the premises, if occupied by the defendant or any person holding under him, otherwise such sales shall be made at the court house door.

SEC. 256. The form and manner of sale of real estate by execution shall be as follows: The sheriff shall proclaim aloud, at the place of sale, in the hearing of all the bystanders—"I am about to sell the following tracts of real estate: (here reading the description,) upon the following execution:" (here reading the execution.) He shall also state the amount which is required to make upon the execution, which shall include damages, interests and costs up to the day of sale and increased costs. If town property, and divided into two or more known lots, he shall ask :

1st—Who will pay this debt for a seven years' lease of all these lots? If there is a bidder, he shall then inquire:

2d—Who will pay the debt for a seven years' lease of any less number of lots than the whole? If there is a bidder, he shall inquire in respect to the smallest number of lots, for a lease of which, any bidder is willing to pay the debt.

3d—Who will pay this debt for the lease for the least period of time? If other lands, and divided into known tracts or parcels, he shall make similar inquiries concerning the whole and the several parcels, and the separate acres in each parcel. If a single tract of land, he shall make similar inquiry concerning the whole, and the number of acres. If there is no bidder who is willing to pay the debt for such lease of the whole, or of any part known as separate lots, parcels or acres, he shall then enquire who will pay the debt for the whole, or any known part, in lots, parcels or acres, as the case may require. If he shall have a bidder, he shall then offer for sale to the highest bidder above the debt, the lowest number of lots, or parcels, or acres, for which any one is willing to pay the debt. If he has no bid for the whole, or any portion equal to the amount of the debt, he shall then offer the land for sale, the lots and parcels separately or together, as he shall deem most advantageous. All land, except town lots, shall be sold by the acre.

SEC. 257. When the land is sold by the acre, and any less number of acres than the whole tract or parcel is sold, it shall be measured off to the purchaser in a square form, from the north east corner of the tract or parcel, unless some person having an interest in the land shall, at the sale,

or prior thereto, and before the bidding is made, request that the land sold shall be taken from some other part, or in some other form; in such case, if such request is reasonable, the officer making the sale, shall sell accordingly.

SEC. 258. When an entire tract or parcel is sold by the acre, it shall not be measured, but shall be deemed and taken to contain the number of acres named in the description, and be paid for accordingly; and when the number of acres is not contained in the description, the officer shall declare, according to his judgment, how many acres are contained therein, which shall be deemed and taken to be the true number of acres.

SEC. 259. The officer shall strike off the land to the highest bidder, who shall forthwith pay the money bid to the officer, who shall return the money with his execution, and his doings thereon, to the clerk of the court from which the execution issued, according to the order thereof.

SEC. 260. Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause on which the execution issued by its title in the docket of the term next after such return, and mark opposite the same—"sale of land for confirmation," and if no objection is made, the court, at such term, shall confirm such sale, and order the officer to make out and deliver to the purchaser a deed or release of the land sold, as the case may require. If the court shall be satisfied that by any irregularity of the officer, or from any cause, injustice has been done, the court shall set aside the sale or lease, and order a new execution. When the sale is confirmed, the money shall be paid to those entitled thereto. When the sale is set aside, the money shall be repaid to the purchaser.

SEC. 261. The party to whom such lease or deed is given, shall, upon the receipt thereof, take the same to the clerk of the district court of the district or county where the land lies, who shall enter in his book of levies, where the levy is recorded, what disposition has been made of such portion of the real estate, and shall endorse the fact upon the deed or lease, with the date when presented to him and when made. And no county auditor shall record any such deed or lease without such endorsement.

SEC. 262. When the sheriff shall levy upon personal property, by virtue of an execution, he may permit the defendant to retain the same or any part thereof in his possession until the day of sale, upon the defendant executing a bond to the sheriff, with sufficient sureties, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale, and for non-delivery thereof, an action may be maintained upon such bond by the sheriff or the plaintiff in the execution.

SEC. 263. If, at the time appointed for the sale, the sheriff should be prevented from attending at the place appointed, or, being present, should deem it for the advantage of all concerned, to postpone the sale for want of purchasers, or other sufficient causes, he may postpone the sale, not exceeding one week next after the day appointed, and so from time to time for like causes, giving notice of every adjournment by public proclamation, made at the same time, not exceeding the life of the execution.

SEC. 264. When the purchaser of any personal property capable of manual delivery, shall pay the purchase money, the sheriff shall deliver to him the property, and shall give him a receipted bill of sale. When such personal property shall not be capable of manual delivery, the sheriff shall execute and deliver to the purchaser a receipted bill of sale.

SEC. 265. The lease and sale of real estate under execution, after the same is confirmed, shall be absolute.

SEC. 266. Where property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases, the person so paying or contributing, shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment; upon filing such notice, the clerk shall make the entry thereof in the margin of the docket where the judgment is entered.

CHAPTER XXVIII.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

SEC. 267. Proceedings when judgment debtor refuses to satisfy judgment.
268. Examination of judgment debtor.
269. Debtors of the judgment debtor may satisfy execution.
270. Examination of persons indebted to judgment debtor.
271. On examination, garnishee to answer on oath.
272. Garnishee required to make answer; in default thereof, judgment creditor to take judgment by default, &c.
273. Judgment by default may be proceeded on to final judgment.
274. Exception may be taken to answer.
When body of garnishee may be attached.

SEC. 275. Issues between judgment creditor and debtor; how tried; when answer deemed sufficient.
276. Proceedings when answer of garnishee is not excepted to.
277. Garnishee may be discharged by delivering property to sheriff.
278. Judgment debtor, &c., may be examined concerning property in hands of garnishee.
279. Costs in issues between judgment creditor and garnishee.
280. Execution to issue as in other cases.
281. What earnings of a judgment debtor not liable.
282. Public officers not liable to answer as garnishee.

SEC. 267. After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the district court, or any judge thereof, that the judgment debtor has property or effects liable to execution which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by order, require the judgment debtor to appear and answer under oath concerning the same before such court, or judge, or before a referee appointed by such court or judge, at the time and place specified in the order, the place to be within the county in which the judgment debtor resides, and disobedience to such order may be punished as for a contempt.

SEC. 268. The judgment debtor, on his appearance, may be examined on oath concerning his property, and his answers reduced to writing, and filed with the clerk of the court by whom the execution was issued. Either party may also examine witnesses in his behalf; and if, during such examination, any property, rights or credits of such judgment debtor, not exempt by law, be discovered, they may be levied upon by execution.

SEC. 269. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 270. After the issuing or return of an execution against property of a judgment debtor, or of any one of several debtors in the same judgment, and upon an affidavit that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding twenty-five dollars, the district court, or any judge thereof, may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before such court or judge, and answer concerning the same. If before a referee, the examination shall be taken by the referee and certified to the court or judge. The court or judge may also, in their discretion, require notice of such proceeding to be given to any party to the action, in such manner as may seem to him proper.

SEC. 271. At any time after the making of such order, the judgment creditor may exhibit written allegations and interrogatories touching the property, stock or credits of the judgment debtor, in the possession of, or held by such person or corporation as garnishee, or debts owing to the judgment debtor by him or it, and such garnishee shall be required to make full, direct and true answers to the same on oath.

SEC. 272. On the day when the garnishee shall be required to attend before the court, judge or referee, he shall exhibit on oath his answer to the allegations and interrogatories of the judgment creditor, unless for cause shown, a further time shall be allowed; in default of such answer, the judgment creditor may take judgment by default against him at the next term thereafter, or the court or judge may punish him as for a contempt.

SEC. 273. Such judgment by default may be proceeded on to final judgment, in like manner as action against defendants; but no final judgment shall be rendered against the garnishee for a greater amount than that specified in the execution.

SEC. 275. The judgment creditor may except to the answer of any garnishee for insufficiency, and if the same shall be judged insufficient, the court or judge may allow the garnishee to amend his answer, in such time and upon such terms as shall be just; or the judgment creditor may take judgment by default, or move the court or judge to attach the body of the garnishee, to compel a sufficient answer.

SEC. 275. The judgment creditor may deny the answer of the garnishee, in whole or in part, and the issue shall be tried as ordinary issues between plaintiff and defendant. If the answer of the garnishee be not excepted to, or denied in such time as the judge or court may deem proper, it shall be taken to be true and sufficient.

SEC. 276. If by the answer be not excepted to or denied, or if upon trial it shall appear that the garnishee is possessed of property or effects of the judgment debtor, or is indebted to him the value of such property or effects, or of the debt being ascertained, judgment may be rendered against the garnishee for the proper amount in money; but if such debt be not yet due, execution shall not be awarded against the garnishee until it becomes due; and in such cases, the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund in his hand.

SEC. 277. Whenever any property, effects, money or debts belonging or owing to the judgment debtor, shall be confessed or found by the court, judge, or referee or jury, to be in possession of the garnishee, he may, at any time before final judgment, discharge himself by delivering the same to the sheriff.

SEC. 278. The judgment debtor or claimant may be required to attend before the court, judge or jury, for the purpose of giving any necessary information respecting property or effects alleged to be in the possession of the garnishee, and may be thereupon examined on oath concerning the same.

SEC. 279. In all cases of controversy between the judgment creditor and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

SEC. 280. Execution may be issued to collect any judgment rendered against a garnishee, as in ordinary cases of judgment against defendants.

SEC. 281. The earnings of a judgment debtor for personal services, at any time within sixty days next preceeding the judgment against a garnishee, shall not be included in such judgment.

SEC. 282. No territorial or county treasurer, sheriff, constable or other public officer, shall be liable to answer as garnishee for moneys in his possession as such public officer, belonging to or claimed by any judgment debtor.

CHAPTER XXIX.

WITNESSES AND EVIDENCE.

SEC. 283. Who eligible as witnesses.
284. Interested persons not excluded.
Such interest may be shown to affect credibility.
285. To whom preceding section shall apply.
Adverse party may be a witness against an assignor.
Assignor when not to be a witness.
286. Conviction for crime affects witnesses credibility.
287. Persons incompetent as witnesses.
288. Persons not to be examined.

SEC. 283. Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action or proceeding.

SEC. 284. No person offered as a witness shall be excluded from giving evidence by reason of his interest in the event of the action, but such interest may be shown to effect his credibility.

SEC. 285. The last section shall not apply to a party to the action, nor to any person for whose immediate benefit it is prosecuted or defended. When any assignor of a thing in action or contract is examined as a witness on behalf of any person deriving title through or from him, the adverse party may offer himself as a witness to the same matter in his own

behalf, and he shall be so received. But such assignor shall not be admitted to be examined in behalf of any person deriving title through or from him against any executor or administrator.

SEC. 286. No person offered as a witness shall be excluded from giving evidence by reason of conviction for crime, but such conviction may be shown to effect his credibility: *Provided*, That no person who shall have been convicted of the crime of perjury, shall be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon.

SEC. 287. The following persons shall not be competent to testify:

1st—Those who are of unsound mind, or intoxicated at the time of their production for examination.

2d—Children under ten years of age, who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly.

3d—Indians, or persons having more than one-half Indian blood, in an action or proceeding to which a white person is a party.

SEC. 288. In order to encourage confidence, and to preserve it inviolate, the following persons shall not be examined as witnesses:

1st—A husband shall not be examined for or against his wife, nor a wife for or against her husband; nor can either, during marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2d—An attorney or cousellor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

3d—A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

4th—A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient.

CHAPTER XXX.

MODE OF PROCURING ATTENDANCE OF WITNESSES.

SEC. 289. Sufficient notice to be given witnesses, and payment for attendance and mileage to be tendered.
290. What notice may require.
291. How served.
Proof of service, when necessary.
292. Person in court required to testify.
293. Witness served with notice, liable for damages for non-attendance.
294. May be fined and stand committed.
295. Attachment may issue for witness.
296. Order to examine prisoner.
297. Order, how obtained.

SEC. 289. Witnesses in civil causes pending before the district court, shall not be required to attend unless a sufficient time prior to the sitting of the court to enable them to attend, they shall be served with a notice signed by the party or his attorney, requiring their attendance at the time and place specified, and shall also be tendered payment for one day's attendance and mileage, or such other compensation in lieu thereof as may be allowed for going to and returning from the place where the court is held; such notice shall be at least three days, and in addition one day (Sunday excepted) for every ten miles of distance from witness' residence to place of examination.

SEC. 290. The notice may require not only the personal attendance of the person to whom it is directed, at a particular time and place to testify as a witness, but may also require him to bring with him any books, documents, or things under his control; but no public officer or person having the possession or control of public records or papers, which by law are required to be kept in any particular office or place, shall be compelled to produce the same in any court.

SEC. 291. Such notice may be served by any white person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

SEC. 292. A person present in court or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a notice served by a party desiring his testimony.

SEC. 293. If any person duly served with a notice, and obliged to attend as a witness, shall fail so to do, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action.

SEC. 294. Such failure to attend, as required by the notice, shall also be considered a contempt, and upon due proof, the witness may be punished by a fine not exceeding fifty dollars, and stand committed until said fine and costs are paid, or until discharged by due course of law.

SEC. 295. The court, judge, justice of the peace, or other officer, in such case, may issue an attachment to bring such witness before them to answer for contempt, and also to testify as witness in the cause in which he was notified to attend.

SEC. 296. If the witness be a prisoner confined in a jail or prison, within this territory, an order for his examination in prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued.

SEC. 297. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

CHAPTER XXXI.

EXAMINATION OF PARTIES.

SEC. 298. A party may examine his adversary.
299. Interrogatories may be filed, instead of examination on trial.
300. Answer to interrogatories, within what time to be made.
301. Interrogator may examine adverse party at the trial.
302. Rebutting testimony.
303. Effect of refusal to testify.
304. Testimony by a party not responsive to the inquiries. May be rebutted by adverse party.
305. A person interested, though not a party, may be examined as if named as a party.

SEC. 298. A party to an action or proceeding may be examined as a witness at the instance of the adverse party, or of one of several adverse parties, and for that purpose may be compelled in the same manner, and subject to the same rules of examination as any other witness to testify at the trial, or he may be examined on a commission.

SEC. 299. Instead of the examination being had at the trial, as provided by the last section, the plaintiff, at the time of filing his complaint or afterwards, and the defendant, at the time of filing his answer or afterwards, may file in the clerk's office interrogatories for the discovery of facts and documents material to the support or defense of the action, to be answered on oath by the adverse party.

SEC. 300. Such interrogatories shall be answered, and such answers filed in the clerk's office within twenty days after the same are

served on the party interrogated, unless for cause shown, a further time be allowed by the court or judge thereof.

SEC. 301. A party to an action having filed interrogatories to be answered by the adverse party, as provided by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial.

SEC. 302. The testimony of a party, either upon an examination at the trial, or upon interrogatories filed, may be rebutted by adverse testimony.

SEC. 303. If a party refuse to attend and testify at the trial, or to be examined upon a commission, or to answer any interrogatories filed, his complaint, answer, or reply may be stricken out, and judgment taken against him, and he may also, in the discretion of the court, be proceeded against as in other cases for a contempt: *Provided*, That the preceding sections shall not be construed so as to compel any person to answer any question where such answer may tend to criminate himself.

SEC. 304. A party examined by an adverse party, as in this act provided, may be examined on his own behalf in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answer thereto, or to discharge when his answer would charge himself, such adverse party may offer himself as a witness on his own behalf, in respect to such new matter, and shall be received.

SEC. 305. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner and subject to the same rules of examination as if he were named as a party.

CHAPTER XXXII.

OF DEPOSITIONS OF WITNESSES IN THE TERRITORIES.

SEC. 306. When depositions in this territory may be taken.
307. Before whom and how taken. Form of certificate.
308. How received in evidence.
Subject to legal exceptions.
Objection to form of interrogatory prohibited; when.
Duty of person taking deposition.
309. When not to be used.
Proviso.
310. When depositions may be used in another action.
Proviso.
311. When they may be used in appellate court.
312. Witnesses, how compelled.

SEC. 306. In all civil cases, the testimony of a witness residing thirty miles or more from the place of holding court, a going witness, or one sick, infirm or aged, rendering it impossible he will be able to attend, may be taken by deposition, and any party may, by notice, require a witness to attend from any part of the district: *Provided*, That in all cases when the judge shall not decide that the personal attendance of the witness was necessary, and that his testimony could not properly be taken by deposition, the party calling the witness shall be liable for and pay all the mileage or traveling expenses of the witness for the distance beyond thirty miles from the place of holding the court, without regard to the final determination of the suit.

SEC. 307. The deposition may be taken before any judge of a court of record, justice of the peace, clerk of a court of record, mayor of a city, or notary public, and shall be written by the officer taking the same, or by the witness, or by some disinterested person, in the presence and under the direction of such officer. When completed, it shall be carefully read to, or by the witness, corrected if desired, and subscribed by him, and certified by the officer substantially as follows:

Territory of Washington,
County of ————, ss.

I, A. B., (judge, clerk, &c., as the case may be,) do hereby certify, that the above deposition was taken before me, and reduced to writing by (myself, or witness, as the case may be,) at ———, in said county, on the ——— day of ———, 18——, at ——— o'clock, in pursuance of notice hereunto annexed; that the above named witness, before examination, was sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him.

Dated at ———, the ——— day of ———, 18——.

A. B. (as the case may be.)

The deposition shall be enclosed in a sealed envelope, by the officer taking the same, and directed to the clerk of the court, arbitrators, referee or justice of the peace, before whom the action is pending, or to such person as the parties in writing may agree upon, and either delivered to the clerk of the court, or other person, or transmitted through the mail, or by some private opportunity.

SEC. 308. Such deposition may be used by either party, upon the trial, or other proceeding against any party giving or receiving the notice, subject to all legal exceptions, to the competency or credibility of the witness, or the manner of taking the deposition; but if the parties attend at the examination, no objection to the form of an interrogatory shall be

made at the trial, unless the same was taken at the time of the examination. It shall be the duty of the person taking the deposition, to propound to the witness every question proposed by either party, and to note all objections to the form of any interrogatory; and when any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question, and before the answer, the words, "objected to;" and when any witness declines to answer a question on the ground that it will tend to criminate himself, that fact shall also be noted after the question is written down. The deposition may be taken in the form of a narrative, or by question and answer, or partly in either form, as either party present at the examination shall require. When taken by question and answer, the officer shall first write down the question, and then the answer, as nearly as may be in the language of the witness; but when the deposition is read to the witness, previous to signing it, he shall be permitted to amend his answer to any question, or any part of his deposition; such amendment, however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added at the end of the deposition, under the title, "amendment by the witness," and such amendment shall intelligibly refer to the part so amended.

SEC. 309. No deposition shall be used, if it appear that the reason for taking it no longer exists: *Provided, however*, That if the party producing the deposition in such case shall show any sufficient cause then existing for using such deposition, it may be admitted.

SEC. 310. When the plaintiff in any action shall discontinue it, or when it shall be dismissed for any cause, and another action shall afterwards be commenced for the same cause between the same parties, or their respective representatives, all depositions lawfully taken in the first action may be used in the other, in the same manner, and subject to the same conditions and objections as if originally taken for such other action: *Provided*, That the deposition shall have been duly filed in the court where the first action was pending, and shall remain in the custody of the court, from the termination of the first action until the commencement of the other.

SEC. 311. When any action shall have been appealed from one court to another, all depositions lawfully taken to be used in the court below, may be used in the appellate court in the same manner, and subject to such exceptions for informality or irregularity, and none other, as were taken to such depositions in writing in the court below.

SEC. 312. Any witness may, upon service of notice, be compelled by any officer authorized to take depositions, to appear and give his depo-

sition at any place, within twenty miles of the abode of such witness, in like manner, and under the same penalties as he may be compelled to attend as a witness in any court.

CHAPTER XXXIII.

DEPOSITIONS OF WITNESSES OUT OF THE TERRITORY.

SEC. 313. Depositions may be taken out of this Territory.
314. Deposition, how taken when witness resides within 200 miles of place of holding court.
315. In other cases, how taken.
316. Written interrogatories may or may not be annexed to commission.
317. What the commission shall authorize.
318. Trial not to be postponed by reason of non-return of commission, except on affidavit.

SEC. 313. The testimony of a witness out of this Territory may be taken by deposition, to be read in evidence in any action, suit, or proceeding pending in any court in this Territory.

SEC. 314. The deposition of a witness out of the Territory, but residing within two hundred miles of the place of holding court, may be taken under a notice in the same manner that depositions are taken in this Territory.

SEC. 315. In other cases, the deposition of a witness out of the Territory shall be taken upon a commission issued by the clerk, under the seal of the court, upon an order of the court, a judge thereof, or any of [the] judges of the supreme court, which order may be made on the application of either party, upon giving to the adverse party, or his attorney, ten days previous notice in writing, together with a copy of the interrogatories intended to be put to such witness. It shall be issued to a person or persons, not exceeding three in number, agreed upon by the parties, or their attorneys; or, if they do not agree, to any judge, justice of the peace, notary public, or other competent person selected by the court or judge granting the order for the commission.

SEC. 316. Such proper interrogatories, as well on part of the plaintiff as on part of the defendant, as the respective parties may prepare to be settled, if they disagree as to form, by the court or judge thereof granting the order for the commission, shall be annexed to the commission; or where the parties agree to that mode, the examination may be without written interrogatories.

SEC. 317. The commission shall authorize the commissioner or commissioners, to administer an oath to the witness and to take his deposition,

in answer to the several interrogatories annexed to such commission; or when the examination is to be without interrogatories, in respect to the question in dispute, to certify the deposition to the court, and to direct it to the clerk of the court, or such other person designated or agreed upon, and forward it to him by mail or other usual channel of conveyance.

SEC. 318. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon affidavit or other evidence satisfactory to the court, that the testimony of the witness is necessary, and that proper diligence has been been used to obtain it.

CHAPTER XXXIV.

PROCEEDING TO PERPETUATE TESTIMONY.

SEC. 319. Testimony, how perpetuated.
320. Proceedings preparatory to taking such testimony.
321. Commission, when to issue.
322. Deposition, how taken.
323. To be filed, when returned.
May be used subject to legal objection.

SEC. 319. When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly and substantially his title, claim, or interest, in or to the subject concerning which he desires to perpetuate the evidence, and the names of all persons interested, or supposed to be interested therein, and also the name of the witness proposed to be examined, which statement shall be under oath and filed in the district court. If the subject of the proposed deposition relate to real estate within this Territory, the statement shall be filed in the county where the lands, or any part thereof, lie, otherwise in the county where the parties interested, or some of them reside. Upon such statement, an application may be made to such court, or a judge thereof, to allow the examination of such witness.

SEC. 320. The court or judge shall appoint a time and place for hearing such application, and shall order notice thereof and of the statement to be served on all persons mentioned therein as adversely interested in the matter. The notice shall be served personally on all those living in the Territory, at least twenty days before the time of hearing the application. Upon those who are not residents of the Territory, it shall be served by publication or otherwise, in the same manner as a notice is served upon a non-resident.

SEC. 321. If, upon such hearing of the parties, or of the applicant alone, should no adverse party appear, the court or judge shall be satis-

fied that there is sufficient cause for taking the deposition, an order shall be made allowing the examination of the witness; and such court or judge shall direct a commission to issue therefor, in like manner as a commission to take the testimony of witnesses [as] in other cases.

SEC. 322. The deposition of such witness, whether residing in this Territory or not, shall be taken upon written interrogatories filed by the applicant, and cross interrogatories filed by any party adversely interested, if he shall think fit, and it shall be taken and returned substantially in the same manner as if taken upon commission, to be used in any cause pending in the same court.

SEC. 323. The deposition, when returned, shall be filed in the office of the clerk of the court by whom the commission was issued, and if a trial be had between the person at whose request the deposition was taken, and the person named in the statement, or any of them, or their successors in interest, upon proof of the death or insanity of the witness, or of his inability to attend the trial, by reason of age, sicknesss, or settled infirmity, the deposition, or a certified copy thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objections to the form of the interrogatory shall be made at the trial, unless the same were taken at the time of examination.

CHAPTER XXXV.

RECORDS, DOCUMENTS, BOOKS, &C.

SEC. 324. Inspection of documents, &c., how obtained.
325. When an instrument may be read without proof of its genuineness.
326. Records of other courts admissible, when.
327. Copies of instruments of writing admissible, when.
328. Certified copies of official papers admissible.
329. Surveyor General's certificate of residence, &c., admissible.
330. How a seal may be affixed, to be valid.
331. Printed copies of laws, printed by authority, admissible.

SEC. 324. Any court in which an action is pending, or a judge thereof, may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any book, document, or paper in his possession, or under his control, containing evidence relating to the merits of the action, or defence therein. If compliance with the order be refused, the court may exclude the book, document or paper from being given in evidence; or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be, and the court may also punish the party refusing as for a

contempt. This section shall not be construed to prevent a party from compelling another to procure books, papers or documents, where he is examined as a witness.

SEC. 325. If either party, at any time before trial, allow the other an inspection of any writing, material to the action, whether mentioned in the pleadings or not, and deliver to him a copy thereof, with notice that he intends to read the same in evidence on the trial of the cause, it may be so read without proof of its genuineness or execution, unless denied by affidavit before the commencement of the trial. If such denial be made of any writing not mentioned in the pleadings, the court may give time to either party to procure evidence, when necessary for the furtherance of justice.

SEC. 326. The records and proceedings of any court of the United States, or of any State or Territory, shall be admissible in evidence in all cases in this Territory, when authenticated by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

SEC. 327. Whenever any deed, conveyance, bond, mortgage, or other writing shall have been recorded or filed, in pursuance of law, copies of such deed, conveyance, bond, or other writing, duly certified by the officer having the lawful custody thereof, with the seal of office annexed, if there be such seal, if there be no seal, then with the official certificate of such officer, shall be received in evidence, to all intents and purposes, as the originals themselves.

SEC. 328. Copies of all papers on file in the offices of the surveyor generals of Oregon and Washington Territory, secretary of Washington Territory, territorial treasurer, territorial auditor, and any county treasurer, or any matter recorded in either of said offices, duly certified by the respective officers, with the respective seals of office annexed, shall be evidence in all the courts of this Territory.

SEC. 329. Any certificate of residence and cultivation upon the public lands, issued by the surveyor general of Oregon or of Washington Territory, in pursuance of law, shall be evidence in all the courts of this Territory.

SEC. 330. A seal of court or public office, when required to any writ, process, or proceeding, or to authenticate a copy of any record or document, may be affixed by making an impression directly on the paper, which shall be as valid as if made upon a wafer or on wax.

SEC. 331. Printed copies of the statute laws of any State, Territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and

read as evidence in their courts, shall be admitted in all courts in this Territory, and on all other occasions as presumptive evidence of such laws.

CHAPTER XXXVI.

WRITS OF ERROR AND APPEALS TO SUPREME COURTS.

SEC. 332. Judgments, &c., may be re-examined on a writ of error.
333. Limitation of time for prosecuting writ of error.
334. Proceedings to obtain a writ of error.
Clerk to issue notice of filing of precipe.
335. Notice, how to be issued and served.
Time of return.
336. Notice by clerk to defendant.
Clerk when to send transcript of record to clerk of Supreme Court.
337. What the transcript to contain.
338. Provision in event of non-reception, or loss of transcript.
When failure arises from neglect of plaintiff.
Diminution of record.
339. Term at which case shall stand for trial.
340. Assigning of errors and filing joinders.
341. Bond may be given by plaintiff to stay execution on original judgment.
342. Judgment may be reversed, affirmed, &c.
Execution of judgment.
343. If judgment below shall have been for money, damages, interest and costs to be awarded; defendant in error—when.
344. Who may prosecute writ and receive benefit thereof.
345. Court shall require another person to be made a party, when and how.
346. Title of property sold on execution, when not to be affected by reversal of judgment.
347. When Supreme Court equally divided in opinion.
348. Special verdict may be directed by District Court, when.
When and how it may direct an appeal.
In cases not provided for in this section, a writ of error necessary.
349. What errors and mistakes in the record shall be considered and adjudged on, upon error or appeal.
When judgment to be reversed.
350. All cases heretofore decided may be examined on writ of error, within time limited in this act.

SEC. 332. Every final judgment, order, or decision of a district court, in a civil action, may be re-examined upon a writ of error in the same court for error in fact, and in the supreme court for error in law.

SEC. 333. Every such writ shall be prosecuted within two years, and not after. But if the party entitled to have such writ shall be absent from the territory, and shall have not been personally served with process, nor appeared to the action, or if such party be an infant, married woman, or imprisoned, or insane, then such writ may be prosecuted within two

years from the removal of such disability, and not after: *Provided*, That absence from the territory shall not entitle the party to a longer time than five years; the time limited shall include the day on which the judgment is rendered or the order of decision is made, or on which the disability ceases.

SEC. 334. The party desirous of taking his writ of error shall file with the clerk of the court in which the judgment was rendered a precipe, containing a particular description of the judgment, order, or decision, upon which he wishes to bring his writ of error and his claim, whether upon error in fact or error in law; which precipe shall also contain an order directing the clerk to issue, under the seal of the court, notice to the adverse party of the filing of such precipe, and of the court and term at which such writs of error will be prosecuted; and the writ of error shall be deemed to have issued at the time of the filing of such precipe.

SEC. 335. The notice shall be issued and served in the same manner as other process is served, and shall be returned to the court in which such writ of error is to be prosecuted, by the first day of the term at which said writ of error is to be heard. It may be served on the defendant, or his attorney of record, in any county in the territory. And if service of the notice cannot be had from any cause, the court, at such term, upon being satisfied that the precipe has been filed and notice issued, may direct the manuer in which such notice shall be given; and after the order for giving notice has been fully complied with, may proceed as though notice had actually been given.

SEC. 336. Upon the filing of such precipe, and the payment of his fees, the clerk shall issue the notice to the defendant in error, and if the precipe direct the return of the writ of error to the supreme court, he shall make out a full transcript of the record, and send the same to the clerk of the supreme court by mail or other safe opportunity.

SEC. 337. The transcript of the record shall contain a copy of the writ and return, the pleadings, the journal entries, judgment, order or decision, bills of exception, execution and return, and all matters pertaining to the case, but it shall not be necessary to send copies of notices to witnesses, motions or depositions, unless the same, by bill of exceptions, have been made part of the record.

SEC. 338. Whenever from any cause the transcript of the record shall not be received by the clerk of the supreme court, or shall be lost, the court shall order a new transcript to be sent up, in such time and manner as they shall see fit: *Provided*, That in all cases where the failure arises from the neglect of the plaintiff in error to comply with the pro-

visions of this act, the writ of error or appeal shall be dismissed,—either party may, upon a suggestion of a diminution of the record, and upon a proper case made, have an order that a further record be sent up.

SEC. 339. If the notice shall have been served ten days or more before the term of the court to which the record is returnable, the case shall stand for trial at such term; and it may stand for trial if the parties appear in court, bringing in the record, and waive the notice.

SEC. 340. The court of error may fix the time for assigning errors and filing joinders; if errors in law be assigned, no joinder shall be necessary. One or more errors in fact may be assigned, and the defendant may put in the common joinder as a demurrer thereto, or may traverse or confess, and avoid the fact assigned for error, and a separate issue shall be made on each.

SEC. 341. If at the time of filing the precipe with the clerk, or at any time thereafter, the plaintiff in error shall file with the clerk a bond, with sureties to the satisfaction of the clerk, in double the amount of the judgment, if it is for money, and if the judgment is for the restraining or performing any other act, or the determination of any other right, then in such a sum as a judge of the supreme court shall direct, conditioned that the plaintiff pay all costs and damages, and perform such judgment as the court on the trial of the writ of error shall adjudge against him, then no further execution shall be had upon the original judgment, until the determination of the writ of error, and any execution previously issued shall be recalled.

SEC. 342. The judgment, or other matter complained of, may be affirmed, or may be reversed or set aside, in whole or in part, or may be modified, or a different judgment or order may be substituted for that complained of, and the cause may be remitted to the district court for such further proceedings as the supreme court by mandate shall direct. Execution may issue from the supreme court, or its judgments may be executed by the district court, on a mandate for that purpose.

SEC. 343. In case the judgment of the court below shall have been for a sum of money, and shall be affirmed against the plaintiff in error, damages shall be awarded to the defendant in error, not exceeding ten per cent, (or such per cent as agreed upon, by express contract in writing by the parties on which judgment is rendered,) on the amount, exclusive of interest, and costs of such judgment. And in all cases interest and costs shall be allowed on the original judgment.

SEC. 344. Any person who may be a party, or privy to any judgment, order or decision, may prosecute a writ of error to reverse the same, and the reversal shall inure to the benefit of all parties and privies therein,

and no other party or privy shall afterwards prosecute a writ of error for the same cause.

SEC. 345. When it shall appear that any other person should be made a party to any proceeding upon a writ of error, the court shall require such person to be made a party, and shall direct in what manner notice shall be given.

SEC. 346. The reversal of a judgment, order, or decision, shall not effect the title of property sold upon an execution issued upon such judgment, order, or decision, if such property be purchased at the sale by a stranger, but if purchased by the judgment creditor, the plaintiff in error may bring an action for the recovery thereof, and the court may award restitution, or render such other judgment as justice shall require.

SEC. 347. When the supreme court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

SEC. 348. Whenever upon the trial of any civil action in the district court, it shall be found to turn upon important questions of law, the court may direct a special verdict to be found; and in all cases the parties may make an agreed statement of facts, signed by themselves or their attorneys, which shall be entered of record; and all questions of law, arising on special verdicts, agreed statements, motions for new trial, and others, in any manner arising in the district court, may, under the direction of the district court, be taken to the supreme court by way of appeal; and for that purpose the court shall render a judgment in form only, which shall not be executed until the final decision of the cause; and the supreme court on hearing the appeal may give judgment, or remand the cause, or make any order, according to the law and justice of the case. In no other cases except as provided in this section can any order, judgment or decree of the district court be reviewed in the supreme court, except upon writ of error.

SEC. 349. In all cases of writs of error or appeals in the supreme court, the court shall consider and adjudge upon all errors and mistakes which shall appear in the entire record by which plaintiff in error may have been prejudiced, if the same were excepted to at the time, whether interlocutory or final, and whether the plaintiff in error had, according to the strict rules of law, waived the same by proceeding with the case, under the order of the court, after such exception: *Provided*, That the court shall consider all amendments which could have been made, as made, and in such case shall not reverse any judgment, order, or decision, unless it shall appear that injustice may have been done, and the plaintiff in error or his attorney shall make oath that injustice has been done him in the judgment which is sought to be reversed.

SEC. 350. All cases, either in law or equity, which have heretofore been decided in this territory, may at any time within the time limited in this act, be examined upon a writ of error, under the provisions of this act, and in adjudging upon such cases, the court shall be governed in their judgment on errors by the rules of the common law.

CHAPTER XXXVII.

SET-OFF.

SEC. 351. Against whom set-off may be made.
352. Set-off when plaintiff is a trustee, or has no real estate.
353. In actions by executors and administrators.
354. Balance found for defendant.
355. Set-offs by executors, trustees, and others, sued in a representative character.
356. Pre-requisite to entitle defendant to set-off.
357. When set off equals or is less than plaintiff's demand.
358. Judgment against plaintiff.

SEC. 351. The defendant in a civil action, upon a contract expressed or implied, may set off any demand of a like nature against the plaintiff in interest, which existed and belonged to him at the time of the commencement of the suit. And in all such actions, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, he may also set off a demand of a like nature, existing against the person to whom he was originally liable, or any subsequent assignee prior to the plaintiff, of such contract: *Provided*, Such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith before notice of such assignment, and was such a demand as might have set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

SEC. 352. If the plaintiff be a trustee for any other, or if the action be in the name of a plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off, as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

SEC. 353. In actions brought by executors and administrators, demands against their testators and intestates, and belonging to defendant at the time of their death, may be set off by the defendant in the same

manner as if the action had been brought by and in the name of the deceased.

SEC. 354. When a set off shall be established in an action brought by executors or administrators, and a balance found due to the defendant, the judgment rendered thereon against the plaintiff shall have the same effect as if the action had been originally commenced by the defendant.

SEC. 355. In actions against executors and administrators, and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates, or those whom they represent, in the same manner as the person so represented would have been entitled to set off the same in an action against them.

SEC. 356. To entitle a defendant to a set off, he must set the same forth in his answer.

SEC. 357. If the amount of the set off, duly established, be equal to the plaintiff's debt or demand, judgment shall be entered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

SEC. 358. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof, but no such judgment shall be rendered against the plaintiff, when the contract which is the subject of the action, shall have been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff in the action.

CHAPTER XXXVIII.

COSTS IN CIVIL ACTIONS.

SEC. 359. Compensation of attorneys.
Costs.
360. To whom costs shall be allowed.
361. Plaintiff in certain cases not entitled to costs.
362. Plaintiff entitled to no more costs than damages; when.
363. Costs when several actions are brought on one instrument of writing, &c
364. When defendant to have judgment in his favor for costs, &c.
365. When allowed to one or more of several defendants.
366. Amount of costs allowed to either party.
367. Necessary disbursements allowed, in addition to costs.
368. Referee's fees.
369. Cost of postponement of trial.
370. When tender made before commencement of action, costs not allowed plaintiff.
371. Plaintiff when to pay costs from time of deposit.
372. Appellant from decision of justice, when to pay costs.
373. Guardian, when responsible for costs.
374. Costs against executors, &c., on what estate chargeable.

SEC. 375. Against assignee.
376. Against Territory or county.
377. On appeal from inferior court in action or special proceeding, costs how awarded and collected.
378. Costs of appeal to supreme court, when at discretion of court.
379. When costs may be allowed or not; and if allowed, apportioned.
380. Costs may be re-taxed on application.
381. Security for costs may be required by defendant; when.
Proceedings in such event.
New bond, &c., may be ordered.
Deposit in lieu of bond.

SEC. 359. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement expressed or implied of the parties, but there may be allowed to the prevailing party upon the judgment, certain sums by way of indemnity for his expenses in the action, which allowances are termed costs.

SEC. 360. Costs shall be allowed the party in whose favor the judgment is rendered, except as is otherwise provided by law.

SEC. 361. The plaintiff shall not be entitled to costs in any action within the jurisdiction of a justice of the peace, which shall be commenced in the district court, when the recovery is for a less amount than one hundred dollars.

SEC. 362. In an action for an assault or an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recover less than ten dollars, he shall be entitled to no more costs or disbursements than the damage recovered.

SEC. 363. When several actions are brought on one bond, undertaking, promissory note, bill of exchange or other instrument in writing, or in any other case for the same cause of action against several parties, who might have been joined as defendants in the same action, no costs or disbursements shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this territory.

SEC. 364. In all cases where costs and disbursements are not allowed to the plaintiff, the defendant shall be entitled to have judgment in his favor for the same.

SEC. 365. In all actions where there are several defendants not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of defendants as have judgment in their favor, or any of them.

SEC. 366. When allowed to either party, costs shall be as follows:

1st—In all actions settled before issue is joined, five dollars.

2d—In all actions where judgment is rendered without a jury, ten dollars.

3d—In all actions where judgment is rendered after impannelling a jury, fifteen dollars.

4th—In all actions removed to the supreme court and settled before argument, ten dollars.

5th—In all actions where judgment is rendered in the supreme court after argument, fifteen dollars.

SEC. 367. The prevailing party, in addition to allowance for costs as provided in the last section, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The disbursements shall be stated in detail and verified by affidavit, which shall be filed with the clerk of the court.

SEC. 368. The fees of referees shall be four dollars to each, for every day spent in the business of the reference, but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

SEC. 369. When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

SEC. 370. When in an action for the recovery of money only, the defendant alleges in his answer, that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, in such specie as by agreement ought to be tendered, and thereupon brings into court, for the plaintiff, if in money, the amount so tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant.

SEC. 371. If the defendant in any action pending, shall at any time deposit with the clerk of the court, for the plaintiff, the amount which he admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of interest and cost, he shall pay all costs that may accrue from the time such money was so deposited.

SEC. 372. In all civil actions tried before a justice of the peace, in which an appeal shall be taken to the district court, and the party appellant shall not recover a more favorable judgment in the district court than

before the justice of the peace, such appellant shall pay all costs accruing after the appeal.

SEC. 373. When costs are adjudged against an infant plaintiff, the guardian or person by whom he appeared in the action, shall be responsible therefor, and payment may be enforced by execution.

SEC. 374. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting and defending in his own right, but such costs shall be chargeable only upon or collected off the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in such action or defence.

SEC. 375. When the cause of action after the commencement of the action, by assignment, or in any other manner becomes the property of a person not a party thereto, and the prosecution or defence is thereafter continued, such person shall be liable to the costs in the same manner as if he were a party, and payment thereof may be enforced by attachment.

SEC. 376. In all actions prosecuted in the name and for the use of the territory, or in the name and for the use of any county, the territory or county shall be liable for costs in the same cases and to the same extent as private parties.

SEC. 377. When the decision of a court of inferior jurisdiction in an action or special proceeding is brought before the supreme court or a district court, for review, such proceedings shall, for purposes of costs, be deemed an action at issue upon a question of law from the time the same is brought into the supreme court, or district court, and costs thereon may be awarded and collected in such manner as the court shall direct, according to the nature of the case.

SEC. 378. In the following cases the costs of an appeal to the supreme court shall be in the discretion of the court:

1st—When a new trial shall be ordered.

2d—When a judgment shall be affirmed in part and reversed in part.

SEC. 379. In all actions and proceedings than those mentioned in this chapter, where no provision is made for the recovery of costs, they may be allowed or not, and if allowed, may be apportioned between the parties in the discretion of the court.

SEC. 380. Any party aggrieved by the taxation of costs by the clerk of the court, may upon application have the same re-taxed by the court in which the action of proceedings is had.

SEC. 381. When the plaintiff in an action resides out of the district or county, or is a foreign corporation, security for the costs and charges

which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until a bond, executed by two or more persons, be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court, or judge, upon proof that the original bond is insufficient security, and proceedings in the action stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond.

CHAPTER XXXIX.

OF COMMISSIONERS TO CONVEY REAL ESTATE.

SEC. 382. Commissioners to convey real estate may be appointed by District Court; when.
383. Deed of Commissioner; what to recite.
384. What title passes by a conveyance in pursuance of a judgment.
385. What, in pursuance of sale ordered by the court.
386. No right passes by conveyance by Commissioner, until same examined and approved.
387. Conveyance by Commissioner, by whom to be signed.
Names of parties to be recited.
388. Conveyance, in what office to be recorded.
389. Court may enforce judgment to execute a conveyance of real estate.

SEC. 382. The several district courts may, whenever it is necessary, appoint a commissioner to convey real estate.

1st. When by a judgment in an action a party is ordered to convey real property to another, or any interest therein.

2d. When real property, or any interest therein, has been sold under a special order of court, and the purchase money paid therefor.

SEC. 383. The deed of the commissioner shall so refer to the judgment authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally

SEC. 384. A conveyance made in pursuance of a judgment, shall pass to the grantee the title of the parties ordered to convey the land.

SEC. 385. A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding.

SEC. 386. A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be endorsed on the conveyance and recorded with it.

SEC. 387. It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the names of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance.

SEC. 388. The conveyance shall be recorded in the office in which by law it should have been recorded, had it been made by the parties whose title is conveyed by it.

SEC. 389. In case of a judgment to compel a party to execute a conveyance of real estate, the court may enforce the judgment by attachment or sequestration, or appoint a commissioner to make the conveyance.

CHAPTER XL.

ACTIONS TO RECOVER, AND AFFECTING REAL ESTATE.

SEC. 390. Real property may be recovered by person having valid interest, &c., therein.
391. Landlord may be substituted for defendant; when.
392. Proof required in action by tenant in common, &c., against co-tenant.
393. Actions for partition of real property held by joint tenants, &c., may be brought in District Court.
394. Complaint to conform to provisions regulating civil practice, and court may require a partition, special assignment, sale, or division.

SEC. 390. Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the district court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein.

SEC. 391. Whenever it appears that the defendant is only a tenant, the landlord may be substituted, reasonable notice thereof being given.

SEC. 392. In an action by a tenant in common, or joint tenant of real property against his co-tenant, the plaintiff must show in addition to his evidence of right that the defendant either denied the plaintiff's right, or did some act amounting to such denial.

SEC. 393. Action may be brought in the district court for the partition of real property, held or possessed by joint tenants, or tenants in common, or for the special assignment or determination of any right or interest therein by any person interested.

SEC. 394. The complaint shall conform as far as is practicable to the provisions of law regulating the practice in civil actions, and the court may require and cause to be made by order, a partition of the premises or a special assignment of the interest, or in case the partition or assignment is impracticable, may order a sale of the property and a division of the

proceeds, and shall in all respects adjudge as the nature of cases may require.

CHAPTER XLI.

OF WASTE.

SEC. 395. Wrongs heretofore remediable by action of waste shall be subjects of action, as other wrongs.
Judgment of eviction, &c., in whose favor to be given.
396. Injunction to restrain waste on lands; when to issue.
Notice and bond required.

SEC. 395. Wrongs heretofore remediable by action of waste, shall be subjects of action as other wrongs in which there may be judgment for damages, forfeiture of the estate of the party offending, and eviction from the premises. Judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, where injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

SEC. 396. When any two or more persons are opposing claimants under the laws of the United States to any land in this territory, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance, and which cannot be compensated by damages, and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction, when granted, shall be set aside or modified as is provided generally for injunctions and restraining orders.

CHAPTER XLII.

NUISANCE.

SEC. 397. A nuisance defined.
Is a subject of action.
398. Who may bring action for nuisance.
399. May be enjoined or abated, and damages recovered.

SEC. 397. The obstruction of any highway, or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health, or indecent or offensive to the senses,

or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action.

SEC. 398. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

SEC. 399. Where a proper case is made, the nuisance may be enjoined or abated, and damages recovered therefor.

CHAPTER XLIII.

FORECLOSURE OF MORTGAGES.

SEC. 400. Mortgage may be foreclosed; when, and in what court.
401. Remedy of mortgage, confined to property mortgaged; when.
402. Mortgaged premises, or part thereof, to be sold.
Payment prior to sale shall satisfy judgment.
403. When other property of the mortgage debtor shall be levied upon.
404. Duty of clerk of court and sheriff when mortgage foreclosed.
405. Plaintiff not to proceed to foreclose mortgage while prosecuting another action for same debt, &c.
406. Complaint for foreclosure may be dismissed or proceeding stayed; when.
Court, what to direct in final judgment.
407. Court may direct sale of a portion only of the property.
Judgment to be enforced on subsequent default.
408. When property cannot be sold in parcels, proceedings to be had.
409. Plaintiff to endorse on execution description of mortgaged premises.
A sale upon execution forecloses equity of redemption.

SEC. 400. When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the district court of the district or county where the land, or some part thereof lies, to foreclose the equity of redemption contained in the mortgage.

SEC. 401. When there is no express agreement in the mortgage, nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgage shall be confined to the property mortgaged.

SEC. 402. In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs at any time before sale, shall satisfy the judgment.

SEC. 403. When there is an express agreement for the payment of the sum of money secured, contained in the mortgage, or any separate instrument, the court shall direct, in the order of the sale, that the balance

due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be levied of any property of the mortgage debtor.

SEC. 404. A copy of the order of sale and judgment shall be issued and certified by the clerk, under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises, or so much thereof as may be necessary to satisfy the judgment, interest and costs, as upon execution; and if any part of the judgment, interest and cost remain unsatisfied, the sheriff shall forthwith proceed to levy the residue of the other property of the defendant.

SEC. 405. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure.

SEC. 406. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into court the principal and interest due, with costs, at any time before final judgment, the complaint shall be dismissed. If such payment be made after final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue.

SEC. 407. In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected.

SEC. 408. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue due do not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgaged debtor, his heirs and assigns.

SEC. 409. Whenever an execution shall issue upon a judgment recovered for a debt secured by a mortgage of real property, the plaintiff shall endorse thereon a brief description of the mortgaged premises, and a sale of the mortgaged premises, upon such execution shall foreclose the equity of redemption.

CHAPTER XLIV.

NEEXEAT.

SEC. 410. When actions may be commenced before time for performance of contract expires.
411. Order of arrest and service thereof.
Bond to be filed.
412. Defendant to give special bail, or be committed.
Liability and right of such bail.
413. Defendant may be discharged without special bail; when.
414. In whose favor this proceeding may be had.
415. Defendant may have remedy by writ of *habeas corpus*.
416. Proceedings may he had before justice of the peace.
417. Proceedings may be had in district where defendants may be found.
418. Surety upon written contract, when right of action has accrued.
May require obligee to institute action.

SEC. 410. Actions may be commenced upon any agreement in writing before the time for the performance of the contract expires, when the plaintiff or his agent shall make and file an affidavit with the clerk of the proper court, that the defendant is about to leave the territory without performing or making provisions for the performance of the contract, taking with him property, moneys, credits or effects, subject to execution, with intent to defraud the plaintiff.

SEC. 411. Upon such affidavit being filed, the clerk shall issue an order of arrest and bail, directed to the sheriff, which shall be issued, served, and returned, in all respects as such orders in other cases; before such order shall issue, the plaintiff shall file in the office of the clerk, a bond with sufficient surety, to be approved by the clerk, conditioned, that the plaintiff will pay the defendant such damages and costs as he shall wrongfully sustain by occasion of the suit, which sureties shall justify as bail upon an arrest.

SEC. 412. The sheriff shall require the defendant to enter into a recognizance of special bail, with sufficient surety, personally to appear on the first day of the court, at its next term, and abide the order of the court, and in default thereof, the defendant shall be committed to prison until discharged in due course of law; such special bail shall be liable for

the principal, and shall have a right to arrest and deliver him up, as in other cases, and the defendant may give other bail.

SEC. 413. Instead of giving special bail as above provided, the defendant shall be entitled to his discharge from custody if he will secure the performance of the contract, to the satisfaction of the plaintiff.

SEC. 414. This proceeding may be had in favor of any surety, or other person, jointly bound with the defendant. It may also be prosecuted by the person in whose favor the contract exists, against any one or more of the persons bound thereby, upon filing such affidavit, when the co-contractors are non-resident or probably insolvent, or at the request of any one of them, when they are residents and solvent.

SEC. 415. The defendant may have the same remedy by writ of habeas corpus, as in other cases of arrest and bail.

SEC. 416. The proceedings may be had before justices of the peace, in all cases within their jurisdiction.

SEC. 417. The affidavit and bond may be filed, and proceedings had in any district where the defendants may be found.

SEC. 418. Any person bound as surety upon any contract in writing for the payment of money or the performance of any act, when the right of action has accrued, may require, by notice in writing, the creditor or obligee forthwith to institute an action upon the contract.

CHAPTER XLV.

ACTIONS OF SURETIES AGAINST PRINCIPALS.

SEC. 419. When surety to be discharged from liability.
420. When one or more defendants being surety for others, question of securityship may be tried; but this not to affect proceedings of plaintiff.
421. When finding is in favor of surety, property of surety [?] to be first exhausted.
422. Judgment against sureties (except in certain cases) does not release the principal.
423. Judgment defendants and replevin bail when to have remedy, provided in preceding section.
424. No surety shall confess or suffer judgment by default; when.
425. Provisions of this act extended to heirs, &c.; but provisions of 427th [? 419th] section not to operate; when.

SEC. 419. If the creditor, or obligee, shall not proceed within a reasonable time to bring his action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon.

SEC. 420. When any action is brought against two or more defend-

ants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of securityship to be tried, and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff.

SEC. 421. If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon, and first exhaust the property of the surety, and the clerk shall endorse a memorandum of the order upon the execution.

SEC. 422. When any defendant, surety in a judgment or special bail or replevin bail, or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been, or shall be compelled to pay any judgment, or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his official bond, shall be compelled to pay any judgment or any part thereof, by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his use.

SEC. 423. Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in the last section against the co-defendants, or co-sureties to collect of them the rateable proportion each is equitably bound to pay.

SEC. 424. No surety, or his representative, shall confess judgment, or suffer judgment by default in any case where he is notified that there is a valid defense, if the principal will enter himself defendant to the action, and tender to the surety or his representatives good security to indemnify him, to be approved by the court.

SEC. 425. The foregoing provisions of this act shall extend to heirs, executors, and administrators of deceased persons, but the provisions of the 427th section, shall not operate against persons under legal disabilities.

CHAPTER XLVI.

HABEAS CORPUS.

SEC. 426. Every person shall have the benefit of habeas corpus.
427. Application for writ of.
How to be made, and what to specify.
428. Writs may be granted in term or vacation, and without delay.
429. To whom writ to be directed; and what to command.
430. If directed to sheriff, to be delivered by clerk.
431. If directed to any other person.
432. How served, when person to whom directed cannot be found, or shall refuse admittance to sheriff.
433. Immediate return to be made.
Return to be enforced.
434. Return to be signed.
What to state.
435. Trial of the return.
436. Cause to be heard and decided summarily.
437. When court shall not enquire into legality of the imprisonment; or discharge before term of commitment has expired.
438. Authority of the court on trial of habeas corpus.
439. Writ may be had to admit prisoner to bail.
Person interested in detention to be notified.
440. Court may compel attendance of witnesses, &c.
441. No officer liable to action for obeying writ or order thereon.
442. When a person in custody may be forthwith brought before the court by warrant.
443. Court may command apprehension of person causing restraint.
444. Writ how executed, and returned.
445. Temporary order may be made.
Court may change custody of prisoner.
446. Writ or process may be served on Sunday.
447. Writs, &c., by whom to be issued, &c.
Return thereof.
Defects in writs, &c.
Amendments and temporary commitments.
448. Writs shall be granted in favor of parents, &c., and of infants and insane persons.

SEC. 426. Every person restrained in his liberty under any pretense whatever, may prosecute a writ of habeas corpus to enquire into the cause of the restraint, and shall be delivered therefrom when illegal.

SEC. 427. Application for the writ shall be made by complaint, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

1st—By whom the person, in whose behalf the writ is applied for, is restrained of his liberty, and the place where, (naming the parties, if they are known, or describing them if they are not known.)

2d—The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

3d—If the restraint be alleged to be illegal, in what the illegality consists.

SEC. 428. Writs of habeas corpus may be granted by the supreme court or district court, or by any judge of either court, whether in term or vacation, and upon application, the writ shall be granted without delay.

SEC. 429. The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court or judge at such time and place as the court and judge shall direct, to do and receive what shall be ordered concerning him, and have then and there the writ.

SEC. 430. If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay.

SEC. 431. If the writ be directed to any other person, it shall be delivered to the sheriff, and shall be by him served by delivering the same to such person without delay.

SEC. 432. If the person to whom such writ is directed cannot be found, or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by fixing of the same on some conspicuous place, either of his dwelling house, or where the party is confined or under restraint.

SEC. 433. The sheriff or other person to whom the writ is directed, shall make immediate return thereof, and if he refuse after due service to make return, the court shall enforce obedience by attachment.

SEC. 434. The return must be signed and verified by the person making it, who shall state—

1s—The authority or cause of the restraint of the party in his custody.

2d—If the authority shall be in writing, he shall return a copy and produce the original on the hearing.

3d—If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party in the hearing, unless prevented by sickness or infirmity, which must be shown in the return.

SEC. 435. The court or judge, if satisfied of the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return, or any part thereof, or allege any new matter in evidence. The new matter shall be verified, except in cases of commitment

on a criminal charge. The return and pleadings may be amended without causing delay.

SEC. 436. The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint, or for the continuation thereof, shall discharge the party.

SEC. 437. No court or judge shall enquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired in either of the cases following:

1st—Upon any process issued on any final judgment of a court of competent jurisdiction.

2d—For any contempt of any court, officer, or body having authority in the premises to commit; but an order of commitment, as for a contempt upon proceedings to force in the remedy of a party, is not included in any of the foregoing specifications.

3d—Upon a warrant, issued from the district court upon an indictment or information.

SEC. 438. No person shall be discharged from an order of commitment issued by any judicial or peace officer, for want of bail, or in cases not bailable on account of any defect in the charge or process, or for alleged want of probable cause; but in all cases the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, admit to bail, or recommit the prisoner as may be just and legal, and recognize witnesses when proper.

SEC. 439. The writ may be had for the purpose of admitting a prisoner to bail in civil and criminal actions. When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

SEC. 440. The court or judge shall have power to require and compel the attendance of witnesses, and to do all other acts necessary to determine the case.

SEC. 441. No sheriff or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge made thereon.

SEC. 442. Whenever it shall appear by affidavit, that any one is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court, or judge, before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or jury may cause a warrant to be issued reciting the facts, and directed to the sheriff or any constable of the county, commanding him

to take the person thus held in custody or restraint, and forthwith bring him before the court or judge to be dealt with according to law.

SEC. 443. The court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

SEC. 444. The officer shall execute the writ by bringing the person therein named before the court or judge, and the like return or proceedings shall be required and had as in case of writs of habeas corpus.

SEC. 445. The court or judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party restrained, may be changed from one person to another, by order of the court or judge.

SEC 446. Any writ or process authorized by this chapter, may be issued and served in cases of emergency on Sunday.

SEC. 447. All writs and other process authorized by this chapter, shall be issued by the clerk of the court, and sealed with the seal of such court, and shall be served and returned forthwith, unless the court or judge shall specify a particular time for such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed, and temporary commitments when necessary.

SEC. 448. Writs of habeas corpus shall be granted in favor of parents, guardians, masters and husbands, and to enforce the rights, and for the protection of infants and insane persons; and the preceeding shall in all cases conform to the provisions of this statute.

CHAPTER XLVII.

MANDATE AND PROHIBITION.

SEC. 449. Writs of mandate and prohibition, from what courts to issue. Limitation as to supreme court.
450. To whom and for what they may issue.
451. How issued and made returnable.
452. First writ to be in the alternative or peremptory.
453. Issues of law and fact may be joined and like proceedings had as in civil action.
454. When plaintiff may recover damages.
455. Court may enlarge time of making return and pleading, &c.
456. Obedience to such writs, how enforced.
457. Writs of prohibition, what to command.
458. What judgment may be rendered.
459. Costs, how awarded.

SEC. 449. Writs of mandate and prohibition may issue from the supreme and district courts of the territory, but such writs shall issue from the supreme court only when necessary for the exercise of its functions and powers.

SEC. 450. Writs of mandate may be issued to any inferior tribunal, corporation, board or person to compel the performance of any act which the law specially enjoins, or a duty resulting from an office, trust or station.

SEC. 451. The writ shall be issued upon affidavit and motion, and shall be attested and sealed, and made returnable as the court shall direct, and the person, body, or tribunal, to whom the same shall be directed and delivered, shall make return, and for neglect to do so, shall be proceeded against as for contempt.

SEC. 452. The first writ shall be in the alternative or peremptory, as the court shall direct.

SEC. 453. Whenever a return shall be made to any such writ, issues of law and fact may be joined, and like proceedings shall be had for the trial of issues and rendering judgement, as in civil actions.

SEC. 454. In case a verdict shall be found for plaintiff, where the writ is in the alternative, or if judgment be given for him, he shall recover damages, as in an action for a false return, against the party making the return, and a peremptory writ shall be granted without delay.

SEC. 455. The court shall have the same power to enlarge the time of making a return and pleading to such writ, and for filing any subsequent pleadings, and to continue such cause, as in civil actions.

SEC. 456. Obedience to such writs may be enforced by attachment, and fine and imprisonment, or both.

SEC. 457. The writ of prohibition shall command the court and party to whom it shall be directed, to refrain from any further proceedings in the matter therein specified, until the return of the writ, and the further order of the court thereon, and upon the return, to show cause why they shall not be absolutely restrained from any further proceedings in the matter.

SEC. 458. The court shall render judgment either that a prohibition absolute, restraining the court and party proceeding in the matter, do issue, or authorizing the court and party to proceed in the matter in question.

SEC. 459. Costs shall be awarded in these proceedings as in civil actions.

CHAPTER XLVIII.

INFORMATION.

SEC. 460. When and against whom an information may be filed.
461. When and by whom it may be filed.
462. Information, of what to consist.
463. When against a person for usurping an office, what to set forth.
464. Notice signed by relator to be served and returned.
Defendant to suffer default, when.
Subsequent proceedings, in what manner had.
465. Judgment where right to office contested.
466. If judgment be in favor of relator, his rights.
467. Court may enforce its order.
468. Limitation of plaintiff's action for damages.
469. One information may be filed against several claimants to same office, &c.
470. When defendant found guilty, what judgment shall be rendered.
And herein of corporations.
471. Collection of costs against a corporation.
472. Recovery of property forfeited to the territory.
Title thereof.
473. When prosecuting attorney liable for costs.
474. Information to annul or vacate letters patent, deeds, &c., when may be prosecuted.
475. By whom information may be filed in such case.
Subsequent proceedings.

SEC. 460. An information may be filed against any person or corporation in the following cases:

1st—When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or any franchise within the territory, or any office in any corporation, created by the authority of the territory.

2d—Whenever any public officer shall have done, or suffered any act, which, by the provisions of law, shall work a forfeiture of his office.

3d—Where any association or number of persons shall act within this territory as a corporation, without being legally incorporated.

4th—Or where any corporation do, or omit acts, which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or where they exercise powers not conferred by law.

SEC. 461. The information may be filed by the prosecuting attorney of the district court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court, or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise, or corporation, which is the subject of the information.

SEC. 462. The information shall consist of a plain statement of the

facts which constitute the grounds of the proceedings, addressed to the court.

SEC. 463. Whenever an information shall be filed against a person for usurping an office, by the prosecuting attorney, he shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his right thereto; and when filed by any other person, he shall show his interest in the matter, and he may claim the damages he has sustained.

SEC. 464. Whenever an information is filed, a notice signed by the relator shall be served and returned as in other actions. The defendant shall appear and answer, or suffer default, and subsequent proceedings be had as in other cases.

SEC. 465. In every case wherein the right to an office is contested, judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself entitled to, if any, to the time of the judgment.

SEC. 466. If judgment be rendered in favor of the relator, he shall proceed to exercise the functions of the office, after he has been qualified as required by law, and the court shall order the defendant to deliver over all the books and papers in his custody, or within his power, belonging to the office from which he shall have been ousted.

SEC. 467. If the defendant shall refuse or neglect to deliver over the books and papers, pursuant to the order, the court, or judge thereof, shall enforce the order by attachment and imprisonment.

SEC. 468. When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the information, have his action for the damages at any time within one year after the judgment.

SEC. 469. When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons, in order to try their respective rights to the office or franchise.

SEC. 470. Whenever any defendant shall be found guilty of any usurpation of, or intrusion into, or unlawfully exercising any office, or any franchise within this territory, or any office in any corporation, created by the authority of this territory, or when any public officer, thus charged, shall be found guilty of having done, or suffered any act, which by the provision of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation, without having been legally incorporated, the court shall give judgment of ouster against the defendant, or defendants, and exclude him, or them, from the office, franchise, or corporate rights; and, in case

of corporations, that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff.

SEC. 471. If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the court may cause the costs to be collected by execution, against the persons claiming to be a corporation, or by attachment against the directors, or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors: the prosecuting attorney shall immediately institute proceedings for that purpose.

SEC. 472. Whenever any property shall be forfeited to the territory, for its use the legal title shall be deemed to be in the territory, from the time of the forfeiture; and an information may be filed by the prosecuting attorney in the district court, for the recovery of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in a civil action for the recovery of property.

SEC. 473. When an information is filed by the prosecuting attorney, he shall not be liable for the costs; but when it is filed upon the relation of a private person, he shall be liable for costs, unless the same are adjudged against the defendant.

SEC. 474. An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate or deed granted by the proper authorities of this territory, when there is reason to believe that the same were obtained by fraud, or through mistake, or ignorance of a material fact, or when the patentee, or those claiming under him, have done or omitted an act, in violation of the terms on which the letters, deeds, or certificates, were granted, have, by any other means, forfeited the interest acquired under the same.

SEC. 475. In such cases, the information may be filed by the prosecuting attornoy upon his relation, or by any private person, upon his relation, showing his interest in the subject matter, and the subsequent proceedings, judgment of the court, and awarding of cost, shall conform to the above provisions, and such letters patent, deed, or certificate shall be annulled or sustained, according to the right of the case.

CHAPTER LXIX.

MISCELLANEOUS PROVISIONS.

SEC. 476. Pleadings sworn to, not to be deemed proof.
477. New party introduced into an action, to what notice entitled.
478. Time within which an act is to be done, how computed.
Sunday, when excluded.
479. Process out of district court to be directed to, and executed by sheriff.
480. Provision where there is no sheriff, or he is disqualified, &c.
481. Notice to be in writing, and duly served.
Return, and proof of service.
482. Certain charges actionable in same manner as in case of slanderous words charging a crime which would subject offender to death, &c.
483. Person offering himself as bail, &c., may be examined on oath.
484. Bonds under this act not void for informality.
485. Of actions for recovery of purchase money for sale of lands.
486. Husband and wife, in what actions they may join.
487. Deposit in lieu of bail.
488. In what county action against a corporation may be brought.
489. Action for personal injury not to abate by death.
490. Right of action of widow and children of a man killed in a duel.
491. Right of action in case of seduction.
Proviso as to damages.
492. All other forms and rights of action for seduction abolished.
493. Proviso as to action for support of bastards.
493. How execution levied upon real estate, owned jointly or in common.
How upon personal property owned jointly or in co-partnership.
494. Unsatisfied judgment on justice's docket may be transferred to clerk of district court, and execution issue thereon.
Transcript to be recorded by county auditor, and remain a lien on real estate of county where recorded.

SEC. 476. Pleadings sworn to by either party, in any case, shall not on the trial be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party.

SEC. 477. When a new party is introduced into an action, as a representative or successor of a former party, such new party is entitled to the same notice to be given, in the same manner, as required for defendants in the commencement of an action.

SEC. 478. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded.

SEC. 479. All process issuing out of the district court shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law.

SEC. 480. When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty,

to appoint some suitable person, a citizen of the county, to execute the same: *Provided*, That final process shall, in no case, be executed by any other person than the legally authorized officer; or in case he is disqualified, some suitable person, appointed by the court or judge thereof, out of which the process issues, who shall make such appointment in writing, and before such appointment shall take effect, the person so appointed shall give surety to the party interested, for the faithful performance of his duties, which bond of suretyship shall be in writing, be approved by the court or judge appointing him, and be placed on file with the papers in the case.

SEC. 481. In all cases where notice is required by this act, it shall be in writing, and must be duly served upon the party. If served by an officer whose duty it is to serve process, his return shall be sufficient. It may be served, however, when not otherwise especially provided herein, by any disinterested person; in which event, proof of service must be established by the affidavit of the person making such service.

SEC. 482. Every charge of incest, fornication, adultery, or whoredom, falsely made by any person against a female; also, words falsely spoken of any person, charging such person with incest, or the infamous crime against nature, either with mankind or the brute creation, shall be actionable in the same manner as in the case of slanderous words, charging a crime, the commission of which would subject the offender to death, or other degrading penalties.

SEC. 483. Every court and officer authorized to take any bail or surety, shall have power to examine on oath the person offering to become such bail or surety, concerning his property, and sufficiency as such bail or surety.

SEC. 484. No bond required under the provisions of this act, and intended as such bond, shall be void for want of form, or substance, or recital, or condition; nor shall the principal or surety on such account be discharged; but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond.

SEC. 485. In any action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not plaintiff, may be made a party, and the court, in a final judgment, may order the interest of the purchaser to be sold or transferred to the plaintiff, upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser, in case a sale be ordered.

SEC. 486. Husband and wife may join in all causes of action aris-

ing from injuries to the person or character of either, and both of them, or from injuries to the property of either, and both of them, or arising out of any contract in favor of either, and both of them.

SEC. 487. Any person required to give bail, may deposit with the clerk the amount of money for which he is required to give bail, and thereupon be discharged from arrest.

SEC. 488. Any action against a corporation may be brought in any county where the corporation has an office for the transaction of business, or any person resides, upon whom process may be served against such corporation, unless otherwise provided in this act.

SEC. 489. No action for a personal injury to any person, occasioning his death, shall abate, nor shall such right of action determine by reason of such death, if he have a wife and child living; but such action may be prosecuted, or commenced and prosecuted, in favor of such wife, or in favor of the wife and children, or if no wife, in favor of such child or children.

SEC. 490. The widow, or widow and children, or child or children, if no widow, of a man killed in a duel, shall have a right of action against the person killing him, and against the seconds, and all aiders and abettors, and shall recover such a sum as to the jury shall seem reasonable.

SEC. 491. The seduction of an innocent unmarried female, shall in itself constitute a good cause of action, in the name of the party injured, and against the party committing the injury, his aiders and abettors: *Provided*, That in all cases the damages recovered shall be for the exclusive benefit of the said injured party.

SEC. 492. All other forms and rights of action, to recover damages for seduction, or for the consequences thereof, by any other person than the party injured, are hereby abolished: *Provided*, That nothing herein contained shall be construed to prevent actions for the support of bastards being maintained by the proper authorities.

SEC. 493. When a defendant in execution owns real estate subject to execution, jointly or in common with any other person, the judgment shall be a lien, and the execution be levied upon the interest of the defendant only. When he owns personal property jointly, or in co-partnership with any other person, and the interest cannot be separately attached, the sheriff shall take possession of the property, unless the other person having an interest therein shall give the sheriff a sufficient bond, with surety, to hold and manage the property according to law; and the sheriff shall then proceed to sell the interest of the defendant in such property, describing such interest in his advertisement, as nearly as may be, and the purchaser shall acquire all the interest of such defendant therein; but nothing [herein] contained shall be so construed as to deprive the co-part-

ner of any such defendant, or any person interested in such property, subjecting the same to the payment of the debts of the co-partnership.

SEC. 494. Any party having a judgment upon any justice's docket, upon which an execution has been returned unsatisfied, and no property found, may take a transcript of such judgment and return to the clerk of the district court embracing his county, and upon making an affidavit that the defendant has real estate in any county of said district, subject to execution, the clerk shall enter the judgment in the execution docket, in the same manner as judgments of the district court, and thereafter it shall stand, and execution be issued thereon, as upon the judgment of the district court. A transcript thereof, or a copy of the execution issued thereupon, shall, as in other judgments, be recorded by the county auditor, and remain a lien upon real estate in the county where so recorded.

CHAPTER L.

OF CONSTRUCTION.

SEC. 495. Each district to be held to be but one county, and in this act the words district or county may be rendered county or district.
The powers of county officers not extended, &c.
496. Term indicating an officer, how construed.
497. Construction of words importing number and gender.
498. Actions already commenced to conform to this act, as far as practicable.
499. This act to be liberally construed.
500. Repealing clause.

SEC. 495. For all necessary purposes connected with the district court, each district shall be considered and held to be but one county; and whenever in this act the words district or county occur, the same may be rendered county or district, as may be necessary to conform the practice of the courts to the act of Congress, approved August 16, 1856: *Provided*, That nothing herein contained shall be construed to confer jurisdiction upon county officers, or extend their powers beyond the limits of their counties.

SEC. 496. Whenever any term indicating an officer is used, it shall be construed, when required, to mean any person authorized by law to discharge the duties of such officer.

SEC. 497. Words importing the singular number only, may also be applied to the plural of persons and things, and words importing the masculine gender only, may be extended to females also.

SEC. 498. In actions already commenced, the pleadings to be had to form issues, the manner of procuring testimony, the examination of

parties, the trial and rendition of judgment, and all other proceedings, shall conform to the provisions of this act, as far as practicable.

SEC. 499. The provisions of this act shall be liberally construed, and shall not be limited by any rule of strict construction.

SEC. 500. The act of the first legislative assembly, entitled "an act to regulate the practice and proceedings in civil actions," and the amendatory acts thereto, passed January 27th, 1857, and all laws and parts of laws inconsistent herewith, be, and the same are hereby repealed, but the repeal thereof shall not revive any former act; and this act is hereby declared as the code of practice in civil actions in the district courts of this territory, and all rights of action secured by existing laws, may be prosecuted in the manner prescribed herein.

Passed January 1860.

AN ACT

RELATIVE TO CRIMES AND PUNISHMENT, AND PROCEEDINGS IN CRIMINAL CASES.

CHAPTER I—*Of the rights of persons who are accused of crimes and offenses.*

" II—*Of offenses against the lives and persons of individuals.*

" III—*Of offenses against property.*

" IV—*Of offenses against public peace.*

" V—*Of offenses against public justice, and by and against public officers.*

" VI—*Of offenses against public policy.*

" VII—*Of offenses against morality and decency.*

" VIII—*Of offenses against public health.*

" IX—*Of principals and accessories.*

" X—*Of fines.*

" XI—*General provisions relative to crimes and punishments.*

" XII—*Of search warrants and proceedings thereon.*

" XIII—*Demanding fugitives from justice.*

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CHAPTER I.

OF THE RIGHTS OF PERSONS WHO ARE ACCUSED OF CRIMES AND OFFENSES.

SEC. 1. No person to be held to answer for a crime unless upon indictment, except before justice of peace or court martial.
2. Rights of the accused party, on trial.
3. Mode of conviction.
4. No person held to answer second indictment for offense of which he has been acquitted by jury.
5. Technical acquittal not a bar to a new indictment, except in capital offense.
6. A legal conviction to precede punisbment.
7. Term at which person imprisoned on indictment may be tried.
Shall be bailed or discharged; how and when.
8. Cases in which accused may be bailed—justification and rights of bail.
9. What offenses may be indicted in district court.
10. Certain prosecutions may be commenced at any period after offense.
Others within one and three years.
Proviso as to time that party was not resident in territory, and when indictment quashed.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That no person shall be held to answer in any court for an alleged crime or offense unless upon indictment by a grand jury, except in proceedings before a justice of the peace, or before court martial.

SEC. 2. On the trial of any indictment, the party accused shall have the right to be heard by himself or counsel, to meet the witnesses produced against him face to face, and he shall have the right to produce witnesses and proofs in his favor, and have compulsory process to compel the attendance of witnesses in his behalf, and to a speedy public trial by an impartial jury.

SEC. 3. No person indicted for an offense shall be convicted thereof unless by confession of his guilt in open court, or by the verdict of a jury accepted and recorded in open court.

SEC. 4. No person shall be held to answer on a second indictment for an offense of which he has been acquitted by a jury upon the facts and merits upon a former trial, but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offense, notwithstanding any defect in the former, or in the substance of the indictment on which he was acquitted.

SEC. 5. If any person indicted for an offense shall, on his trial, be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form, or to the substance of the indictment, he may be arraigned on a new indictment, and may be tried and convicted for the same offense, notwithstanding such former acquittal, except where such former charge was a capital offense.

SEC. 6. No person charged with any offense against the law, shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case, and of the person.

SEC. 7. Every person held in prison on indictment shall, if he require it, be tried at the next term of the court after the time he was imprisoned, or shall be bailed on his own recognizance, and every person held in prison on any charge of having committed an offense shall be discharged, if he be not indicted before the end of the first term of the court at which he is held to answer, unless it shall appear to the satisfaction of the court that the witnesses on the part of the territory have been enticed or kept away, or are detained and prevented from attending the court by sickness or some inevitable accident.

SEC. 8. Every person charged with an offense except that of murder in the first degree, where the proof is evident, or the presumption great, may be bailed by sufficient sureties, and bail shall justify and have the same rights as in civil cases, except as otherwise provided in this act.

SEC. 9. Offenses cognizable at common law, if not controled by statute or organic law, may be indicted in the district court.

SEC. 10. Prosecutions for the offenses of murder and arson, where death ensues, may be commenced at any period after the commission of the offense, or offenses; the punishment of which may be by imprisonment in the penitentiary, within three years after their commission, and for all other offenses within one year after their commission: *Provided*, That any length of time during which the party charged, was not usually and publicly resident within the territory, shall not be reckoned within the one

and three years respectively; and further provided, that where a person has been indicted within the period during which the indictment might be found, if the indictment be quashed, the time of limitation shall be computed from the quashing of such indictment.

CHAPTER II.

OF OFFENSES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

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12. Murder in first degree defined—punishment.
Pardoning power not prevented.
13. Murder in second degree, defined—punishment.
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15. Killing in duel out of Territory, when previous appointment made within, murder in second degree.
16. Manslaughter defined.
17. Assisting self-murderer, deemed manslaughter.
18. Loss of life on boats or vessels, when deemed manslaughter.
19. Loss of life on steamboats, when deemed manslaughter.
20. Second in duel where death ensues, guilty of manslaughter.
21. Manslaughter, how punished.
22. Engaging in duel, challenging, &c., how punished.
23. Accepting or carrying challenge, how punished.
24. Attempt to murder, by poisoning, how punished.
25. Attempt to murder by poisoning food, water, &c., how punished.
26. Mayhem [malicious] defined, how punished.
27. Assault, or assault and battery with malicious intent, how punished.
28. Assault, &c., when the offender has a pistol, &c., how punished.
29. Assault and battery defined, how punished.
30. Exhibiting dangerous weapon, when and how punished.
31. Attempt to murder, not by assault, how punished.
32. Mayhem (simple) defined, how punished.
33. Rape, defined—what sufficient evidence; punishment.
34. Robbery, defined; punishment.
35. Kidnapping, defined; punishment.
36. County in which preceding offense may be tried.
Consent of person taken, no defense; when.
37. Administering drugs, &c. to pregnant woman, with intent to destroy child, when and how punished.
38. Administering drugs to procure miscarriage of woman, when and how punished.
39. Extortion of money, &c., how punished.

SEC. 11. All offenses which may be punishable by imprisonment in the penitentiary, are felonies; and all other offenses are misdemeanors.

SEC. 12. Every person who shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate, any rape, arson, robbery or burglary, or by administering poison, or causing the same to be done, kill another, every such person shall be deemed

guilty of murder in the first degree, and upon conviction thereof shall suffer death. But this shall in no case prevent the exercise of the pardoning power of the governor, or the authority to commute the punishment from that of death to imprisonment for life.

SEC. 13. Every person who shall purposely and maliciously, but without deliberation and premeditation, kill another, every such person shall be deemed guilty of murder in the second degree, and upon conviction thereof, shall be imprisoned in the penitentiary, for a term of not less than ten, nor more than twenty years, and kept at hard labor.

SEC. 14. If either party to a duel be killed, the survivor shall be deemed guilty of murder in the second degree.

SEC. 15. If any person shall, by previous appointment made within, fight a duel without this territory, and in so doing shall inflict a mortal wound upon any person, whereof the person so injured shall die, such person so offending shall be deemed guilty of murder in the second degree, within any county in this territory.

SEC. 16. Every person who shall unlawfully kill any human being without malice express or implied, either voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act, such person shall be deemed guilty of manslaughter.

SEC. 17. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter.

SEC. 18. Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers, or such a quantity of other lading, that, by means thereof, such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter.

SEC. 19. If the captain, or any other person having charge of any steamboat used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat, or of any other apparatus for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create, or allow to be created, such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any person shall be killed, every such captain, engineer, or other person, shall be deemed guilty of manslaughter.

SEC. 20. Any person who shall be present at a duel as second, when either party thereto shall be killed, or a mortal wound inflicted, and whereof death shall ensue, shall be deemed guilty of manslaughter.

SEC. 21. Any person convicted of manslaughter shall be punished

by imprisonment in the penitentiary, not less than one year, nor more than twenty years, and shall be fined in any sum not exceeding five thousand dollars.

SEC. 22. Every person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight a duel, or shall send or deliver any written or verbal message, purporting or intending to be such challenge, although no duel ensue, shall be imprisoned, on conviction thereof, in the penitentiary, not more than ten years, nor less than one year.

SEC. 23. Every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not, and every person who shall be present at the fighting of a duel with deadly weapons, as an aid, or second, or who shall advise, encourage, or promote such duel, shall, on conviction thereof, be imprisoned in the penitentiary, not more than five years nor less than six months.

SEC. 24. Every person who shall administer, or procure to be administered, any poison to any other human being, with intent to kill the person to whom the same shall be administered, if death do not ensue, upon conviction thereof, shall be imprisoned in the penitentiary not more than twenty years nor less than two years.

SEC. 25. Every person who shall mingle poison with any food, drink or medicine, with the intent to injure any human being, or who shall poison any spring, well or reservoir of water, with such intent, shall, upon conviction thereof, be imprisoned in the penitentiary not more than fourteen years nor less than one year.

SEC. 26. Every person who on purpose, and of malicious aforethought, shall unlawfully disable the tongue, put out an eye, cut or bite off the nose, ear, lip, or other member of any person, with intent to disfigure or disable such person, shall be deemed guilty of malicious mayhem, and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years nor less than one year, and be fined in any sum not exceeding one thousand dollars.

SEC. 27. Every person who shall perpetrate, or attempt to perpetrate, an assault, or an assault and battery, with intent to commit murder, manslaughter, mayhem, rape, robbery, burglary, or kidnapping, shall, on conviction thereof, be imprisoned in the penitentiary not more than fourteen years nor less than one year, or be imprisoned in the county jail not more than one year or less than six months, and be fined in any sum not exceeding one thousand dollars.

SEC. 28. Every prison who shall assault and beat another with a cowhide or whip, having with him at the time a pistol or other deadly

weapon, shall, on conviction thereof, be imprisoned in the county jail not more than one year nor less than three months, and be fined in any sum not exceeding one thousand dollars.

SEC. 29. Every person who in a rude, insolent and angry manner, shall unlawfully touch, strike, beat or wound another, shall be deemed guilty of an assault and battery, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment not exceeding six months in the county jail.

SEC. 30. Every person who shall, in a rude, angry or threatening manner, in a crowd of two or more persons, exhibit any pistol, bowie knife or other dangerous weapon, shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars.

SEC. 31. Every person who shall attempt to commit the crime of murder by drowning or strangling another person, or by any means not constituting an assault with intent to commit murder, shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years nor less than one year.

SEC. 32. Every person who shall violently and unlawfully deprive another of the use of any bodily member, or who shall unlawfully and wilfully disable the tongue or eye, or bite the nose, ear or lip of another, shall be deemed guilty of simple mayhem, and, on conviction thereof, shall be imprisoned in the county jail not more than one year nor less than one month, and be fined in any sum not exceeding two thousand dollars, or fined only.

SEC. 33. Every person who shall unlawfully have carnal knowledge of a woman against her will, or of a female child under twelve years of age, shall be deemed guilty of a rape, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than thirty years nor less than one year, and in prosecutions for such offense, proof of penetration shall be sufficient evidence of the commission thereof.

SEC. 34. Every person who shall forcibly and feloniously take from the person of another any article of value, by violence or putting in fear, shall be deemed guilty of robbery, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years nor less than two years, and be fined in any sum not exceeding one thousand dollars.

SEC. 35. Every person who shall steal and take, or forcibly and unlawfully arrest any person, and convey such person to parts without the territory of Washington, or aid or abet therein, or who shall forcibly and unlawfully take or assist, or aid or abet, in forcibly and unlawfully taking or arresting any person, with intent to take such person to parts without

said territory, without having first established a claim upon the services of such perso, according to the laws of this territory or of the United States, shall be deemed guilty of kidnapping, and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years nor less than one year, and be fined not more than five thousand dollars nor less than one hundred dollars.

SEC. 36. Every offense mentioned in the preceding section may be tried either in the county in which the same may have been committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be sold or transferred, shall have been taken, confined, held, carried or brought; and upon the trial of any such offense, the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defense, unless it shall be made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or by threats.

SEC. 37. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby produced, on conviction thereof, be imprisoned in the penitentiary not more than twenty years, nor less than one year.

SEC. 38. Every person who shall administer to any pregnant woman, or to any woman who he supposes to be pregnant, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall, on conviction thereof, be imprisoned in the penitentiary not more than five years, nor less than one year, or be imprisoned in the county jail not more than twelve months, nor less than one month, and be fined in any sum not exceeding one thousand dollars.

SEC. 39. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or to control the person so threatened, to do any act against his will, he shall, upon conviction thereof, be imprisoned in the county jail not more than one year, nor less than one month, or be fined in any sum not exceeding five hundred dollars, nor less than one hundred dollars.

CHAPTER III.

OF OFFENCES AGAINST PROPERTY.

SEC. 40. Arson defined.
How punished.
When it is murder.
41. Malicious burning of property, how punished.
42. Malicious burning of one's own dwelling house, &c.
When damage ensues to another; punishment.
When it is murder in second degree.
43. Three preceding sections extended to married women.
44. Entering dwelling house, &c., in night time, or breaking or entering in day time, with felonious intent, how punished.
45. Grand larceny defined.
Punishment.
46. Petit larceny defined.
Punishment.
47. Personal goods, what may be considered as.
48. False marking, branding or altering, &c., another's animal with intent to steal. Punishment.
49. Buying or receiving stolen property, &c., when and how punished.
50. Not necessary to aver or prove conviction of person who stole such property.
51. Property to be restored to owner.
Sale shall not divest owner of his rights.
Officer arresting, to secure goods, &c.
52. Prosecutor and officer to be paid.
53. Falsely personating another, and thus receiving money, &c., what deemed, and how punished.
54. Obtaining money, &c., under false pretence, how punished.
55. When embezzlement deemed larceny, and how punished.
56. False receipt, &c., by ware-houseman, miller, or clerks, &c., or fraudulent conversion of money by agents, &c., how punished.
57. Forgery defined.
Punishment.
58. Counterfeiting gold or silver coin.
Punishment.
59. Where the intent to defraud is necessary to constitute offence of forgery, what allegations sufficient.
60. Forcible entry or detainer defined.
Punishment.
61. Malicious trespass defined.
Punishment.
62. Destroying monuments, boundary marks, &c., how punished.
63. Burning woods, grounds, &c., wilfully or by negligence, other than one's own, or to the injury of others, how punished.

SEC. 40. Every person who shall wilfully and maliciously set fire to the dwelling house, barn, stable, out house, ship, steamboat, or other vessel, or any water craft, mill, milk-house, banking house, distillery, manufactory, mechanic's or artificer's shop, store house, building, or room oc-

cupied as a shop or an office for professional business, or printing office of another, any public bridge, court house, jail, market house, seminary or college edifice, or building thereto belonging, or other public buildings of the value of five dollars, shall be deemed guilty of arson, and upon conviction thereof, shall be imprisoned in the penitentiary not more than ten years, nor less than one year, or in the county jail not more than six months, nor less than one month, and be fined in any sum not exceeding one thousand dollars; and should the death of any person ensue therefrom, known to be occupying or present on said premises, at the time such premises are wilfully set fire to, the offender, on conviction thereof, shall be deemed guilty of murder in the first degree.

SEC. 41. Every person who shall wilfully and maliciously set fire to any pile or parcel of boards, timber, piles, or other lumber, cord wood, ricks, stacks, or shocks of grain, hay, or other vegetable products, or vegetable products severed from the soil, not in ricks, stalks, or shocks, or any standing grass or grain, or other cultivated vegetable product of the soil, shall, upon conviction thereof, be imprisoned in the county jail not more than one year, nor less than one month, and be fined in any sum not exceeding five hundred dollars.

SEC. 42. Every person who shall wilfully and maliciously set fire to the dwelling house, or any building owned by himself, whereby the dwelling house or building of another shall be burnt or injured by fire, shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years, nor less than one year, or be imprisoned in the county jail not more than six years, nor less than six months, and fined in any sum not exceeding one thousand dollars; and should the life of any person be thereby lost, such offender shall be deemed guilty of murder in the second degree, and be imprisoned in the penitentiary during life.

SEC. 43. The three preceding sections shall severally extend to a married woman who may commit either of the offences therein described, though the property set fire to may belong partly or wholly to her husband.

SEC. 44. Every person who shall enter in the night time, or shall break or enter in the day time, any dwelling house or out-house thereto adjoining, and occupied therewith, or any office, shop, store, or warehouse, or any ship, steamboat or vessel, within the body of any county, with intent to commit a felony, upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years, nor less than one year.

SEC. 45. Every person who shall feloniously steal, take and carry, lead or drive away the personal goods or property of another, of the value of thirty dollars or more, shall be deemed guilty of grand larceny, and

upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years, nor less than one year.

SEC. 46. Every person who shall feloniously steal, take and carry, lead or drive away, the personal goods or property of another under the value of thirty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof, shall be imprisoned in the county jail not more than two years, nor less than one month.

SEC. 47. Bonds, promissory notes, bills of exchange, or other bills, orders, drafts, checks, or certificates, or warrants for or concerning money, goods or property due, or to become due, or to be delivered; and any deed or writing containing a conveyance of land or any valuable contract in force, or receipt, release, or defeasance, writ, process or public record, or any other instrument whatever, shall be considered as personal goods of which larceny may be committed.

SEC. 48. Every person who shall mark or brand, or alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his own property, but belonging to some other person, or cause the same to be done with intent thereby to steal the same, or to prevent the identification thereof by the true owner, shall, on conviction thereof, be imprisoned in the penitentiary not more than five years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 49. Every person who shall buy, receive or aid in the concealment of stolen property, money or goods, knowing the same to have been stolen, shall, upon conviction thereof, be imprisoned in the penitentiary not more than four years, nor less than one year, or imprisoned in the county jail not more than two years nor less than one month, and be fined not exceeding five hundred dollars, nor less than one hundred dollars.

SEC. 50. In any prosecution for the offence of buying, receiving, or aiding in the concealment of stolen money or other property known to have been stolen, it shall not be necessary to aver, nor on the trial thereof, to prove that the person who stole such property, has been convicted.

SEC 51. All property obtained by larceny, robbery or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser, or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alledged to have been stolen, and he shall be answerable for the same, and shall annex a schedule thereof to his return of the warrant.

SEC. 52. Upon any conviction of burglary, robbery or larceny, the court may order a suitable recompense to the prosecutor, and also to the

officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

SEC. 53. Every person who shall falsely represent or personate another, and in such assumed character, shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed guilty of larceny, and shall, on conviction thereof, be imprisoned in the penitentiary not more than fourteen years nor less than one year, or imprisoned in the county jail for any length of time not exceeding one year.

SEC. 54. If any person, with intent to defraud another, shall designedly, by color of any false token or writing, or any false pretense, obtain from any person any money, transfer, note, bond or receipt, or thing of value, such person, shall, upon conviction thereof, be imprisoned in the penitentiary not more than five years nor less than one year, or imprisoned in the county jail for any length of time not exceeding one year.

SEC. 55. If any officer, agent, clerk, or servant, or person to whom any money or other property shall be entrusted for any specific purpose for hire, shall embezzle, or fraudulently convert to his own use, or shall take or secrete with intent to embezzle and fraudulently convert to his own use, any money or other property which shall have come into his possession, or shall be under his care or charge by virtue of such employment, or for such specific purpose, shall be deemed guilty of larceny, and, on conviction thereof, be imprisoned in the penitentiary not more than ten years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 56. If any warehouse-man, miller, storage, forwarding, or commission merchant, or his or their servants, agents, or clerks, shall wilfully and fraudulently make, or alter any receipt or other written evidence of the delivery into any warehouse, mill, store, or other building belonging to him, them, or either of them, or his or their employers, of any grain, flour, pork, beef, or wool, or other goods, wares, or merchandize, which shall not have been so received or delivered into such mill, warehouse, store, or other building, previous to the making and altering such receipt or other written evidence thereof, upon conviction thereof, shall be imprisoned in the penitentiary not more than two years, nor less than six months, or imprisoned in the county jail for any length of time not exceeding one year, and fined in any sum not exceeding one thousand dollars; *and provided, further*, if any agent, clerk, officer, servant, or person to whom any money or other property shall be entrusted, with or without hire, shall fraudulently convert to his own use, or shall fail to account to the person so entrusting it to him, shall be deemed guilty of larceny, and

on conviction thereof, shall be imprisoned in the penitentiary not more than ten years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 57. Every person who shall falsely make, or assist to make, deface, destroy, alter, forge, or counterfeit, or cause to be falsely made, defaced, destroyed, altered, forged, or counterfeited, any record, deed, will, codicil, bond, writing obligatory, or property, receipt for money or property, power of attorney, certificate of a justice of the peace, or other public officer, auditor's warrant, treasury note, county order, acceptance or indorsement of any bill of exchange, promissory note, draft, or order, or assignment of any bond, writing obligatory, or promissory note for money or property, or any other instrument in writing, or any brand prescribed by law on a tobacco, beef, bacon, or pork cask, lard keg or barrel, salt barrel or hay bale, or any person who shall utter or publish as true any such instrument, knowing the same to be false, defaced, altered, forged, or counterfeited, with intent to defraud any person, body politic or corporate, shall be deemed guilty of forgery, and on conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years nor less than one year, and be fined in any sum not exceeding five thousand dollars.

SEC. 58. Every person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this territory, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false or counterfeit coin as aforesaid, shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years, nor less than one year, and be fined in any sum not exceeding five thousand dollars, and all such tools and instruments, intended for such purposes aforesaid, shall be destroyed.

SEC. 59. In any case where the intent to defraud is necessary to constitute the offence of forgery, or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment, an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trail of such indictment, it shall be deemed sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, territory, county, city, town or village, or any body corporate, or any public officer in his official capacity, or any co-partnership or member thereof, or any particular person, and persons of skill shall be competent witnesses to prove a forgery.

SEC. 60. Every person who shall violently take or keep possession of any house, or close with menaces, force and arms, and without the authority of law, shall be deemed guilty of forcible entry or forcible detainer, as the case may be, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

SEC. 61. Every person who shall maliciously or mischievously injure or destroy, or cause to be injured or destroyed, any property of another, or any public property, shall be deemed guilty of a malicious trespass, and on conviction thereof, be fined not exceeding three fold the value of the damage done, to which may be added imprisonment in the county jail not exceeding one year.

SEC. 62. Every person who shall wilfully or maliciously remove any monuments of stone, wood or other durable material, lawfully erected for the purpose of designating the corner or any other point in the boundary of any lot or tract of land, or any post or stake lawfully fixed or driven in the ground for the purpose of designating a point in the boundary of any lot or tract of land, or alter the marks upon any tree, post, or other monument lawfully made for the purpose of designating any point, course, or line in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction thereof, be imprisoned in the county jail not more than one year, and be fined in any sum not exceeding one thousand dollars, or be fined only.

SEC. 63. Every person who shall wilfully and maliciously set on fire, or cause to be set on fire any woods, prairie, or other grounds, other than his own, or shall intentionally or by gross neglect, permit the fire to pass his own premises or grounds, to the injury of any other person or persons, shall, on conviction thereof, for every such offence, be fined in any sum not exceeding five hundred dollars.

CHAPTER IV.

OF OFFENSES AGAINST PUBLIC PEACE.

SEC. 64. Riot defined;
Punishment.
65. Unlawful assemblages, how dispersed.
66. Refusal to disperse, or obstructing command to do so;
Punishment.
67. Disturbing public worship, or any lawful assemblage;
Punishment.
68. Affray defined;
Punishment.

SEC. 64. If three or more persons shall do an act in a violent and tumultuous manner, they shall be deemed guilty of a riot, and upon conviction thereof shall be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars, or be fined only.

SEC. 65. If three or more persons shall be unlawfully, riotously, or tumultuously assembled, any justice of the peace, sheriff, deputy sheriff, constable, or marshal of a city, or mayor or alderman thereof, shall go among the persons so assembled, or as near to them as possible, and shall command them in the name of the territory of Washington, immediately to disperse. If the persons so assembled do not immediately disperse, it shall be lawful for every such officer to command sufficient aid, and to seize, arrest, and secure in custody all such persons; and if necessary, an armed force may be called out, and shall obey the orders of any two of the magistrates or officers mentioned in this section, and if any such persons shall be killed or wounded by reason of their resisting the persons endeavoring to disperse or seize them, the magistrate or officers shall be held guiltless.

SEC. 66. All persons who shall have been commanded peaceably to disperse, shall refuse so to disperse, or shall wilfully obstruct or hinder such officer, who shall declare himself as such, from commanding them to disperse, shall, on conviction, be imprisoned in the county jail not more than one year, and be fined in any sum not exceeding two hundred dollars, or fined only.

SEC. 67. Every person who shall disturb any religious society, or any member thereof, when met or meeting together for public worship, or shall sell or give away any spiritous liquor at any booth, wagon, shed, or open place, or at any boat, canoe, or other watercraft, or in any building temporarily erected for the purpose of selling therein such liquors, within one mile of any collection of a portion of the citizens of this territory convened for the purpose of worship, or shall disturb any collection of the people convened for any lawful purpose, such person shall, on conviction thereof, be imprisoned in the county jail not exceeding one month, and be fined in any sum not exceeding two hundred dollars, or fined only.

SEC. 68. If two or more persons by agreement fight in any public place, the persons so offending shall be deemed guilty of an affray, and upon conviction thereof, shall be imprisoned in the county jail not more than six months, and be fined in any sum not exceeding three hundred dollars, or be fined only.

CHAPTER V.

OF OFFENCES AGAINST PUBLIC JUSTICE, AND BY AND AGAINST PUBLIC OFFICERS.

SEC. 69. Perjury, official.
70. Perjury, individual.
71. Subornation of perjury.
72. Punishment for perjury, or subornation of.
73. Official bribery, punishment for.
74. Malfeasance in office, punishment for.
75. Persons bribing or offering a bribe, how punished.
76. Aiding in escape of, or rescuing a prisoner, how punished.
77. Jailor voluntarily suffering prisoner to escape, liable to suffer same punishment for the crime with which the prisoner stood charged.
78. Jailor suffering prisoner to escape through negligence, or refusing to receive him into custody, how punished.
79. Obstruction of, or disobedience to legal process, how punished.
80. Officer refusing to serve process, or omitting or delaying execution thereof, how punished.
81. Inhumanity to, or oppression of prisoners, how punished.
82. Officer failing to perform duty, or doing any act prohibited by law, how punished.
83. Officer neglecting or refusing to pay over money collected, &c., how punished.
84. Auditor issuing unauthorized warrant, how punished.
85. Usurpation defined, how punished.
86. Officer performing duty before taking oath or filing bond, how punished.
87. Receiving unlawful fees, how punished.

SEC. 69. Every person who, having taken a lawful oath or affirmation, in any matter in which by law an oath or affirmation may be required, shall upon such oath or affirmatinn swear or affirm wilfully, corruptly, and falsely, touching a matter material to the point in question, shall be deemed guilty of perjury.

SEC. 70. Every person who shall wilfully, corruptly, and falsely swear before any officer authorized to administer oaths, under oath or affirmation, voluntarily make any false certificate, affidavit, or statement of any nature, for any purpose, shall be deemed guilty of perjury.

SEC. 71. Every person who shall suborn or procure any person to commit perjury, he shall be deemed guilty of subornation of perjury.

SEC. 72. Every person duly convicted of perjury, or of subornation of perjury, shall be imprisoned in the penitentiary not more than twenty years, nor less than one year, and be fined in any sum not exceeding one thousand dollars.

SEC. 73. If any judge, justice of the peace, juror, commissioner, auditor, referee, arbitrator, or person summoned as a juror, shall accept,

receive, or agree for in any way, any bribe, present, or reward to him offered, for the purpose of obtaining or influencing his opinion, judgment, verdict, sentence, report or award, in any matter or cause depending, or to be tried before him alone, or before him with others, he shall, on conviction thereof, be imprisoned in the penitentiary not more than seven years, nor less than one year, or be imprisoned in the county jail not more than one year, nor less than one month, and be fined in any sum not exceeding one thousand dollars.

SEC. 74. If any executive, judicial, or ministerial officer, or member of the legislative assembly, shall accept or receive, or agree to accept or receive, in any way, any bribe, present, or reward to him offered, for the purpose of inducing or influencing such officer to appoint any person to office, to give any vote, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or voted or exercised any power in him vested, or performed any duty of him required with partiality or favor, or otherwise, contrary to law, he shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years, nor less than one year, or in the county jail not more than one year, nor less than three months, and be fined in any sum not exceeding five thousand dollars.

SEC. 75. Every person who shall bribe, or offer or attempt to bribe, any of the officers mentioned in the two preceding sections, shall, on conviction thereof, be imprisoned in the county jail any length of time not exceeding one year, and be fined in any sum not exceeding two thousand dollars, or fined only.

SEC. 76. Every person who shall convey into any penitentiary, jail or house of correction, or house of reformation, any disguise, or any instrument, tool, weapon or other thing, adapted to, or useful, in aiding any prisoner there, lawfully committed or detained, to make escape, or shall by any means whatever aid or assist any such prisoner, in his endeavor to escape therefrom, whether such escape be attempted or effected or not; and every person who shall aid or assist any prisoner in escaping, or in attempting to escape from any officer or person who shall have the lawful custody of such prisoner, or who shall forcibly rescue any prisoner from lawful custody of such persons, shall, on conviction thereof, be imprisoned in the penitentiary not more than four years, nor less than one year, or imprisoned in the county jail any length of time not exceeding one year, and be fined in any sum not exceeding five hundred dollars.

SEC. 77. If any jailor or other officer shall voluntarily suffer any prisoner in his custody, charged with or convicted of any criminal offense,

to escape, he shall suffer, unless the prisoner so charged with or convicted of any capital offense, the like punishment and penalties as the prisoner so suffered to escape, was sentenced to, or would be liable to suffer upon conviction for the crime or offence wherewith he stood charged, and if the prisoner was charged with or convicted of a capital offence, he shall be imprisoned in the penitentiary not more than twenty years, nor less than five years.

SEC. 78. If any jailor or other officer shall, through negligence, suffer any prisoner in his custody, upon conviction or upon any criminal charge, to escape, or shall wilfully refuse to receive into his custody any prisoner lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction thereof, be imprisoned in the county jail not more than two years, and be fined not more than five hundred, nor less than one hundred dollars, or fined only.

SEC. 79. Every person who shall obstruct the execution of any legal process, or who, on being required by any marshal, sheriff, or their deputies, or by any coroner, constable, or any conservator of the peace, to assist him in the execution of his office, or in the service of any process, shall fail to obey, without a valid cause for not obeying, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 80. If any officer authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person charged with or convicted of an offence, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall, on conviction thereof, be imprisoned in the county jail, not more than one year, or be fined not exceeding three hundred, nor less than fifty dollars.

SEC. 81. If any sheriff, jailor, or other officer, shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, he shall, on conviction thereof, be imprisioned in the county jail not more than one year, nor less than one day, and be fined in any sum not exceeding one thousand dollars.

SEC. 82. If any officer shall wilfully fail to perform any duty within the time and in the manner prescribed by law, or shall do any act which he shall be specially prohibited from doing by law, he shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment in the county jail, for any length of time not exceeding six months.

SEC. 83. If any officer or person required by law to collect, disburse, receive, or keep any public money, shall wilfully neglect or refuse to pay over such money, at the time prescribed by law, or shall wilfully

refuse to pay any warrant lawfully drawn, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, nor less than one month, or be fined in any sum not exceeding five thousand dollars.

SEC. 84. If any auditor shall knowingly issue any warrant not authorized by law, he shall, upon conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding one thousand dollars, or be fined only.

SEC. 85. Every person who shall officiate in any place of authority, without being legally authorized, shall be deemed guilty of usurpation, and upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 86. If any person elected or appointed to an office, or his deputy, shall perform any of the duties of such office, without having taken an oath as prescribed by law, or before having given and filed the bond required of him, and in the manner prescribed by law, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 87. If any officer, whose fees are stated by law, shall corruptly exact or extort any greater fees for any services than by law are stated and allowed, or shall levy, demand, receive, or take under color of his office, any bond, bill, or note, or other assurance or promise whatever, securing the payment of a greater sum of money for any service than he is by law authorized to demand and receive, he shall, on convicton thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding one thousand dollars.

CHAPTER VI.

OF OFFENSES AGAINST PUBLIC POLICY.

SEC. 88. Nuisance, punishment.
89. Malicious prosecution, punishment.
90. Violation of license laws, punishment.
91. Barrator, who is a, punishment for.
92. Attempt to cause a fraudulent vote, punishment.
93. Voting or attempting to vote more than once at one election, punishment
94. Judge, &c., of election attempting to control a vote, punishment for.
95. Voting, knowingly, without legal qualification, punishment for.
96. Judge, &c., of election opening, &c., or attempting to discover names on ticket, punishment for.
97. Threatening and bribing voters, punishment for.
98. Lottery tickets, punishment for selling.
99. Gaming, punishment for.
100. Keeping gaming apparatus and suffering their use for gaming, punishment for.
101. Violation of the estray law, punishment for.

SEC. 102. Obstructing public highway, bridge, &c., punishment for.
103. Discharging ballast in shoal water, punishment for.
Proviso.
104. Obstructing navigation, punishment for.
Proviso
105. Discountings by officers of territorial or county order, punishment for.
106. Supervisor of roads, neglect of duty by, punishment for.
107. Practicing on jury box previous to a draft, &c., or fraud in drawing jurors, punishment for.
108. Unlawful toll on ferry or bridge, receiving of, punishment.
109. Marriage law, violation of, punishment for.
110. Marriage certificate, failure to return, punishment for.
111. Marriage ceremony, unauthorized performing, punishment for.
112. Concealing commission of crime, punishment for.

SEC. 88. Every person who shall erect, or continue and maintain any public nuisance, to the injury of any part of the citizens of this territory, shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 89. If any person shall maliciously, without probable cause, attempt to cause an indictment to be found, or other prosecution, for any crime or misdemeanor, to be commenced against any person, or if two or more persons shall conspire together for that purpose, the person so sought to be indicted or otherwise prosecuted being innocent, such person or persons, so offending, shall, on conviction thereof, be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding one thousand dollars.

SEC. 90. Every person who shall, by himself or agent, transact any business, or do any act, without a license therefor, where such license is required by any law in this territory, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, and in all such cases where the principal is prosecuted, his agent may be compelled to testify, and when the agent is prosecuted, the principal may be compelled to testify.

SEC. 91. Every person who shall excite quarrels or lawsuits among the citizens of this territory, shall be deemed a common barrator, and, upon conviction thereof, shall be imprisoned in the county jail any length of time not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or fined only.

SEC. 92. If any person shall fraudulently cause, or attempt to cause, any elector at any election held pursuant to law in this territory, to vote for a person different from the one he intended to vote for, such person, so offending, shall be fined not more than one hundred, nor less than ten dollars.

SEC. 93. If any elector shall vote or attempt to vote more than once at any election, or shall knowingly hand in two or more tickets to-

gether, or having voted in one township, precinct, or county, shall afterwards, on the same day, vote or attempt to vote in another township, precinct, or county, such person shall be fined in any sum not exceeding fifty dollars, and be incapable of voting at any election, or holding any office, for two years thereafter.

SEC. 94. If any inspector, judge, or clerk of an election shall attempt to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person, such person, so offending, shall be fined in any sum not exceeding one hundred dollars.

SEC. 95. If any person, knowing that he does not possess the legal qualifications of a voter, at any elections authorized by law to be held in this territory for any office whatever, shall vote at such election, such person, so offending, shall be fined not more than one hundred nor less than five dollars.

SEC. 96. If any judge, inspector, clerk, or other officer of an election, shall open or mark, by folding or otherwise, any ticket presented by such elector at such an election, or attempt to find out the names thereon, or suffer the same to be done by any other person, before such ticket is deposited in the ballot box, such person, so offending, shall be fined in any sum not exceeding one hundred dollars.

SEC. 97. If any person shall use any threats, menaces, force, or any corrupt means, at or previous to any election, held pursuant to the laws of this territory, towards any elector, to hinder or deter such elector from voting at such election, or shall directly or indirectly offer any bribe or reward of any kind, to induce any elector to vote contrary to his inclination, or shall on the day of election give any public treat, or authorize any person to do so, to obtain votes for any person, such person, so offending, shall be fined in any sum not exceeding five hundred dollars, and be incapable of holding any office for two years after conviction thereof.

SEC. 98. Every person who shall sell any lottery tickets, or share in any lottery, for the division of property to be determined by chance, or shall make or draw any lottery or scheme for a division of property, not authorized by law, on conviction thereof, shall be fined in any sum not exceeding five hundred dollars.

SEC. 99. Every person who shall deal at the game cards called faro or monte, or other banking games, or shall set up, keep or exhibit an E-O or roulette table, or shuffle board, or any gaming table whatever, for the purposes of gaming, or shall have in his possession, to be used for such purposes, any gaming device whatevr, shall, on conviction, be fined in any sum not exceeding one thousand dollars.

SEC. 100. Every person who shall suffer any gaming table, bank,

or gambling device, prohibited in this chapter, to be kept or exhibited, or used for the purpose of gaming, in any house, building, steamboat, raft, or other water crafts, lot, yard, or garden, to him belonging or by him occupied, or of which he has the control, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 101. If the taker up of estray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and wilfully violate any of the provisions of the law regulating the taking up of estrays, such person, so offending, shall be fined in any sum not exceeding five hundred dollars, and not less than double the value of such estray propery.

SEC. 102. Every person who shall in any manner obstruct any public highway, turnpike, plank road, or bridge, or injure any material used in the construction of such roads or bridge, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 103. Every master, mate, or other officer, or other person belonging to or in any charge of any vessel, who shall discharge, or cause to be discharged, the ballast of such vessel into the navigable portions or channels of any of the inlets, bays, harbors, or rivers within, or bordering on this territory, where the water is less than ten fathoms deep, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars: *Provided*, That nothing in this act shall be so construed as to prevent any such person from discharging ballast from such vessel on the beach at or above half tide in all waters where the tide ebbs and flows; and that no ballast shall be discharged on any of the flats included within the boundary of any town site or extension thereof.

SEC. 104. Every person who shall in any manner obstruct the navigable portion or channel of any bay, harbor, or river, or stream, within or bordering upon this territory, navigable and generally used for the navigation of vessels, boats, or other water crafts, or for the floating down of logs, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars: *Provided*, That the placing of any mill dam or boom across a stream, used for floating saw logs, shall not be construed to be an obstruction to the navigation of such stream, if the same shall be so constructed as to allow the passage of boats or logs without unreasonable delay.

SEC. 105. If any auditor, treasurer, sheriff, assessor, or county commissioner shall purchase, exchange, or receive in payment, during his term of office, any territorial or county order, or demand, for less than the amount of such order or demand, on conviction thereof, he shall be fined in any sum not exceeding one thousand dollars.

SEC. 106. If any supervisor of roads fail to keep his highways and bridges in his road district in as good repair as the available labor or other means of such district will enable him to do, or fail to discharge any other duty required of him by law, he shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars; and upon prosecution for neglecting to keep a highway in good repair, it shall be sufficient to prove that such highway is commonly reputed as such.

SEC. 107. If any clerk of a district court, or any other person, shall be guilty of any fraud, either by practicing on a jury box previously to a draft, or in changing a juror, or any way in the drawing of jurors, he shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 108. If any ferryman, ferry owner, ferry keeper, or keeper of a toll bridge or toll gate, himself, or by any person in his employment, shall demand or receive any greater fees on account of ferriage or toll, than is or may be fixed by law, or by the proper board doing county business, as the rates of ferriage or toll to be received by such person, upon conviction he shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one month.

SEC. 109. Any person authorized by the laws of this territory to join parties in marriage, who shall knowingly join in marriage any parties contrary to the provisions of the law regulating marriages, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 110. Any person having joined parties in marriage, who shall fail to return a certificate thereof within the time prescribed by law, shall be fined in any sum not exceeding three hundred dollars.

SEC. 111. Every person who shall undertake to join parties in marriage, knowing that he is not authorized so to do, shall, upon conviction thereof, be imprisoned in the county jail not more than three months, or fined in any sum not exceeding five hundred dollars.

SEC. 112. If any person having knowledge of the commission of any crime, shall take any money, gratuity, reward, or any engagement therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such crime, or not to prosecute therefor, or not give evidence thereof, he shall, on conviction thereof, be imprisoned in the county jail for any length of time not exceeding one year, or be fined in any sum not exceeding one thousand dollars.

CHAPTER VII.

OF OFFENSES AGAINST MORALITY AND DECENCY.

SEC. 113. Seduction defined.
Punishment for.
Unsupported testimony of female insufficient.
Subsequent marriage, effect of.
114. Adultery or fornication, open and notorious.
Punishment for.
115. Incest defined.
Punishment for.
116. Polygamy defined.
Punishment for.
Proviso as to absence of five years.
117. Notorious lewdness.
Punishment for.
118. Obscene books, pamphlets, &c.
Punishment for publication or distribution of.
119. Dead body, disinterment of.
Punishment for.
120. Tombstones, &c., disfiguring of, or using cemetery for other purposes than a burying ground.
Punishment for.
121. Cruelty to animals.
Punishment for.

SEC. 113. Every person who, under promise of marriage, shall have illicit carnal intercourse with any female of good repute for chastity, under the age of twenty-one years, shall be deemed guilty of seduction, and upon conviction thereof, shall be imprisoned in the penitentiary for not more than ten years, nor less than one year, or be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars; but no conviction shall be had under the provisions of this section on the testimony of the female seduced, unsupported by other evidence, provided that the subsequent intermarriage of the parties may be pleaded in bar of a conviction.

SEC. 114. Every person who shall live in open and notorious adultery or fornication, shall, upon conviction thereof, be imprisoned in the county jail not exceeding three months, or be fined in any sum not exceeding five hundred dollars, or fined only.

SEC. 115. All persons being within the degrees of consanguinity in which marriages are prohibited, or declared by law to be incestuous and void, who, knowing such consanguinity, shall intermarry with each other, or shall commit adultery, or fornication with each other, shall be deemed guilty of incest, and upon conviction thereof, shall be imprisoned in the penitentiary not more than two years, or imprisoned in the county jail not

more than one year, and fined in any sum not exceeding five hundred dollars.

SEC. 116. If any person who knowingly has a former husband or wife living, shall marry another, he or she shall be deemed guilty of the crime of poligamy, and shall, upon conviction thereof, be imprisoned in the penitentiary not more than four years nor less than one year, and be fined in any sum not exceeding five hundred dollars: *Provided*, That the provisions of this section, shall not extend to any person whose husband or wife shall have been continuously absent from the other, without having been heard from for the space of five years before such marriage, or to any person who shall have been divorced.

SEC. 117. Every person who shall be guilty of notorious lewdness or other public indecency, upon conviction thereof, shall be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or fined only.

SEC. 118. Every person who shall print, publish, sell, or distribute any book, or any pamphlet, ballad, printed paper or other things, containg obscene language or obscene prints, pictures, figures or descriptions, or shall introduce into any family, school or other place of education, or shall buy, procure, receive or have in his possession, any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of loan, sale, exhibition or circulation, or with intent to introduce the same into any family, school or place of education, or shall expose the same to public view, shall, on conviction thereof, be imprisoned in the county jail not more thansix months, or be fined in any sum not exceeding five hundred dollars.

SEC. 119. If any person not being lawfully authorized, shall wilfully dig up. disinter, remove or convey away any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall, upon conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined not exceeding one thousand dollars, or fined only.

SEC. 120. Every person who shall wilfully disfigure, injure or remove any tombstone, monument, fence, tree or shrubbery around or within any cemetery, or shall use such cemetery for any other purpose than a burying ground, he shall, upon conviction thereof, be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or shall be fined only.

SEC. 121. Every person who shall cruelly use, beat, torment, overload or overdrive, any horse, ox, mule or other animal, whether belonging to himself or to another, shall, upon conviction, be fined in any sum not exceeding three hundred dollars.

CHAPTER VIII.

OF OFFENSES AGAINST PUBLIC HEALTH.

SEC. 122. Unwholesome provisions; punishment for knowingly selling.
123. Poison; punishment for carelessly selling.
124. Physician, &c., injuring a person by prescribing while intoxicated.
125. Selling intoxicating liquor to minors, after request by parent, &c., not to do so. Punishment for.

SEC. 122. Every person who shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall, on conviction thereof, be imprisoned in the county jail not more than one year, and be fined not exceeding one thousand dollars, or fined only.

SEC. 123. Every apothecary, druggist or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, strychnine or other active poison, without having the word "poison," and the true name thereof in English written or printed upon a label attached to the vial, box or parcel containing the same, shall, on conviction thereof, be imprisoned in the county jail not more than six months, and be fined in any sum not exceeding one hundred dollars, or fined only.

SEC. 124. If any physician or other person, while in a state of intoxication, shall prescribe any poison, drug or other medicine to another person, to his injury, he shall, on conviction thereof, be imprisoned in the county jail for any length of time not exceeding one year, and fined not exceeding five hundred dollars, or fined only.

SEC. 125. Every person who shall sell or give to a minor, or person under the age of twenty-one years, intoxicating or spirituous liquor, after being requested not to do so by the parent or guardian of such minor, shall be deemed guilty of a high misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and shall be imprisoned in the county jail for any time not exceeding six months; and in case such person has a license to sell liquor such license shall be revoked. *And be it further enacted,* That if any person shall allow any minor to play at cards in his house, after being so requested not to do so by the parent or guardian, shall be liable to the same penalties as for furnishing to such minor spirituous liquors, mentioned in the former part of this section.

CHAPTER IX.

OF PRINCIPALS AND ACCESSORIES.

SEC. 126. Accessory before the fact, &c., how tried and punished.
127. Accessory after the fact, who is deemed, and how punished.
128. Accessory after the fact in felony, may be indicted, &c., whether or not principal previously convicted.

SEC. 126. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, and all persons concerned in the commission of an offense, whether they directly counsel the act constituting the offense, or counsel, aid and abet in its commission, though not present, shall hereafter be indicted, tried and punished as principals.

SEC. 127. Every person not standing in the relation of husband or wife, parent or grand parent, child or grand child, brother or sister by consanguinity or affinity to the offender, who, after the commission of any felony, shall harbor, conceal or maintain, or assist any principal felon or accessory before the fact, or shall give the offender any other aid, knowing that he had committed a felony, or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial or punishment, shall be deemed accessory after the fact, and shall, on conviction thereof, be imprisoned in the county jail not more than one year, or be fined in any sum not exceeding five hundred dollars.

SEC. 128. Every person who shall become an accessory after the fact to any felony, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, or shall or shall not be amenable to justice, by any court having jurisdiction to try the principal felon, and either in the county where such person shall become an accessory or in the county where such principal felony shall have been committed.

CHAPTER X.

OF FINES.

SEC. 129. Fines collected under this act to be paid county treasurer as school funds.

SEC. 129. All fines imposed on any person by the provisions of this act where the same shall be collected, shall be paid to the county treasurer as school funds of the county where such conviction shall have been had, who shall give duplicate receipts therefor, one of which shall be filed with

the county auditor; and all officers refusing or neglecting to pay over any fines within one month after they shall have been received, shall, upon conviction thereof, be fined in four-fold the amount of such fines so received.

CHAPTER XI.

GENERAL PROVISIONS RELATIVE TO CRIMES AND PUNISHMENTS.

SEC. 130. When offense committed partly in two counties, jurisdiction in either.
131. Offenses committed on boundaries of two counties, &c., may be prosecuted, &c.. in either.
132. Property taken by burglary, &c., in one county and brought into another, jurisdiction in either.
133. When death ensues in one county from wound, &c., given in another, jurisdiction in either.
134. In prosecutions for offences against real estate or personal property, possession will be sufficient ownership.
135. The term person, what it may be construed to include.
136. Terms implying singular or plural number, and terms implying sex, how they may be construed.
137. Offenses committed against the laws heretofore in force, not effected by this act, except, &c.
138. No prosecution for offense committed, effected by this act, except, &c.
139. Each judicial district to constitute one county; when.
The words "county" and "district" may be construed to mean either; when.

SEC. 130. When a public offense has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

SEC. 131. Offenses committed on the boundary line of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

SEC. 132. When property taken in one county by burglary, robbery, larceny or embezzlement, has been brought into another county, the jurisdiction is in either county.

SEC. 133. If any mortal wound is given, or poison administered in one county, and death, by means thereof, ensue in another, the jurisdiction is in either.

SEC. 134. In the prosecution of any offense committed upon, or in relation to, or in any way effecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at

the time when such offense was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

SEC. 135. When the term "person" or other word is used to designate the party whose property is the subject of an offense, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this territory, or any state or territory, or any public or private corporations, as well as an individual.

SEC. 136. Every term in this act implying one only, shall, when required, be construed to mean two or more, and any term implying two or more, shall also be construed to mean, when required, but one, except in cases where two or more are necessary to constitute the offense, and every term implying sex, shall, when necessary, be construed to mean both or either.

SEC. 137. No offense committed against the laws heretofore in force, shall be effected by the provisions of this act, except where any punishment may have been mitigated by those provisions, they may be extended and applied to any judgment hereafter to be pronounced.

SEC. 138. No prosecution for any offense committed, shall be effected by the provisions of this act, except that the proceeding in such prosecution shall be conformed, when necessary, to the provisions of the act regulating proceedings in criminal prosecutions.

SEC. 139. So far as the jurisdiction of offenses cognizable by the district court, and the trial of criminals is concerned, each judicial district shall constitute one county; and wherever in this act the word "county" or "district" occur, they shall be construed to mean either district or county, whenever such construction shall be required to carry into effect and conform the practice of the courts to the act of Congress, approved August 16, 1856.

CHAPTER XII.

OF SEARCH WARRANTS AND PROCEEDINGS THEREON.

SEC. 140. When a search warrant for personal property may issue, and by whom.
141. Search warrant for counterfeit coin, &c., and for gaming apparatus, may issue, when and by whom.
142. Warrants, to whom to be directed, and what to command.
143. Duty of officer executing a search warrant.

SEC. 140. When complaint shall have been made on oath, to any magistrate authorized to issue warrants in criminal cases, that personal

property has been stolen or embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such property.

SEC. 141. Any such magistrate, when satisfied that there is a reasonable cause, may, also, upon like complaint, made on oath, issue search warrant in the following cases, to-wit:

1st—To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

2d—To search for and seize any gaming apparatus, used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

SEC. 142. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and property, or things to be searched for, shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case.

SEC. 143. When any officer in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized, shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant, shall be destroyed under direction of the court or magistrate.

CHAPTER XIII.

DEMANDING FUGITIVES FROM JUSTICE.

SEC. 144. Governor may appoint agents to demand fugitives from justice, &c.
145. Proceedings when demand is made by executive of another state, &c.
146. When a person charged with an offense in another state or territory is found in this territory, a warrant may issue for his arrest.
147. Examination of such person, and proceedings thereon.
148. Such person may be discharged, when and how.
May be taken by agent of executive at any time.
149. The complainant to be answerable for costs, support of prisoner, &c.

SEC. 144. The governor of this territory may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any state or territory, any fugitive from justice, or any other person charged with felony or any other crime in this territory, and whenever an application shall be made to the governor for that purpose, the prosecuting attorney or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the ground of such application, and report to the governor all material circumstances which may come to his knowlege, with an abstract of the evidence and his opinion as to the expediency of the demand, but the governor may, in any case, appoint such agents without requiring the opinion of, or any report from the prosecuting attorney, and the accounts of the agents appointed for such purpose, shall in all cases be audited by the territorial auditor, and paid from the territorial treasury.

SEC. 145. When a demand shall be made upon the governor of this territory by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory, with treason, felony, or any other crime, the prosecuting attorney or any other prosecuting officer, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody, or is under recognizance to answer for any offense against the laws of this territory or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor be satisfied that such demand is conformable to law and ought to be complied with, he shall issue his warrants under the seal of the territory, authorizing the agents who make such demand, either forthwith or at such time as shall be designated by the warrant, to take and transport such person to the line of the territory at the expense of such agents, and shall also by such warrant require the civil officers within this territory to afford all needful assistance in the execution thereof.

SEC. 146. Whenever any person shall be found within this territory, charged with an offense committed in any state or territory, and liable, by the constitution and laws of the United States, to be delivered on the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offense, and such other matter as are necessary to bring the case within the provisions of law, issue a warrant to bring the person

so charged before the same or some other court or magistrate so authorized within the territory, to answer such complaint as in other cases.

SEC. 147. If, upon the examination of the person charged, it shall appear to the court or magistrate, by proof in addition to the oath of the complainant, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison and be there detained such day, in like manner as if the offense charged had been committed in this territory; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances, entered into before such court or magistrate, but if such person be charged with a capital crime, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

SEC. 148. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and be detained as before provided; whenever the person so appearing shall be recognized, committed or discharged, any person authorized by the warrant of the executive, may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SEC. 149. The complainant in such cases shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board, at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails to do so, the jailor may forthwith discharge the person from his custody.

CHAPTER XIV.

PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

SEC. 150. Powers of a justice of the peace.
151. Proceedings when complaint is made to magistrate.
152. Magistrate to examine all material witnesses, reduce testimony to writing, and send copy to clerk of court.
153. When warrant for apprehension of person complained of to issue.
154. Proceedings, when there is just cause to fear that offense threatened will be committed.
155. When person fails to recognize, must be committed, &c.
156. Proceedings where there is no just cause to fear commission of offense threatened.
157. Costs, how paid, &c.
158. Appeals from justice of peace, to what court to be taken.
159. On appeal, witnesses shall be recognized.
160. Powers of the court before which such appeal is prosecuted.
161. Consequence of appellant failing to prosecute appeal.
162. Person committed for not finding sureties, &c.
May be discharged, when.
163. Recognizances to be filed in district court.
164. When a person may be recognized to keep the peace without process or other proof.
165. Suit on recognizance, remission of portion of penalty.
166. Surety may surrender principal.
Person surrendered may recognize anew.

SEC. 150. Justices of the peace shall have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power may require persons to give security to keep the peace, for the good behavior, or both, in the manner herein provided.

SEC. 151. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offense against the property or person of another, the magistrate shall examine the complaint, and any witness who may be produced on oath, and reduce such complaints to writing, and cause the same to be subscribed by the compainant.

SEC. 152. It shall be the duty of every magistrate examining a party charged with an offense, or with an intention to commit an offense, to examine all the witnesses he shall deem material, and reduce their testimony to writing, a copy of which, whether the accused is discharged, committed, or held to bail, or shall take an appeal, he shall transmit to the clerk of the court having jurisdiction of the offense.

SEC. 153. If upon examination it shall appear that there is just cause to fear that such offense may be committed, the magistrate shall

issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

SEC. 154. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, hear and examine the complaint. And if it shall appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be required to enter into recognizances with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of this territory, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding one year, but he shall not be ordered to recognize for his appearance at the district court unless he is charged with some offense for which he ought to be held to answer at said court.

SEC. 155. If the person so ordered to recognize shall fail to enter into such recognizance, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

SEC. 156. If upon examination it shall not appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

SEC. 157. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behavior, the magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

SEC. 158. All appeals in criminal complaints from a justice of the peace, shall be had and taken to the probate court when sitting for the transaction of criminal business.

SEC. 159. The magistrate from whose order an appeal is so taken, shall require such witnesses as he may think necessary to support the complaint, to recognize for their appearance at the court to which the appeal is made.

SEC. 160. The court before which such appeal is prosecuted may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable.

SEC. 161. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs which shall be ordered, by the court appealed to, to be paid by the appellant.

SEC. 162. Any person committed for not finding sureties or refusing to recognize, as required by the magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

SEC. 163. Every recognizance taken pursuant to the foregoing provisions, shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed on record by the clerk.

SEC. 164. Every person who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any judge of court of record, make an affray or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who in the presence of such judge or magistrate shall contend with hot and angry words to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal may be committed as before directed.

SEC. 165. Whenever upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

SEC. 166. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance, and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

CHAPTER XV.

OF EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

SEC. 167. Duty of magistrate, &c., upon complaint.
168. Sheriff, &c. may pursue to any county in territory.
169. Magistrate may take recognizance for appearance, when.
170. Proceedings when defendant shall not enter into recognizance.
171. Duty of magistrate when person committed or held to bail on charge of felony, as to recognizing accused and witnesses.
172. Duty of magistrate when person committed or held to bail on charge of misdemeanor.
173. Defendant to be discharged, when.
If complaint malicious, &c., costs against whom taxed.
174. When justice may take cognizance of the case.
175. In bailable offense, magistrate to order defendant to recognize.
If he shall not do so, or offense not bailable, &c.
176. Cases in which justice shall not take a recognizance unless sureties be approved by another justice.
Defendant in custody for not recognizing, may be allowed to do so, by whom.
177. Magistrate may associate one or more magistrates with himself.
No fees for such associates.
178. Witnesses for prosecution may be recognized.
179. When there is cause to believe that witness will not perform condition of recognizance.
180. When married woman or minor is a material witness, how to be recognized.
181. Witnesses refusing to recognize, how to be dealt with.
182. When testimony of witnesses to be reduced to writing, and by whom.
183. Examination, &c., to be certified, &c., and filed with clerk, when.
Magistrate may be compelled to do so.
184. When magistrate may discharge the recognizance or supersede the commitment.
185. Default of person to perform condition of recognizance to be recorded.
Duty, in such case, of prosecuting attorney.
186. In all cases where defendant is recognized, magistrate to forward an abstract of costs.

SEC. 167. Upon complaint being made to any justice of the peace or probate judge, or judge of the district court, in open court, or in vacation, that a criminal offense has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant, and if it shall appear that any offense has been committed, of which the district court has exclusive jurisdiction, the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the person issuing the warrant, unless he

shall be absent or unable to attend thereto, then before some other magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

SEC. 168. If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this territory, and for that purpose may command aid, and exercise the same authority as in his own county.

SEC. 169. The magistrate before whom such accused person shall be brought, when the offense is bailable, may at the request of such person, with or without examination, allow him to enter into recognizance, with sufficient sureties, to be approved by the magistrate, conditioned for his appearance at the next term of the district court having cognizance of the offense.

SEC. 170. If the defendant shall not enter into recognizance with sureties, the magistrate shall proceed to hear and examine the complaint, and may adjourn the examination from time to time, not exceeding in all ten days from the time such defendant shall have been brought before him, and in case of such adjournment, the magistrate may, if the offense be bailable, take a recognizance with sufficient sureties for the appearance of the defendant at such further examination; and if he fail to enter into such recognizance, he shall be ordered into custody until the time appointed for such examination.

SEC. 171. Whenever any person shall be committed or held to bail, charged with a felony, it shall be the duty of the committing magistrate to recognize the accused, if held to bail, and also such witnesses as are before him upon both sides, and to summon such other witnesses as may be required, if within his county, to appear at the next term of the district court to be held in the district: *Provided*, that if, in the opinion of the magistrate, the distance to the place where the court is held is such that the parties and witnesses cannot reosonably be required to attend at the next term of the court, then he shall recognize and summon them to appear at the next succeeding term thereof.

SEC. 172. Whenever any person shall be committed or held to bail, charged with a misdemeanor, it shall be the duty of the committing magistrate to recognize the accused, if held to bail, and the witnesses upon both sides who are present before him, and to summon such other witnesses as both parties shall require, if within his county, to appear

before the probate court at its next term, to be holden within the county for the transaction of criminal business.

SEC. 173. If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged, and if, in the opinion of the magistrate, the complaint was malicious, or without probble cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint.

SEC. 174. If it should appear that an offense has been committed, of which a justice of the peace has jurisdiction, and one which would be sufficiently punished by fine not exceeding thirty dollars, if the magistrate having the complaint is a justice of the peace, he shall cause the complaint to be altered, and proceed as in like cases before a justice of the peace, or any other magistrate; he shall certify the papers with a statement of the offense appearing to be proved, and recognize the witnesses and the defendant to appear before the nearest justice of the peace, at a time appointed, who shall proceed as herein provided.

SEC. 175. If it appears that a bailable offense has been committed, the magistrate shall order the defendant to enter into recognizance, with sufficient sureties, for his appearance before the criminal session of the probate court, and if he shall not do so, or the offense be not bailable, he shall commit him to jail.

SEC. 176. No justice of the peace shall take a recognizance from any defendant charged with murder in the second degree, manslaughter, kidnapping, arson, rape, or burglary, robbery, or grand larceny, unless the sureties therein shall be approved by some other justice of the peace, or the probate judge of the county; and if the defendant be in custody for not entering into recognizance of bail, any judge of probate in the county, or any judge of the district court, may allow him to enter into recognizance in the amount required, or any amount they may think fit, with sufficient sureties.

SEC. 177. Any magistrate to whom complaint is made, or before whom any defendant is brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and duties before mentioned; but no fees shall be taxed for such associates.

SEC. 178. Where the person arrested is held to bail or committed to jail, or forfeits his recognizance, the magistrate shall recognize the witnesses for the prosecution, to be and appear at the term of the court to which the party is recognized, bailed or committed.

SEC. 179. If the magistrate shall be satisfied that there is good

cause to believe that any such witness will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into recognizance, with such sureties as may be deemed necessary for his appearance at court.

SEC. 180. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

SEC. 181. All witnesses required to recognize, either with or without sureties, shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

SEC. 182. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses.

SEC. 183. All examinations and recognizances taken by any magistrate, in pursuance of the provisions of this law, shall be certified and returned by him to the prosecuting attorney, or the clerk of the district court, on or before the first day of the next term thereof, and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith, by rule of court, and in case of disobedience, may be proceeded against by attachment, as for contempt.

SEC. 184. When any person shall be committed to prison, or shall be under examination or recognizance to answer any charge for a misdemeanor for which the party injured may have a remedy by a civil action, except where the offense was committed upon a sheriff or other officer, justice, or violently, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, or is conducting the examination, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all costs which may have accrued, discharge the recognizance, or supercede the commitment by an order under his hand, and may also discharge all recognizances and supercede the commitment of all witnesses in the case.

SEC. 185. When any person under recognizance in any criminal prosecution, either to appear and answer before a justice, to testify in any court, shall fail to perform the condition of any such recognizance, his default shall be recorded; and it shall be the duty of the prosecuting at-

torney to proceed at once by action against the person bound by recognizance, or such of them as he may elect.

SEC. 186. In all cases where any magistrate shall order a defendant to recognize his appearance for before a justice of the peace, or the district court, he shall forward with the papers in the case, an abstract of the costs that have accrued in the case, and such costs shall be subject to the final determination of the case.

CHAPTER XVI.

OF THE GRAND JURY.

SEC. 187. Challenges to the panel; to whom, and when allowed.
To be in writing, &c.
188. Challenges to individual grand jurors; when they may be made.
189. Proceedings when a challenge to panel allowed.
190. Proceedings when to individual juror allowed.
191. Form of grand juror's oath.
192. Foreman and clerk of grand jury to be appointed; by whom, and power and duty of.
193. Grand jury to be charged by court, and may ask advice of court.
194. Prosecuting officer may attend grand jury; for what purpose.
195. Of what offences grand jury to have cognizance.
196. Grand jury to enquire especially as to certain offenses, and other subjects.
197. What evidence grand jury to hear.
Their duty as to the evidence submitted.
198. The vote of twelve grand jurors necessary to find indictment.
199. Grand jurors bound to secresy, as to indictment of a person not in custody, &c.
200. Grand jury prohibited from testifying, &c., in court, as to any vote or opinion of jury.
Duty of court, in charging jury, as to provisions of this and preceding sections.
201. Grand jury may be re-summoned at same term.

SEC. 187. Challenges to the panel shall be allowed to any person in custody, or held to bail to answer to an offense, when the clerk has not drawn from the jury box the requisite number of ballots to constitute a grand jury, or when the drawing was not done in the presence of the proper officers; and such challenges shall be in writing and verified by affidavit, and proved to the satisfaction of the court.

SEC. 188. Challenges to individual grand jurors may be made by such person for reason of want of qualifications to sit as such juror, and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice.

SEC. 189. If a challenge to the panel be allowed, the panel shall

be discharged, and the court may order the sheriff to summon from the bystanders and the body of the county, a sufficient number of person to act as grand jurors at such term of the court.

SEC. 190. If a challenge to an individual juror be allowed, he shall be discharged and the panel filled.

SEC. 191. The following oath shall be administered to the grand jury:

You, as grand jurors for the body of the county of ———— (as the case may be) do solemnly swear (or affirm) that you will diligently enquire into, and true presentment make, of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the United States of America, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred or malice; neither will you leave any person unpresented through fear, favor, affection or reward, or the hope thereof; but that you will present things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this territory, so help you God.

SEC. 192. A foreman of the grand jury shall be appointed by the court, who may remove him and appoint another at any time, and such foreman shall have power to administer all oaths and affirmations to witnesses, who shall appear before such grand jury, and the jury may appoint one of their number as clerk to keep a minute of their proceedings.

SEC. 193. The grand jury shall be charged by the court as to the nature of their duties, and may at any reasonable time ask the advice of the court as to any legal questions upon which they may desire information.

SEC. 194. The prosecuting officer may attend on the grand jury for the purpose of examing witnesses, and giving them such advice as they may ask.

SEC. 195. The grand jury shall have cognizance of all offenses against the laws of the United States and the laws of this territory.

SEC. 196. The grand jury shall especially inquire as to the offense of any person confined in prison on a criminal charge; into the condition and mismanagement of the public prisons in the county; into the willful misconduct in office of public officers, and shall in their discretion examine the public records of the county.

SEC. 197. The grand jury are 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 cause process to issue for the witnesses.

SEC. 198. No indictment shall be found unless twelve grand jurors vote for the finding thereof.

SEC. 199. No grand juror shall disclose the fact that an indictment for a felony has been found against any person not in custody or under recognizance, until such person has been arrested.

SEC. 200. No grand juror shall be allowed to state or to testify in any court in what manner he, or any member of the jury, voted on any question before them, or what opinion was expressed by any juror in relation to such question, or what question was before them; and in charging the grand jury the court shall remind them of the provisions of this and the preceding sections.

SEC. 201. Whenever the grand jury shall have been dismissed at any term of the court, for which they shall have been empanneled, before the final adjournment, they may be summoned to attend again at the same term, if necessary; and if a full jury do not attend, the number may be completed from the bystanders.

CHAPTER XVII.

OF INDICTMENTS.

SEC. 202. Indictments to be signed, endorsed and returned.
203. When returned, court may cause correction thereof to be made.
204. What indictment shall specify; and how.
205. Certain mistakes, omissions, &c., not to cause indictment to be quashed.
206. Indictments may be amended; when.
207. The name of one or more joint owners, &c., sufficient in indictment, for offense relating to property.
208. Judgments, &c., by courts, &c., of special jurisdiction, how pleaded.
209. Private statute, how pleaded.
210. Perjury, indictment for, how made, &c.
211. Misdescription of an instrument, the subject of indictment for forgery; when deemed immaterial.
212. Plea in abatement of an indictment, when allowed.

SEC. 202. Indictments shall be signed by the prosecuting attorney, and endorsed a true bill, and such endorsement, signed by the foreman of the grand jury, and the names of the witnesses examined before the grand jury, or relied in by the territory, endorsed thereon, and returned into open court.

SEC. 203. The court shall examine the indictments returned, and if it appear that the prosecuting attorney has neglected to sign his name, or the foreman of the grand jury to sign the endorsement of a true bill,

or that the names of the witnesses are not endorsed thereon, the court must cause the proper correction to be made in the presence of the grand jury.

SEC. 204. An indictment shall specify the name of the court, and the names of the parties. It shall be direct and certain as regards the party charged, the offense charged, and the particular circumstances of the offense charged when necessary.

SEC. 205. No indictment shall be quashed for a mistake in the name of the county in the title, for want of an allegation of time or place of any material fact, when they have been once stated in the body of the indictment, nor because figures are used to express dates and numbers, nor for any mistake in concluding, contrary to the form of the statute or statutes, as the case may be, or for omission of the words, "force and arms," or "against the peace and dignity of the territory of Washington," or for the want of the signature of the prosecuting attorney.

SEC. 206. All indictments may be amended by the record, and in all matters of form, when the same can be done without injury to the substantial rights of the defendant.

SEC. 207. In an indictment for an offense committed in relation to property, it is sufficient to state the name of any one, or names of several or joint owners.

SEC. 208. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is sufficient to allege generally, that the judgment or determination was duly made or had before such court or officer; but the facts constituting the jurisdiction must be established on the trial.

SEC. 209. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title, and the day of its approval, and the court must take notice thereof.

SEC. 210. In indictments for perjury, in a judicial proceeding, it shall only be necessary to set forth in the indictment the names of the parties to the action, in which the perjury is alleged to have been committed, in what court the party charged, and by whom, averring such court or officer to have competent authority, the statement sworn to, in substance, together with the proper averments to falsify the record on which the perjury may be assigned, without setting forth the pleading matter or proceedings, or authority of the court or officer, before whom the perjury is alleged to have been committed, and an indictment for perjury, in swearing to any written instrument, or any statement in writing, it shall only be necessary to set forth that part of the instrument alleged to have been falsely sworn to, and to negative the same with the name of the officer or court before whom the instrument was sworn to.

SEC. 211. 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 such destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

SEC. 212. No plea in abatment of an indictment shall be allowed, except for causes, where the defendent, had he been in custody or under recognizance, could have challenged the panel, or for causes that would be good ground for challenge to four, or more, individual jurors.

CHAPTER XVIII.

OF PROCEEDINGS BEFORE TRIAL.

SEC. 213. Warrant to issue on indictment; when returnable.
214. All criminal process from district court to whom to be directed, and by whom to be executed.
215. Court must, by order, fix bail; bail to be endorsed on warrant.
If no order made, how fixed.
216. When writs of attachment returnable after close of term, court to direct amount of bail.
217. Officer must show his authority to defendant.
218. In case of flight of, or resistance by defendant, after notice, officer may use all necessary means to arrest.
219. If prisoner escape, or is rescued, power of the person from whom he escaped or was rescued.
220. Recognizances may be taken in open court, and entered.
221. Officer authorized to execute warrant may take recognizance, &c.
222. Recognizance so taken must be certified to clerk of court.
Clerk's duty upon receipt thereof.
Effect of such recognizance.
223. Deposit in lieu of bail may be made with clerk.
Sheriff to discharge defendant upon receipt of certificate of deposit.
224. Failure to appear for trial, &c., to be entered, and recognizance, &c., in such case forfeited.
225. Party indicted to be served with copy of indictment; shall have list of petit jurors returned, and process to summon his witnesses.
226. Person indicted, if under recognizance, or in custody, to be furnished copy of indictment, without fee.
227. Proceedings may be stayed and defendant discharged from indictment; when.
228. When a *nolle prosequi* may be entered.

SEC. 213. When an indictment is found, the court may direct the clerk to issue a warrant, returnable forthwith; if no order is made, the clerk must issue a warrant upon all indictments, within ten days after the close of the term.

SEC. 214. All criminal process issuing out of the district court shall be directed to the sheriff of the county in which it is to be served, and be

by him executed according to law. When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same: *Provided*, That final process shall in no case be executed by any other person than the legally authorized officer, or in case he is disqualified, some suitable person appointed by the court or judge thereof, out of which the process issues, who shall make such appointment in writing, and before such appointment shall take effect, the person so appointed shall give surety to the party interested, for the faithful performance of his duties, which bonds of suretyship shall be in writing and approved by the court or judge making the appointment, and be placed on file with the papers in the case.

SEC. 215. The court, at each term, must order the amount in which persons charged by indictment are to be held to bail, and the clerk must endorse the amount on the warrant. If no order fixing the amount of bail has been made, the sheriff may present the warrant to the judge of the district court, and such judge must thereon endorse the amount of bail to be required; or, if there is no such judge in the county, the clerk may fix the amount of bail.

SEC. 216. When writs of attachment are returnable after the close of term, the court must direct the amount of bail to be required of the defendant.

SEC. 217. The officer must inform the defendant that he acts under authority of a warrant, and must also show the warrant, if required.

SEC. 218. If, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

SEC. 219. If a person arrested escape, or be rescued, the person from whose custody he made his escape, or was rescued, may immediately pursue and retake him, at any time, and within any place in the territory. To retake the person escaping, or rescued, the person pursuing has the same power to command assistance as is given is cases of arrest.

SEC. 220. Recognizances in criminal proceedings may be taken in open court, and entered on the order book.

SEC. 221. Any officer, authorized to execute a warrant in a criminal action, may take the recognizance, and justify and approve the bail; he may administer an oath, and examine the bail as to its sufficiency.

SEC. 222. Every recognizance, taken by any peace officer, must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in

the order book, and from the time of filing it has the same effect as if taken in open court.

SEC. 223. The defendant may, in the place of giving bail, deposit with the clerk of the court to which he is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody.

SEC. 224. If, without sufficient excuse, the defendant neglect to appear for trial, or trial or judgment, or upon any other occasion when his presence in court may be lawfully required, according to the condition of his recognizance, the court must direct the fact to be entered upon its minutes, and the recognizance of bail, or money deposited as bail, as the case may be, is thereupon forfeited.

SEC. 225. As soon as may be, after the finding of such indictment for a capital crime, the party charged shall be served with a copy thereof, by the sheriff or his deputy, at least twenty-four hours before trial, and shall, on demand upon the clerk, by himself or counsel, have a list of the petit jurors returned, delivered to him at least twenty-four hours before trial, and shall, also, have process to summon such witnesses as are necessary to his defense, at the expense of the county.

SEC. 226. Every person indicted for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance or in custody to answer for such offense, he or his attorney shall be furnished with a copy of the indictment, and of all endorsements thereon, without paying any fees therefor.

SEC. 227. Whenever an indictment is found against any person for an assault and battery, or other misdemeanor, for which the party injured may have a remedy by civil action, except where the offense was committed by or upon any sheriff, or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear in court where such indictment is pending, and acknowledge satisfaction for the injuries sustained, the court may, on payment of the costs accrued, order all further proceedings to be stayed, and discharge the defendant from the indictment, which shall forever bar all remedy for such injury by civil action.

SEC. 228. The court may, in its discretion, on motion of the prosecuting attorney, order a *nolle prosequi* to be entered in any case, but no prosecuting attorney shall, without leave of the court, in any case cause such entry to be made.

CHAPTER XIX.

OF THE DOCKET.

SEC. 229. Order of the docket, and what it shall specify.

SEC. 229. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments pending, to be tried at the term according to the date of their filing, and specifying opposite to the title of each action, whether it be for a felony or a misdemeanor, and whether the defendant be in custody or on bail, and shall, in like manner, enter therein all indictments found during the term, and on which issues of fact are joined, all cases sent to the court on change of venue, and all cases sent to the court by a magistrate, on appeal or otherwise.

CHAPTER XX.

OF THE ARRAIGNMENT OF THE DEFENDANT.

SEC. 230. When prisoner pleads guilty, proceedings thereupon.
231. When prisoner refuses to plead, or shall not confess indictment to be true, proceedings thereupon.
232. Counsel may be assigned prisoner by the court; when.
233. Proceedings in case of misnomer.
234. Misnomer not to stay proceedings.
235. Defendant may appear upon arraignment by counsel; when.

SEC. 230. If on the arraignment of any person, he shall plead guilty, if the offense charged be not murder, the court shall, in their discretion, hear testimony, and determine the amount and kind of punishment to be inflicted; but if the defendant plead guilty to a charge of murder, a jury shall be impanneled to hear testimony, and determine the degree of murder, and the punishment therefor.

SEC. 231. If, on the arraignment of any person who is indicted, he shall refuse to plead or answer, or shall not confess the indictment to be true, the court shall order a plea of not guilty to be entered, and thereupon the proceedings shall be the same as if he had pleaded not guilty to the indictment, and, for cause shown, he shall have reasonable time to answer the indictment.

SEC. 232. If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and he shall be asked if he desire the aid of counsel, and if it appear that he is unable to employ counsel, by reason of poverty, counsel shall be assigned him by the court.

SEC. 233. When the defendant is arraigned, he shall be informed,

if the name by which he is indicted be not his true name; he shall then declare his true name, or be proceeded against by the name in the indictment.

SEC. 234. If he allege that another name is his true name, it must be entered in the minutes of the court, and the subsequent proceedings on the indictment may be had against him by that name, referring, also, to the name by which he is indicted.

SEC. 235. If the indictment be for a misdemeanor, punishable by fine only, the defendant may appear upon arraignment by counsel.

CHAPTER XXI.

OF WITNESSES AND EVIDENCE.

SEC. 236. Witnesses may be compelled to attend and testify before grand jury and in open court.
May be recognized.
237. Clerk when to issue subpœna for witnesses.
When continuance not to be granted the territory, on account of absence of witness.
238. Competent witnesses.
239. When, and how far confessions may be taken as evidence.
240. Rules of evidence in civil actions to be applied to criminal prosecutions.

SEC. 236. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the territory, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpœnaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may recognize witnesses, with or without sureties, to attend and testify at the same or next term of the court, or at any term of a court within the territory.

SEC. 237. The clerk shall, at the time of issuing a warrant for the defendant, issue a subpœna for all the witnesses whose names are endorsed on the indictment, and any others required; but in no case shall a continuance be granted to the territory on account of the absence of any witness, whose name is not endorsed on the indictment.

SEC. 238. Witnesses competent to testify in civil cases, shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests, shall not be protected from testifying as to confessions, or information received from any defendant, by virtue of their profession or character; and Indians shall be competent witnesses in any prosecutions in which an Indian may be a defendant.

SEC. 239. The confession of a defendant, made under inducement, with all the circumstances, may be given in evidence against him, except

when made under the influence of fear, produced by threats; but a confession made under inducement is not sufficient to warrant a conviction, without corroborating testimony.

SEC. 240. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions.

CHAPTER XXII.

OF VENUE.

SEC. 241. No change of venue from the district to be allowed on account of the prejudice of the inhabitants of any county.
Proceedings upon affidavit that party cannot have justice from jury of particular county, and in cases now pending where change of venue ordered.

SEC. 241. No change of venue from the district shall be allowed on account of the prejudice of the inhabitants of any particular county, but where a party or his attorney shall make his affidavit that the inhabitants of any particular county are so prejudiced or excited, or so particularly interested in the cause or question that he believes the party cannot have justice done by a jury of that county, or where, in cases now pending, there has already been a change of venue from any particular county ordered on account of prejudice, then no juror for that particular case shall be taken from that county, unless by consent of the party making the objection, but the case shall be tried by the jurors from the other counties, who may be in attendance as grand and petit jurors, and if, from challenges or any other cause, there shall not remain twelve competent jurors, then the case may be tried by a number less than twelve:—*Provided*, That the parties litigant consent to so try the case.

CHAPTER XXIII.

OF TRIALS.

SEC. 242. Issues of fact to be tried by jury.
Law regulating drawing, &c, jurors, and trial by jury in civil, to apply to criminal cases.
243. Peremptory challenge by defendant.
Several defendants on trial together, must join in challenge.
244. Peremptory challenge by prosecuting attorney.
245. Challenges to the panel, when allowed.
Must be in writing, &c.
246. Challenges for cause, when allowed.
247. Certain persons not permitted to serve as jurors on trial of offense punishable by death.

SEC. 248. How the jury shall be sworn.
249. Trial may be submitted to the court; by whom, and when.
250. In certain prosecutions, accused to be present during trial.
251. No person prosecuted for offense punishable by fine only, to be tried without being present, unless, &c.
252. Court to decide all questions of law.
Laws in relation to instruction to jury, &c., provided in civil practice act to govern in criminal cases, except, &c.
253. Jury to be kept together.
254. View may be ordered.
255. When two or more indicted jointly, may be tried separately.
256. One defendant may be discharged to give evidence for state, or for co-defendant.
Effect of order of discharge.
257. When mistake has been made in charging proper offense; proceedings thereupon.
258. Venue of indictment may be corrected; when.
259. Jury impanneled in case where a mistake has occurred, may be discharged.
260. A conviction or acquittal on indictment for offense consisting of different degrees, shall be a bar to another indictment for the offense charged in the former, &c.
261. Jury may find defendant guilty of an offense of an inferior degree to that charged.
262. Jury may find defendant guilty of an offense necessarily included in that charged.
263. On an indictment against several, if jury cannot agree upon a verdict as to all, how to proceed.
264. Reconsideration of verdict may be directed by the court, when.
265. When a person indicted shall, on trial, be acquitted by jury on ground of insanity.
Proceeding in such case.
266. Rendition of verdict, how made.
267. Verdict must state amount of fine and punishment to be inflicted.
268. When defendant found guilty, court to render judgment accordingly.
Defendant liable for costs, unless, &c.

SEC. 242. Issues of fact, joined upon an indictment, shall be tried by a jury of twelve persons, and the law regulating the drawing, retaining and selecting jurors, and trials by jury, in civil cases, shall apply to criminal cases, so far as the same may be applicable.

SEC. 243. In prosecution for capital offenses, the defendant may challenge, peremtorily, twelve jurors; in prosecution for offenses punishable by imprisonment in the penitentiary, six jurors; in all other prosecutions, three jurors. When several defendants are on trial together, they must join in their challenges.

SEC. 244. The prosecuting attorney, in capital cases, may challenge, peremptorily, six jurors; in all other cases, three jurors.

SEC. 245. Challenges to the panel shall only be allowed for a material departure from the forms prescribed by law, for the drawing and

return of the jury, and shall be in writing, sworn to and proved to the satisfaction of the court.

SEC. 246. Challenges for cause shall be allowed for such cause as the court may, in its discretion, deem sufficient, having reference to the causes of challenge prescribed in civil cases, as far as they may be applicable, and to the substantial rights of the defendant.

SEC. 247. No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death, shall be compelled or allowed to serve as a juror on the trial of any indictment for such an offense.

SEC. 248. The jury shall be sworn, or affirmed, to well and truly try the issue between the territory and the defendant, according to the evidence; and in capital cases, to well and truly try, and true deliverance make, between the territory and the prisoner at the bar, whom they shall have in charge, according to the evidence.

SEC. 249. The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in capital cases.

SEC. 250. No person prosecuted for any offense punishable by death, or by confinement in the state's prison, or in the county jail, shall be tried unless personally present during the trial.

SEC. 251. No person prosecuted for any offense punishable by a fine only, shall be tried without being personally present, unless some responsible person, approved by the court, undertakes to be bail for stay of execution, and payment of the fine and costs that may be assessed against the defendant. Such undertaking must be in writing, and is as effective as if entered into after judgment.

SEC. 252. The court shall decide all questions of law which shall arise in the course of the trial. The same laws in relation to giving instruction to the jury by the court, and the argument of counsel and taking exceptions, as is now provided in the civil practice act, shall also govern in criminal cases, except as herein specially provided.

SEC. 253. Juries in criminal cases shall not be allowed to separate, except by consent of the defendant and the prosecuting attorney, but shall be kept together, without meal or drink, unless otherwise ordered by the court, to be furnished at the expense of the county.

SEC. 254. The court may order a view by any jury impanneled to try a criminal case.

SEC. 255. When two or more defendants are indicted jointly, any defendant requiring it shall be tried separately.

SEC. 256. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his

defense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving testimony for a co-defendant. The order of discharge is a bar to another prosecution for the same offense.

SEC. 257. When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant shall not be discharged, if there appears to be good cause to detain him in custody; but the court must recognize him to answer to the offense shown, and if necessary, recognize the witnesses to appear and testify.

SEC. 258. When it appears, at any time before verdict or judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment to be corrected, and direct that all the papers and proceedings be certified to the proper court of the proper county, and recognize the defendant and witnesses to appear at such court, on the first day of the next term thereof, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced.

SEC. 259. When a jury has been impanneled, in either case contemplated in the two last preceding sections, such jury may be discharged without prejudice to the prosecution.

SEC. 260. When the defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein.

SEC. 261. Upon an indictment 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.

SEC. 262. In all other cases, the defendant may be found guilty of an offense, the commission of which is necessarily included within that with which he is charged in the indictment.

SEC. 263. On an indictment 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 shall be entered accordingly.

SEC. 264. 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 such reconsideration, they return the same verdict, it must be entered, but it shall be good cause for new trial; but where there is a verdict of acquittal, the court cannot require the jury to reconsider it.

SEC. 265. When any person indicted for an offense shall, on trial, be acquitted by the jury by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge, or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

SEC. 266. 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 appear, their verdict must be rendered in open court; if all do not appear, the rest must be discharged without giving a verdict, and the cause must be tried again at the same or next term.

SEC. 267. When the defendant is found guilty, the jury must state in their verdict the amount of fine, and the punishment to be inflicted.

SEC. 268. When the defendant is found guilty, the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise.

CHAPTER XXIV.

OF NEW TRIALS AND ARREST OF JUDGMENT.

SEC. 269. Application for new trial, when to be made, and for what causes to be granted.
270. Facts on which application based, when to be set forth by affidavit.
271. Causes for which judgment may be arrested, on motion.
272. When judgment may be arrested without motion.
273. When judgment is arrested, defendant may be recommitted or held to bail; when.
274. Exceptions may be taken by defendant as in civil cases.

SEC. 269. An application for a new trial must be made before judgment, and may be granted for the following causes:

1st—When the jury has received any evidence, paper, document or book not allowed by the court, to the prejudice of the substantial rights of the defendant.

2d—Misconduct of the jury.

3d—For newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial.

4th—Accident or surprise.

5th—Admission of illegal testimony and misdirection of the jury by the court, in a material matter of law, excepted to at the time.

6th—When the verdict is contrary to law, and evidence, but not more than two new trials shall be granted for these causes alone.

SEC. 270. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the preceding sections, the facts on which it is based shall be set out in an affidavit.

SEC. 271. Judgment may be arrested on the motion of the defendant, for the following causes:

1st—No legal authority in the grand jury to inquire into the offense charged, by reason of its not being within the jurisdiction of the court.

2d—That the facts as stated in the indictment do not constitute a crime or misdemeanor.

SEC. 272. The court may also on its views of any of these defects, arrest the judgment without motion.

SEC. 273. When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offense properly charged, the court may order the defendant to be recommitted, or admitted to bail anew, to answer a new indictment.

SEC. 274. Exceptions may be taken by the defendant, as in civil cases, on any matter of law by which his substantial rights are prejudiced.

CHAPTER XXV.

OF JUDGMENTS AND EXECUTIONS.

SEC. 275. Court to pronounce judgment; when.
276. When defendant must be present, and when he may be absent, for the purpose of judgment.
277. When defendant is not present, a warrant to issue for his arrest.
278. Defendant to be informed by court of verdict, and asked if he have any cause to show why judgment should not be pronounced.
279. A bench warrant for arrest of defendant, in addition to forfeiture of recognizance may issue; when.
280. Custody of defendant until fine and costs paid.
281. Execution upon judgment for fine, &c., and return thereof.
282. In addition to the legal punishment of an offense, court may, in certain cases, cause offender to recognise to keep the peace, &c.
283. Proceedings in case of breach of such recognizance.

SEC. 284. Defendant may stay execution for fine and costs; how.
285. Sureties for such stay to be approved by clerk.
Entry of recognizance, &c.
Execution to issue; when, &c.
286. If person ordered into custody until fine and costs paid, shall not pay so before final adjournment of court, how to be dealt with.
287. When clerk to deliver to sheriff a transcript from minutes of conviction and sentence.
288. Form of the sentence when imprisonment in penitentiary is awarded.
289. Provision where there is no penitentiary in territory, or jail in county.
290. Defendant may work out his fine and costs, or unexpired term of imprisonment; when.
291. Death warrant to be delivered to sheriff.
What it shall state.
When to be returned.
292. Punishment of death to be inflicted by hanging by the neck.
293. Sheriff to return warrant.
What to state thereon.
Clerk's duty upon its receipt.
294. When the time for the execution passes, court or judge by whom fixed may appoint a day.
295. Final record to be made by clerk.
What to contain.

SEC. 275. After verdict of guilty, or finding of the court against the defendant, if the judgment be not arrested, or a new trial granted, the court must pronounce judgment.

SEC. 276. For the purpose of judgment, if the conviction be for an offense punishable by imprisonment, the defendant must be personally present; if for a fine only, he must be personally present, or some responsible person must undertake for him to secure the payment of the judgment and costs; judment may then be rendered in his absence.

SEC. 277. If in any case the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in this territory, as a warrant of arrest in other cases.

SEC. 278. When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him.

SEC. 279. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 280. When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured, as provided by law.

SEC. 281. Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions.

SEC. 282. Every court before whom any person shall be convicted upon an indictment for any offense not punishable with death or imprisonment in the penitentiary, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum, to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize.

SEC. 283. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

SEC. 284. Every defendant against whom a judgment has been rendered for fine and costs, may stay the execution for the fine assessed, and costs, for sixty days from the rendition of the judgment, by procuring one or more sufficient sureties, to enter into a recognizance in open court, acknowledging themselves to be bail for the fine and costs.

SEC. 285. Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment, and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in this act, in committal for default to pay or secure the fine and costs.

SEC. 286. If any person ordered into custody, until the fine and costs adjudged against him, shall not, before the final adjournment of the court, pay or cause the payment of the same to be secured, the clerk of the court shall issue a warrant to the sheriff, commanding him to imprison such defendant in the county jail until such fine and costs are paid or secured, or until he has been imprisoned in such jail one day for every three dollars of such fine or costs, but execution may at any time issue against the property of the defendant, as in other cases.

SEC. 287. When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, and he shall execute it accordingly.

SEC. 288. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he

be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and the execution of such punishment, the solitary shall precede the punishment by hard labor, unless the court shall otherwise order.

SEC. 289. If there shall be no penitentiary in the territory, or other prisons, the court may order the prisoner to be imprisoned in any county jail, if there be one, or any other place of confinement within the territory, at the expense of the territory; and if there is no county jail or county prison, the court may order the defendant, sentenced to the county jail, to be confined in the penitentiary, if there be one, or in any county jail, or other place of confinement in the territory, at the expense of the county in which the conviction was had.

SEC. 290. When a defendant is committed to jail on failure to pay any fine or costs, if there be no such jail, he shall, under the order of the county commissioners, work out the amount of such fine and costs, at the rate of three dollars for every day's labor, and if there be a county jail, he may elect so to do; and in case he shall so work out his fine and cost, no execution shall issue therefor. When any defendant is in the custody of the sheriff, by virtue of a sentence to imprisonment in the county jail, and there be no county jail in the county, he may, under order of the county commissioners, cause such person to work out his unexpired term of imprisonment, in such manner as they may direct.

SEC. 291. When judgment of death is rendered, a warrant signed by the judge, and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day in which the judgment shall be executed; which shall not be less than thirty nor more than ninety days from the time of judgment. And the sheriff or officer to whom said warrant was delivered shall return the same within twenty days after the time fixed for the execution.

SEC. 292. The punishment of death prescribed by law must be inflicted by hanging by the neck.

SEC. 293. The sheriff shall return and file with the clerk the warrant, with a statement of his doings thereon, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

SEC. 294. Whenever the time appointed for the execution of a prisoner shall have passed, from any cause, the court by whom the time was fixed, or the judge or judges thereof, shall cause the prisoner to be brought immediately before the said court, judge or judges, and proceed to appoint a day for the carrying into effect the sentence of death.

SEC. 295. The clerk of the district court shall make a final record of all the proceedings in a criminal prosecution, within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment, journal entries, pleadings, minutes of challenges to panel petit jurors, judgment, orders, or decision, and bill of exceptions.

CHAPTER XXVI.

OF SUITS OF ERROR AND APPEALS.

SEC. 296. Re-examinations in district and supreme court, may be had.
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297. Appeals may be taken at term at which judgment was rendered.
298. Writs of error, how sued out, served, and returned.
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Transcript, what to contain.
300. Transcript, what to contain when writ sued out or appeal taken by prosecuting attorney.
301. Transcript, if not filed within sixty days, appeal or writ to be dismissed, unless, &c.
302. Supreme court may reverse, modify, &c., judgment, or order new trial.
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305. Writ of error taken, or appeal granted, in cases of felony, to what extent to operate as a supersedeas.
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306. One or more of several defendants tried jointly, may take appeal, or sue out writ of error.
307. When a prisoner may be discharged; when detained.
308. No appeal or writ of error to be dismissed for informality, when.
309. Opinions of supreme court when to be in writing and recorded.
310. A transcript under seal of order, &c., sufficient authority for action by any court or officer.
311. Prosecutions heretofore decided, may be re-examined, within what time.
312. Power of supreme court to make rules.

SEC. 296. Every final judgment, order, or decision of a district court, in a criminal prosecution, may be re-examined upon a writ of error, in the same court for error in fact, within one year, and in the supreme court for error in law, within two years. The writ may be sued out by the defendant for all errors, and by the prosecuting attorney when the error complained of is in quashing the indictment, or where a judgment is arrest-

ed by reason of the facts, as stated in the indictment, not constituting a crime or misdemeanor.

SEC. 297. Appeals may be taken from any final judgment, from which a writ of error would lie, by the defendant and prosecuting attorney, as provided in the preceding section, at the term of the court at which the judgment was rendered.

SEC. 298. Writs of error shall be sued out and served in the same manner as notice in civil action; and when sued out by the defendant, shall be served on the prosecuting attorney, and when sued out by the prosecuting attorney, on the defendant or his attorney, and returned as in civil actions.

SEC. 299. The defendant, on appeal or writ of error, shall be entitled to a transcript of the record, on payment of the fee therefor; and the transcript shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment, journal entries, pleadings, minutes of challenge to panel of petit jurors, judgment, order, decision, and bill of exceptions, certified to by the clerk.

SEC. 300. The transcript, when the writ of error is sued out, or the appeal taken by the prosecuting attorney, shall contain a copy of the indictment, and the order, decision, or judgment of the court from which the appeal is taken, or on which error is to be assigned.

SEC. 301. If the transcript shall not be filed within sixty days, the appeal or writ of error shall be dismissed, unless it shall appear that the plaintiff in error, or appellant, was not in fault; and the court may order a new transcript or further record to be certified to at any time.

SEC. 302. The supreme court may reverse, affirm, or modify the judgment appealed from, or may, if necessary or proper, order a new trial. In either case, the cause must be remanded to the court below, with proper instructions, together with the opinion of the court. But whenever any judgment is affirmed, the court may order it to be enforced by the proper officer.

SEC. 303. On hearing of writs of error, the supreme court shall examine all errors assigned; and on the hearing of appeals, shall examine all errors and mistakes excepted to at the time, whether waived by the strict rules of law or not; but the court shall consider all amendments which could have been made, as made, and shall give judgment without regard to technical errors or defects, or exceptions which do not effect the substantial rights of the defendant.

SEC. 304. A writ of error or appeal may operate to stay proceedings, in a capital case, on the allowance of a judge of the supreme court, and after sufficient notice to the prosecuting attorney of the time and

place of making the application; and such order, certified to by the clerk of the district court of any county, under the seal thereof, when served on the sheriff, shall stay further proceedings in the case.

SEC. 305. In any case in which a party is convicted of a felony, and an appeal is taken, or a writ of error obtained in behalf of said party, such appeal or writ of error shall operate as a supersedeas, insofar as to stay the execution of the sentence, if the same is to be enforced by imprisonment in the penitentiary; but in no case shall a party convicted of a felony be allowed the benefit of bail, but such party shall be confined in some county jail, or some other place of imprisonment.

SEC. 306. When several defendants are tried jointly, any one or more of them may take an appeal, or sue out a writ of error.

SEC. 307. When a judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense, although defectively charged in the indictment, the supreme court, if the defendant is imprisoned, must direct the keeper of the place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the district court thereof; and such keeper shall be entitled to the usual fees therefor.

SEC. 308. No appeal or writ of error shall be dismissed for any informality or defect in taking or sueing out the same, if such informality or defect shall be corrected within a resonable time.

SEC. 309. All opinions of the supreme court in criminal prosecutions, must be given in writing, and recorded in the order book.

SEC. 310. A transcript of any order or judgment, or both, of the supreme court, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate.

SEC. 311. All criminal prosecutions, heretofore decided in this territory, may at any time within one year after the decision thereof be re-examined on writs of error, and within two years after such decision, may be re-examined on appeal, according to the provisions of this act, and on such re-examinations, the court shall be governed by the law then in force.

SEC. 312. The supreme court shall have power to make any rules, not inconsistent with the provisions of this or other acts.

CHAPTER XXVII.

MISCELLANEOUS PROVISIONS.

SEC. 313. Persons in custody, charged with crime, upon what county to be charged, and by what sheriff to be kept.
314. Jail of county in which district court is held, free to all persons from any county in the district.
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315. When necessary to convey prisoners to place where district court is held, by what sheriff to be conveyed, and at expense of what county, &c.
316. To what county fines and ferfeitures shall belong.
How to be applied.
317. School superintendents, &c., and road supervisors, to make complaint of criminal violation of school and road laws.
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318. Power of governor to commute the death sentence, grant a pardon, respit, or reprieve.
319. Recognizances forfeited, to be certified to clerks of district court.
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320. Recognizances not to be barred or defeated.
Defect in form not to arrest judgment.
May be recorded after execution awarded.
321. Person acquitted not liable for costs or fees, except fees of his own witnesses, and those of officer summoning such witnesses.
322. Bail, when required, to justify; how.
323. Officer may break open door, &c., to make arrest; when.
324. Benefit of clergy abolished.
325. Laws and usages heretofore in force, to what extent continued.
326. Repealing clause.

SEC. 313. All persons in custody, charged with the commissions of crime within the jurisdiction of the district court, and all persons who may be placed in custody or committed to the district court, shall, in the first instance, be a charge upon the county where they belong, and in custody of the sheriff of that county, if he be in attendance upon the court; if he be not in attendance, then they shall be in charge of the sheriff of the county in which the court is held.

SEC. 314. The jail of the county in which the district court is held shall be free to all prisoners coming from any county in the district and in no instance shall more than one dollar a day be allowed for the custody and maintainance of a prisoner.

SEC. 315. All prisoners, whom it may be necessary to convey to the place where the district court is held, or to any place for an examination before the judge, if conveyed beyond the bounds of the county in which they are confined, shall be conveyed to and from their place of confinement by the sheriff of the county in which they are confined, or the sheriff of the county to which such prisoner belongs, at the expense, in

the first instance, of the county to which such prisoner belongs; and such sheriff shall have a right to the custody of the prisoner within the limits of any county in this territory through which he may pass; and for the temporary confinement of his prisoner, may use the county jail of any county free of charge, except for board, which shall not exceed thirty cents a meal.

SEC. 316. All fines and forfeitures shall belong to the counties from which the defendants come, to be applied to the same purposes as if the court was a district court of the county.

SEC. 317. It shall be the duty of all county school superintendents and school directors to make complaint in all cases which shall come to their knowledge, of a criminal violation of the laws relating to schools and education. It shall be the duty of road supervisors to make complaint in all cases which shall come to their knowledge, of a criminal violation of the laws relating to roads and highways. It shall be the duty of all constables and all sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions.

SEC. 318. Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life, at hard labor; and in all cases in which the governor is authorized to grant pardon, or commute sentence of death, he may, upon the petition of the person convicted, commute a sentence, or grant a pardon, upon such conditions, and with such restrictions, and under such limitations, as he may think proper; and he may issue his warrant to all proper officers to carry into effect such pardon or commutation; which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respits or reprieves, from time to time, as he may think proper.

SEC. 319. All recognizances, taken and forfeited before any justice of the peace, or magistrate, shall be forthwith certified to the clerk of the district court of the county; and it shall be the duty of the prosecuting attorney to proceed at once, by action, against all the persons bound in such recognizances, and in all forfeited recognizances whatever, or such of them as he may elect to proceed against.

SEC. 320. No action, brought on any recognizance, given in any criminal proceeding whatever, shall be barred or defeated; nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court, or

before what justice, the party or witness was bound to appear; and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded.

SEC. 321. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of any officer, or for any charge for subsistence while he was in custody, except for the fees of witnesses summoned by him, and those of the officer summoning such witnesses.

SEC. 322. Bail shall, when required, justify as in civil cases.

SEC. 323. To make an arrest in criminal actions, the officer may break open any outer or inner door, or window, of a dwelling house or other building, or any other enclosure, if, after notice of his office and purpose, he be refused admittance.

SEC. 324. The plea of the benefit of clergy is abolished.

SEC. 325. The laws and usages of this territory, relative to pleading and practice, heretofore in force in criminal cases, and not inconsistent herewith, as far as the same may operate in aid hereof, or to supply any omitted case, are hereby continued in force.

SEC. 326. The act, entitled an act relative to crimes and punishments, and proceedings in criminal cases, passed at the first legislative assembly of the territory of Washington, and the various act[s] amendatory to said act, be, and the same are, hereby repealed.

Passed January 31, 1860.

AN ACT

DEFINING THE JURISDICTION AND PRACTICE IN THE PROBATE COURTS OF WASHINGTON TERRITORY.

CHAPTER I—*The probate court, its powers and jurisdiction.*
" II—*Wills, and rules applicable to and governing their construction.*
" III—*Venue.*
" IV—*Of the proof of wills.*

CHAPTER V—*Letters testamentary and of administration, and bonds of executors and administrators.*
" VI—*Of the inventory and effects of deceased persons.*
" VII—*Provision for the support of the family.*
" VIII—*Of claims against the estate.*
" IX—*Sales of property by executors and administrators.*
" X—*Of the powers and duties of the executor and administrator, and of the management of the estate.*
" XI—*Of the conveyance of real estate by executors and administrators in certain cases.*
" XII—*Of accounts to be rendered by executors or administrators, and of the payment of debts.*
" XIII—*Of the partition and distribution of the estate.*
" XIV—*Descent of real estate.*
" XV—*Distribution of personal estate.*
" XVI—*The appointment and duties of guardians.*
" XVII—*Relating to idiots and insane persons.*
" XVIII—*Miscellaneous provisions.*

CHAPTER I.

THE PROBATE COURT, ITS POWERS AND JURISDICTION.

SEC. 1. Election of probate judge, his court and term of office.
2. Governor to commission judge.
3. Powers of the court.
4. Court to provide and keep a seal.
5. To be a court of record, with power to issue necessary writs.
6. Court where and when to be held.
7. Probate judge to be *ex officio* clerk of court.
His compensation as such.
8. Process from court to be attested and sealed.
How to be served.
9. Powers of court to enforce its orders, &c.
10. May, by attachment, enforce return of writ, &c., and production and delivery of papers.
11. Disqualification of judge in certain cases.
12. Proceeding when judge disqualified.
13. Adjournment, and special terms of court.
14. Judge to be a conservator of the peace.
15. Court may order a jury; when.
Number, qualification and compensation of jurors.
16. Jury trials, how governed.
Writs of inquiry awarded and executed.
Verdicts set aside and new trials granted.

SEC. 17. Letters of administration may be granted.
Return and entry of inventories or accounts of sales.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That there shall be elected at the next general election, and every three years thereafter, in each county in this territory, one suitable person, who shall have the qualification of an elector, who shall be styled the "probate judge," and the court hereby coustituted shall be called the "probate court," and such judge shall hold his office for three years, and until his successor is duly elected and qualified.

SEC. 2. The clerk of the board of county commissioners of each county shall certify the name of the person elected under this act, to the governor of the territory, who shall thereupon commission said person judge of probate of said county.

SEC. 3. That the probate court shall have and possess the following powers: Exclusive original jurisdiction within their respective counties in all cases relative to the probate of last wills and testaments; the granting of letters testamentary and of administration, and revoking the same; the appointment and displacing guardians of orphan minors, and of persons of unsound mind, and the binding of apprentices; in the settlement and allowance of accounts of executors, administrators and guardians; to hear and determine all disputes and controversies respecting wills, the right of executorship, administration and guardianship, or relative to the duties and accounts of executors, administrators and guardians; and to hear and determine all disputes and controversies between masters and their apprentices; to allow or respect claims, against estates of deceased persons as hereinafter provided; to award process, and cause to come before said court all and every person or persons whom they may deem it necessary to examine, whether parties or witnesses, or who, as executors, administrators, or guardians, or otherwise, shall be entrusted with, or in any wise accountable for any lands, tenements, goods or chattels, belonging to any minor, orphan, or person of unsound mind, or estate of any deceased person, with full power to administer oaths and affirmations, and examine any person touching any matter of controversy before said court, or in the exercise of its jurisdiction.

SEC. 4. The said court shall provide and keep a suitable seal.

SEC. 5. That the court established by this act shall be a court of record, and shall keep just and faithful records of its proceedings, and shall have power to issue any and all writs which may be necessary to the exercise of its jurisdiction.

SEC. 6. The probate court shall meet in each and every county, at the county seat, on the third Monday in January, April, July and Octo-

ber, in each and every year: *Provided, however,* That if the district court of the district embracing any county, be in session at such time, the probate court of the county in which said district court is held, shall stand adjourned until the first Monday of the ensuing month.

SEC. 7. The probate judge shall be *ex officio* clerk of the probate court of said county, and for the performance of services not provided for in the act entitled "an act to regulate fees and costs," shall receive the same compensation as clerks of the district court, for the performance of similar services.

SEC. 8. That all process issuing out of the probate court, shall be attested by the clerk, and sealed with the seal of the court, and shall be served in the same manner as processes issuing out of the district court.

SEC. 9. That the probate court shall have the same power and authority under like restrictions and rules of law, to enforce and execute their orders, rules, judgments and decrees, as the district courts of this territory.

SEC. 10. The said court may enforce by attachment, the return of any writ or process, and the payment of any moneys over which it has jurisdiction, and to compel the production or delivery of any papers which are subjects of or necessary to its judicial action.

SEC. 11. That no judge of the probate court shall sit on the determination of any cause or proceeding in which he is interested, or related within the fourth degree to either party, or shall have been counsel.

SEC. 12. That if the judge be disqualified from any cause for sitting on the determination of any cause or proceeding pending before him, the same shall be certified with the original papers to the probate court of the next adjacent county, which shall proceed thereon to final judgment and determination.

SEC. 13. That if said court shall not be held on the first day of the term, such court shall stand adjourned from day to day until the evening of the third day. If at that time the judge shall not have appeared and opened court, the same shall stand adjourned until the next regular term. Special adjourned terms may be held in continuation of the regular term, upon its being so ordered by the court in term time, and entered by the clerk upon the record of the court.

SEC. 14. That each judge of the probate court shall be a conservator of the peace throughout his county.

SEC. 15. That when any issue is pending, proper to be tried by a jury, the court may order a jury to be summoned by the sheriff, not to exceed six in number, who shall possess the qualifications and be entitled to the same compensation for their services as jurors of the district court.

SEC. 16. That trials by jury in said court shall be governed in all cases as similar trials in the district court, and writs of inquiry may in like manner be awarded and executed, the verdicts of juries be set aside, and new trials granted.

SEC. 17. Letters of administration, or letters of guardianship, may be granted; inventory or account of sale of property returned during term time or vacation, and entered on record of the same day that such grant or return shall be made.

CHAPTER II.

WILLS, AND RULES APPLICABLE TO AND GOVERNING THEIR CONSTRUCTION.

SEC. 18. Who are competent to devise estates.
Construction of this section, as to dower of widow and courtesy of husband.
19. Rights of married women to dispose, by will, of real estate.
20. Wills to be in writing, signed and attested.
21. Persons signing testator's name.
22. Written wills, how to be revoked.
23. When subsequent marriage shall be deemed a revocation.
24. Will of an unmarried women revoked by her subsequent marriage.
25. Bond, &c., to convey property devised, not a revocation, &c.
26. Charge or incumbrance not a revocation.
27. Children of testators, or their descendants, not provided for, to have same proportion of estate as if there had been no will.
28. Unless where advancement bestowed during testator's lifetime.
29. If devisee die before testator, his lineal descendants to take estate.
30. Canceling, &c., of second will not to revive the first, unless, &c.
31. Nuncupative will, when to be deemed good; how and where must be made.
32. Mariners and soldiers may dispose of wages, &c.
33. Proof of nuncupative will.
Within what time to be received, and pre-requisites to.
34. Legacies, &c., to subscribing witnesses to wills void; when.
Creditors of testator not incompetent as witnesses in certain case.
35. If such witness be an heir-at-law, and will be not established, how much of the estate to be saved to him. May recover the same.
36. *Ib.*
37. Estates for life.
Remainder when to revert to heirs-at-law of testator.
38. An estate acquired by testator after making will, in what manner to pass.
39. When any devisees, &c., bequest taken by execution to pay testator's debts, co-devisees, &c., to contribute part of loss.
40. Such contribution may be ordered and enforced by court.
41. Term "will" to include codicils attached to will.
42. Courts to have due regard to direction of will, and intent, &c., of testator.

SEC. 18. Every person who shall have attained the age of majori-

ty, of sound mind, may, by last will, devise all his estate, real and personal. This section shall not be construed as depriving a widow of her dower, nor a husband of his interest as tenant by the courtesy.

SEC. 19. A married woman may, by will, dispose of any real estate held in her own right, subject to any rights which her husband may have as tenant by courtesy.

SEC. 20. Every will shall be in writing, signed by the testator or by some other person under his direction in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator.

SEC. 21. Every person who shall sign the testator's name to any will by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

SEC. 22. No will in writing, except in cases hereinafter mentioned, nor any part thereof, shall be revoked except by a subsequent will in writing, or by burning, canceling, tearing, or obliterating the same, by the testator, or in his presence, or by his consent and direction.

SEC. 23. If, after making any will, the testator shall marry, and the wife shall be living at the death of the testator, such will shall be deemed revoked, unless provision shall have been made for her by marriage contract, or unless she shall be provided for in the will, or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation, shall be received.

SEC. 24. A will made by an unmarried woman shall be deemed revoked by her subsequent marriage.

SEC. 25. A bond, covenant, or agreement, made for a valuable consideration by a testator, to convey any property, devised or bequeathed in any last will, previously made, shall not be deemed a revocation of such previous devise or bequest, either in law or equity; but such property shall [pass] by the deviser or bequest, subject to the same remedies on such bond, covenant, or agreement, for sepcific performance, or otherwise against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

SEC. 26. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance.

SEC. 27. If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their

death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as he shall regard such child or children, or their descendants, not provided for, shall be deemed to die intestate, and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part.

SEC. 28. If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding sections.

SEC. 29. When any estate shall be devised to any child, grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator.

SEC. 30. If, after making any will, the testator shall duly make and execute a second will, the destruction, canceling, or revocation of such second will shall not revive the first will, unless it appears by the terms of such revocation, that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

SEC. 31. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, nor unless the same be proved by two witnesses, who were present at the making thereof, nor unless it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness, and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home, and died before his return.

SEC. 32. Any mariner at sea, or soldier in the military service, may dispose of his wages, or other personal property, as he might have done by common law, or by reducing the same to writing.

SEC. 33. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may contest the will if they think proper.

SEC. 34. All beneficial devises, legacies and gifts whatever, made or

given in any will to a subscribing witness thereto, shall be void, unless there are two other competent subscribing witnesses to the same, but a mere change [charge] on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

SEC. 35. But if such witness, to whom any beneficial devise, legacy or gift, may have been made or given, would have been entitled to any share in the testator's estate, in case the will is not established, then so much of the estate as would have descended, or would have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will, in proportion to, and out of the parts devised and bequeathed to him.

SEC. 36. Every devise of land in any will shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

SEC. 37. If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and without the remainder is specially devised to the heirs of said devisee, it shall revert to the heirs at law of the testator.

SEC. 38. Any estate, right or interest in lands acquired by the testator after the making of his or her will, shall pass thereby, and in like manner as if it passed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

SEC. 39. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs, shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

SEC. 40. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the probate court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made, and enforce such order with like effect as a judgment of the district court.

SEC. 41. The term "will," as used in this act, shall be so construed as to include all codicils attached to any will.

SEC. 42. All courts and others concerned in the execution of last wills, shall have due regard to the direction of the will, and the true intents and meaning of the testator, in all matters brought before them.

CHAPTER III.

VENUE.

SEC. 43. In what county will to be proved, &c.
44. If estate in more than one county, and testator died out of territory, a non-resident, what court to have exclusive jurisdiction.

SEC. 43. Wills shall be proved and letters testamentary or of administration shall be granted:

1st—In the county of which the deceased was a resident, or had his place of abode at the time of his death.

2d—In the county in which he may have died, leaving estate therein, and not being a resident of the territory.

3d.—In the county in which any part of his estate may be, he having died out of the territory, and not having been a resident thereof at the time of his death.

SEC. 44. When the estate of the deceased is in more than one county, he having died out of the territory, and not having been a resident thereof at the time of his death, the probate court of that county in which application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate.

CHAPTER IV.

OF THE PROOF OF WILLS.

SEC. 45. Within what time the custodian of a will to deliver same to court, or to the executor.
46. Within what time executor to present will to court.
47. Duty of executor declining to act, or intending to accept.
48. Penalty for violating the foregoing sections.
49. Any person named as executor, not having will in his possession, may petition proper court for an order to have same produced.
50. Any person having an interest in will, may petition in like manner.
51. Power of court to compel production of will.
52. Applications for probate, &c., may be made in vacation, and judge may, at any time, issue necessary orders, &c.
53. Reception of proof and certificate of probate or rejection.
54. When witness absent through sickness, &c., court may issue commission to take his attestation.
55. Testimony before a commission of same force as if taken before court.
56. How and when hand writing of testator and absent witnesses, &c., may be proved, when only one attesting witness examined.
57. When all the witnesses are dead, residence unknown, &c., what proof to be taken.
58. Testimony to be reduced to writing, signed and certified.
59. Wills to be recorded and originals filed.

SEC. 60. Wills, properly proved, may be read as evidence.
61. Record of will and exemplification thereof by probate judge, to be received as evidence, and to be as effectual as original.
62. When lands devised are in different counties, copy of will to be recorded in each county.
In what office, and within what time.
63. Wills may be contested upon petition, within one year after probate or rejection.
Proceedings in such case.
64. Upon filing of petition, a citation shall issue to the executors, &c., requiring their appearance before the court.
65. After one year, probate or rejection final, saving to infants, &c., one year after disability removed.
66. Oath of witness at time of probate, when admissible on trials respecting validity of will.
67. Will and probate thereof, when to be annulled and revoked.
68. Upon revocation, powers of executor, &c., to cease.
Not liable for acts done previous to service of written notice of intention to contest.
69. Fees, &c., by whom to be paid.
70. When any will shall be lost or destroyed, power of court to take proof of its execution, &c.
71. When will established, duty of the probate judge.
72. Court to restrain certain proceedings by administrators, &c., appointed before or during pendency of application to prove a lost or destroyed will.

SEC. 45. Any person having the custody of any will shall, within thirty days after he shall have knowledge of the death of the testator, deliver said will into the probate court which has jurisdiction of the case, or to the person named in the said will as executor.

SEC. 46. Any person named as executor in any will shall, within thirty days after he has knowledge that he is executor, present the will, if in his possession, to the probate court which has jurisdiction.

SEC. 47. An executor named in any will may decline to act by filing a written renunciation at the time of filing said will; but if he intends to accept, he shall present with the will a petition praying that the will be admitted to probate and that letters testamentary be issued to him.

SEC. 48. Any person violating the three preceding sections of this act without reasonable excuse, shall be liable to every person interested in the will for damages caused by such neglect.

SEC. 49. Any person named as an executor in a will, not having the same in his possession, may petition the court of proper jurisdiction, for an order to have the same produced, that it may be admitted to probate, and that letters testamentary may be issued to him.

SEC. 50. Any person having an interest in the will, may in like manner present a petition praying that it may be required to be produced and admitted to probate.

SEC. 51. The said court may compel, by citation and attachment, any person in whose possession any will may be, to produce it in court at such time as the court may order.

SEC. 52. Applications for the probate of a will, or for letters testamentary, may be made to the probate judge, in vacation, and he may, also, at any time, issue all necessary orders and process to enforce the production of any will.

SEC. 53. When any will is exhibited to be proven, the court may immediately receive the proof, and grant a certificate of probate, or if such will be rejected, issue a certificate of rejection.

SEC. 54. If any witness be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the territory, or more than thirty miles from the place where the will is to be proven, such court may issue a commission, annexed to such will, and directed to any judge, justice of the peace, or mayor, or other person, empowering him to take and certify the attestation of such witness.

SEC. 55. If such witness appear before such officers, and make oath or affirmation that the testator signed the writing annexed to such commission, as his last will, or that some other person signed it by his direction, and in his presence, that he was of sound mind, that the witness subscribed his name thereto in the presence of the testator, the testimony, so taken, shall have the same force as if taken before the court.

SEC. 56. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the hand writing of the testator, and of the witnesses dead, insane, or residence unknown, and of such other circumstances as would be sufficient to prove such will.

SEC. 57. If it shall appear to the satisfaction of the court that all the subscribing witnesses are dead, insane, or their residence unknown, the court shall take and receive such proof of the hand writing of the testator and subscribing witnesses to the will, and of such other facts and circumstances as would be sufficient to prove such will.

SEC. 58. All the testimony adduced in support of the will, shall be reduced to writing, signed by the witnesses, and certified by the judge of probate.

SEC. 59. All wills shall be recorded by the probate judge, in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed.

SEC. 60. Every will proved according to the provisions of this act, recorded and certified by the judge of probate, and attested by his seal of office, may be read as evidence without any further proof.

SEC. 61. The record of any will made, proved and recorded as afore-

said, and the exemplification of such record by the judge of probate, in whose custody the same may be, shall be received as evidence, and shall be as effectual, in all cases, as the original would by if produced and proven.

SEC. 62. In all cases were lands devised by last will are situated in different counties, a copy of such will shall be recorded in the county auditor's office in each county, within six months after probate.

SEC. 63. If any person interested in any will shall appear within one year after the probate or rejection thereof, and by petition to the probate court having jurisdiction, contest the validity of said will, or pray to have the will proven which has been rejected, he shall file a statement containing his objections and exceptions to said will, or to the rejection thereof. An issue shall be made up in said probate court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint, or undue influence, or fraudulent representations, or for any other cause affecting the validity of such will, such issue or issues shall, at the request of either of the parties interested, be certified immediately to the district court of the district which may embrace the county where probate jurisdiction has been exercised, for trial by jury; or may, by the consent of the parties, be tried by the probate court. Such issue or issues of fact shall be made up and tried in the same manner as is or may be provided by law for the trial of issues of fact in other cases. The jury trying the same shall render a special verdict thereon, subject, nevertheless, to the like objections and exceptions to the decisions of the court as in civil actions. After the trial of such issue, without an appeal or writ of error shall be taken in said case to the supreme court, as hereinafter allowed, the district court shall remit the proceedings upon such trial, together with the findings and decision, to the probate court, which shall form part of the record of the cause in the probate court. The probate court shall render judgment according to the finding and decision of the district court, or upon appeal to the supreme court, then upon the judgment or decision of said supreme court.

SEC. 64. Upon the filing of the petition referred to in the next preceding section, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators with the will annexed, and to all the legatees named in the will residing in the territory, or to their guardians, if any of them are minors, or their personal representative, if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified, to show cause why the petition should not be granted.

SEC. 65. If no person shall appear within the time aforesaid, the

probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a like period of one year after their respective disabilities are removed.

SEC. 66. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness examined at the time of probate, may be admitted as evidence.

SEC. 67. If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked.

SEC. 68. Upon the revocation being made, the powers of the executor or administrator with the will annexed shall cease, but such executor or administrator shall not be liable for any act done in good faith previous to service of written notice of intention to contest said will.

SEC. 69. The fees and expenses shall be paid by the losing party. If the probate be revoked, or the will annulled, the party who shall have resisted such revocation shall pay the cost and expenses of the proceedings out of the property of the deceased.

SEC. 70. Whenever any will be lost or destroyed, by accident or design, the probate court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to all persons interested having first been given, shall be reduced to writing and signed by the witnesses. But no will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses.

SEC. 71. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the probate judge, under his hand and the seal of the court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the will annexed, shall be issued thereon, in the same manner as upon wills produced and only proved.

SEC. 72. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the court shall have authority to restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees, claiming under the lost or destroyed will.

CHAPTER V.

LETTERS TESTAMENTARY AND OF ADMINISTRATION, AND BONDS OF EXECUTORS AND ADMINISTRATORS.

SEC. 73. Letters testamentary to be granted to persons named as executors.
If part or all refuse to act, or be disqualified, proceedings thereupon.
74. Objections to granting letters to executors named may be filed, and the objection shall be heard and determined by court.
75. Proceedings when executor is a minor, or absent from territory.
76. Proceedings when will is found after letters of administration granted.
77. Proceedings when such will is set aside.
78. Marriage of executrix or administratrix extinguishes her powers.
79. Court to revoke letters granted, in certain cases.
80. No executor of an executor, as such, to administer on estate of first testator.
Proceedings on death of sole or surviving executor.
81. When a part only of executors named are appointed, their acts to be as effectual as if all were appointed.
82. Authority of administrators with the will annexed.
83. Letters to be signed by clerk of probate, to be under seal of court, and to have copy of will attached.
84. Administrators, &c., to make oath that he knows of no other or subsequent will.
85. Letters testamentary, &c., to be recorded, and judge to certify accordingly.
86. Certified and sealed copies of letters or records thereof, to be received as evidence.
87. Form of letters testamentary to executors.
88. Form of letters of administration with the will annexed.
89. To what persons administration to be granted, and in what order.
When judge may appoint any person to administer estate.
90. Application for letters of administration, how to be made.
Applicant to make affidavit as to names and residence of heirs, &c.
91. Similar affidavit required from administrators of goods remaining unadministered, and during contest about will, or granting letters.
92. Letters of administration to be signed and sealed.
Form thereof.
93. Executors and administrators to give bond.
Form and penalty and condition thereof.
Additional bond may be required; when.
And additional security for rents, &c.
94. Court may take a separate or joint bond.
95. Certain persons not to be taken as security in bonds required by this act.
96. Judge to take good security.
May examine on oath, persons offered.
97. Judge to cause bonds to be recorded, and originals filed.
98. Upon affidavit by any heir, &c., complaining of the principal or surety, as to insolvency, &c., thereof, court to examine complaint.
99. Court to make like examination upon complaint of any surety on bond.
100. If complaint just, court may order another bond, &c., to be given.
101. Effect of said bond as to former securities.
102. Effect of failure to give said bond.
103. Letters testamentary may issue without bond; when
Executor afterwards required to give bond.

SEC. 104. Special administrator may be appointed; when.
105. Bond to be given by special administrator.
106. Duty and power of special administrator.
His compensation.
107. Upon grant of letters, his power to cease.
As to suit commenced by special administrator.
108. Not liable to action by creditor of deceased.
From what time limitation as to suits to commence.
109. Special administrator to render an account, on oath, of proceedings.
110. Executor, &c., may resign; how.
111. *Ib.*
112. Survivors, &c., of executors to perform all duties.
113. In case all the executors, &c., die, resign, &c., to whom letters to be granted.
114. Legal representatives of deceased executor, &c., to deliver to successor all moneys, deeds, &c.
115. Succeeding administrator, &c., may proceed against any delinquent, former executor, &c.
116. Suits against securities, within what time to be commenced.
117. Executors, &c., failing to make settlement, &c., power of court in such case.
118. *Ib.*, as to those who have surrendered their letters, &c., or legal representatives of deceased executors, &c.
119. Delinquents in such cases, to pay costs.
120. Inventory of an estate when deceased was member of a partnership, what to include.
121. Delivery of co-partnership property, to whom to be made.
Bond required.
122. Condition of bond.
123. Authority of court to cite surviving partners.
Remedies of interested parties against survivors.
124. In case surviving partners refuse, &c., to give bond, who to administer on partnership estate.
125. Executor so administering, to give further bond.
126. Surviving partners to exhibit to appraisers, certain property of the firm.
127. Penalty for breach of preceding section.
128. Surviving partner not allowed to retain the partnership property against the demand of the executors of deceased partner, unless he give bond, &c.
129. *Ib.*
Said executor, &c., to take the property, unless the bond given.
130. If property withheld, executors, &c., may have process.
131. Non-residents, not to have letters granted them.

SEC. 73. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, or be disqualified, letters of administration with the will annexed, shall be granted to the person to whom administration would have been granted, if there had been no will.

SEC. 74. Any person interested in a will may file objections in writing to the granting of letters testamentary, to the persons named as ex-

ecutors, or any of them, and the objection shall be heard and determined by the court.

SEC. 75. If the executor be a minor, or absent from the territory, letters of administration with the will annexed, shall be granted during the time of such minority or absence, to some other person; unless there be another executor, who shall accept the trust; in which case the estate shall be administered by such other executor, until the disqualification shall be removed; when such minor, having arrived at full age, or such absentee shall be admitted as joint executor with the former.

SEC. 76. If, after letters of administration are granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked, and letters testamentary or of administration with the will annexed shall be granted.

SEC. 77. If, after a will has been found and letters thereon granted, the will shall afterwards be set aside, the letters shall be revoked, and letters of administration granted on the goods unadministered.

SEC. 78. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve on him, but the marriage shall extinguish her powers and the letters be revoked.

SEC. 79. If any executor or administrator become of unsound mind, or be convicted of felony or other infamous crime, or become a habitual drunkard, or otherwise incapable of, or unsuitable for executing the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or co-administrator, the probate court upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if they find it just, shall revoke the letters granted.

SEC. 80. No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator left unadministered, shall be issued.

SEC. 81. When all the executors named shall not be appointed by the court, such as are appointed shall have the same authority to perform every act, and discharge every trust required by the will, and their acts shall be as effectual for every purpose, as if all were appointed and should act together.

SEC. 82. Administrators with the will annexed, shall have the same

authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

SEC. 83. Letters testamentary and of administration, with the will annexed, shall be signed by the clerk of probate, and be under the seal of the court, and a copy of the will shall be attached to the letters.

SEC. 84. Every administrator with the will annexed, and executor at the time letters are granted him, shall make an affidavit that he knows of no other and subsequent will of the deceased.

SEC. 85. The judge of probate shall cause his clerk to record in a well-bound book, kept for that purpose, all letters testamentary and of administration, before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded.

SEC. 86. Copies of such letters, or copies of the records thereof, certified by the probate judge, and under the seal of the probate court, shall be received as evidence in any court in this territory.

SEC. 87. Letters testamentary to be issued to executors under the provisions of this act, may be in the following form:

United States of America,
Territory of Washington. } ss.

In the probate court of the county of ————————

Whereas, the last will of A. B., deceased, was on the ——— day of ——— A. D., ——, duly exhibited, proven and recorded in our said probate court, a copy of which is hereto annexed; and whereas, it appears in and by said last will, that C. D. is appointed executor thereon. Now, therefore, know all men by these presents, that we do hereby authorize the said C. D. to execute said will according to law.

In testimony whereof, I, E. F., clerk of the probate court of said county, on this ——— day of ———, A. D. ——, at my office in said county, have hereunto set my name and affixed the seal of said court.

SEC. 88. Letters of administration with the will annexed, may be substantially, in the following form:

United States of America,
Territory of Washington. } ss.

In the probate court of the county of ————————.

The last will of A. B., deceased, a copy of which is hereunto annexed, having been proved and recorded in the said probate court, and —— (as the case may be,) ————————. C. D. is hereby appointed administrator with the will annexed.

In testimony whereof, I, —— ———, clerk of the probate court of said county, on this ——— day of ———, A. D. ——, have hereunto affixed my hand and the seal of said court.

SEC. 89. Administration of the estate of a person dying intestate,

shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

1st. The surving husband, or wife, or such person as he or she may request to have appointed.

2d. The children.

3d. The father or mother.

4th. The brothers.

5th. The sisters.

6th. The grand children.

7th. Any other of the next of kin, entited to share in the distribution of the estate. *Provided*, That nothing hereinbefore mentioned shall be so construed as to prevent the judge of probate from appointing any disinterested and competent person or persons to administer such estate, when requested so to do, by petition of any person or persons interested in a just administration thereof.

SEC. 90. Application for letters of administration shall be made by petition in writing, signed by the applicant or his attorney, and filed in the probate court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and such applicant, at the time of making such application, shall make an affidavit, stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased, and that the deceased died without a will.

SEC. 91. A similar affidavit, with such variations as the case may require, shall be made by administrators of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the granting of letters of administration.

SEC. 92. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

United States of America,
Territory of Washington. } ss.

In the probate court of ————————.

Whereas, A. B., late of ———, on or about the —— day of ——, A. D. ——, died intestate, leaving at the time of his death, property in this territory subject to administration. Now, therefore, know all men by these presents, that we do hereby appoint ——— ———, administrator upon said estate, and hereby authorize him to administer the same according to law.

In testimony whereof, I, E. F., clerk of the probate court of said county, on this ——— day of ———, A. D. ——, at my office in said county, have hereunto set my name and affixed the seal of said court.

SEC. 93. Every executor or administrator, before entering upon the execution of his trust, shall give bond with sufficient sureties, resident in this territory, in such sum as the judge of probate shall order, payable to the Territory of Washington. The form of the bond shall be joint and several, and the penalty shall not be less than twice the value of the estate; which value shall be ascertained by the probate judge, by examination, on oath, of the party applying, and of any other persons he may think proper to examine. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of his trust according to law. In the discretion of the court, an additional bond may be required whenever any real estate is ordered to be sold by the court; and also, the court may require additional security for the annual rents, issues and profits of all real estate in the charge of said executor or administrator.

SEC. 94. When two or more persons have been appointed executors or administrators, the probate court may take a separate bond, with securities, from each of them, or a joint bond, with securities, from all of them.

SEC. 95. No judge of the probate court, no sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as security in any bond required to be taken by this act.

SEC. 96. The judge of probate shall take special care to take as securities, men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy himself, he may take testimony, and examine, on oath, the applicant or persons offered as security.

SEC. 97. The judge of probate shall cause his clerk to record in a well-bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular files.

SEC. 98. If any heir, legatee, creditor or other person interested in any estate, file in the probate court an affidavit, stating that the affiant has sufficient cause to believe that the security in the executor's or administrator's bond, has, or is likely to become insolvent, or has died or removed from the territory, or that the principal in such bond has, or is likely to become insolvent, or is wasting the estate, or that the penalty of such bond is [in]sufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond at least ten day's notice of the complaint, the court shall examine into the complaint.

SEC. 99. If any person bound as security in any executor's or administrator's bond, file in the probate court an affidavit stating that the affiant has sufficient reason to believe, and does believe his co-surety has died or is likely to become insolvent, or has removed from the territory, or the principal in such bond has or is likely to become insolvent, or is wast-

ing the estate, and shall have given to the principal in such bond at least ten day's notice of such complaint, the court shall examine into the same.

SEC. 100. If the probate court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond and sufficient surety to be given.

SEC. 101. Such additional bond when given and approved, shall discharge the former securities from any liability arising from the misconduct of the principal after the filing of the same, and such former securities shall only be liable for such misconduct as happened prior to the giving such new bond.

SEC. 102. If such person fail to give such additional bond and security for ten days after making such order, or in such other time as the court may prescribe, his letters from thenceforth shall be deemed to be revoked, and his authority from that time cease.

SEC. 103. When it is expressly provided in the will of a testator that no bond shall be required of the executor, letters testamentary may issue without any bond having been given; but an executor to whom letters have been issued without bond, may, at any time afterwards, whenever it may be shown from any cause to be necessary and proper, be required to appear and file a bond as in other cases.

SEC. 104. When by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of probate may, in his discretion, appoint a special administrator, (other than one of the parties,) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he shall nevertheless proceed in the execution of his trust, until he shall be otherwise ordered by the district court to which such appeal is taken.

SEC. 105. Every such administrator shall, before entering on the duties of his trust, give bond with sufficient surety or sureties, in such sum as the judge of probate shall order, payable to the territory of Washington, with condition as required of an executor, or in other cases of administratorship, to make and return into the probate court within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come into his possession or knowledge; and that he will truly account for all the goods, chattels, debts and effects of the deceased, that shall be received by him as special administrator, whenever required by the judge of probate, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

SEC. 106. Such special administrators shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the judge of probate shall order to be sold, and he shall be allowed such compensation for his service as the judge of probate shall deem reasonable.

SEC. 107. Upon granting letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased, in his hands, and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

SEC. 108. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate, shall begin to run from the time of granting letters testamentary or of administration in usual form, in like manner as if such special administration had not been granted.

SEC. 109. The special administrator shall also render an account on oath of his proceedings, in like manner as other administrators are required to do.

SEC. 110. If any executor or administrator, having first settled his accounts, shall publish for six weeks in some newspaper in this territory, in general circulation in the county wherein his letters were granted, a notice of his intention to apply to the probate court to resign his letters, and the court on proof of such publication believe that he should be permitted to resign, it shall so order; said publication of notice in the newspaper, upon application to the probate court for that purpose, may be dispensed with, and instead thereof, the probate court may require said executor or administrator to post ten written or printed handbills containing said notice, in ten of the most public places in the county where his letters were granted, at least twenty days before the term of the court at which he makes application to resign his letters.

SEC. 111. Such person shall then surrender his letters, his power from that time shall cease, and he shall pay the expenses of publication, and of all the proceedings on such application.

SEC. 112. If there be more than one executor or administrator of an estate, and the letters or part of them be revoked or surrendered, or a part die, or in any way become disqualified, those who remain shall perform all the duties required by law respecting the estate.

SEC. 113. If all the executors or administrators of an estate shall

die, resign, or their letters be revoked, in case not otherwise provided for, letters of administration of the goods remaining unadministered, shall be granted those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators.

SEC. 114. If any executor or administrator resign, or his letters be revoked, or he die, he or his legal representatives shall account for, pay and deliver to his successor or to the surviving or remaining executor or administrator, all money and property of every kind, and all rights, credits, deeds, evidences of debt and papers of every kind of the deceased at such time and in such manner as the court shall order, on final settlement with such executor or administrator or his legal representatives.

SEC. 115. The succeeding administrator, or remaining executor or administrator, may proceed at law against any delinquent, former executor or administrator, or his legal representatives, or the securities of either, or against any other person possessed of any part of the estate.

SEC. 116. All suits against securities shall be commenced within six years after the revocation or surrender of letters of administration, or death of the principal.

SEC. 117. If any executor or administrator fail to make either annual or final settlement as required by law, and do show good cause for such failure, after having been cited for that purpose by the probate court, it shall order such executor or administrator to give notice when required, and to make such settlement, and may enforce obedience to such order by attachment, and may revoke his letters.

SEC. 118. If any person who has surrendered his letters testamentary or of administration, or whose letters have been revoked, or the legal representatives of any deceased executor or administrator shall fail to make final settlement as required by law after being cited for that purpose by the probate court, it shall order such delinquents to make such settlement, and may enforce obedience to such order by attachment.

SEC. 119. In all cases where citations or attachments may be issued against any executor, administrator or other person for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

SEC. 120. The executor or administrator on the estate of any deceased member of a co-partnership shall include in the inventory, which he is required by law to return to the probate court, the whole of the partnership property, goods, chattels, rights and credits appraised at their true value as in other cases; but the appraisers shall carry out in the foot-

ing, an amount equal only to the deceased's proportional part of the co-partnership interest.

SEC. 121. The co-partnership property thus appraised shall remain with, or be delivered over, as the case may be, to the surviving partner or partners, who may be disposed to undertake the management thereof, agreeably to the conditions of a bond which he or they shall be required to give to the territory of Washington, in such sum and with such securities as are required in other cases of administration.

SEC. 122. The condition of such bond shall, in substance, be as follows:

The condition of the above bond is, that if A. B., or A. B. and C. D., surving partner or partners of the late firm of ——— ———, shall use due diligence and fidelity in closing the affairs of the said co-partnership, apply the proceeds thereof towards the payment of the co-partnership debts, render a true account on oath to the probate court, whenever required so to do by said court, of all the co-partnership affairs, and pay over within one year, unless a longer time be allowed by the probate court, to the executor or administrator the excess, if any there be beyond satisfying the partnership debts, then this bond shall be void, otherwise remain in full force.

SEC. 123. The probate court shall have the same authority to cite such survivor or survivors to account, and to adjudicate upon such account as in the case of any ordinary administration, and the parties interested shall have the like remedies by means of such bond for misconduct or neglect of such survivor or survivors as may be had against administrators.

SEC. 124. In case the surviving partner or partners having been duly cited for that purpose, shall all neglect or refuse to give the bond required in this act, the executor or administrator on the estate of such deceased partner, on giving a bond as provided in the following sections, shall forthwith take the whole partnership estate, goods, chattels, rights and credits into his own possession, and shall be authorized to use the name of the survivor or survivors in collecting the debts due the late firm, if necessary, and shall, with the partnership property, pay the debts due from the late firm, and return or pay to the survivors his or their proportion of the excess, if any.

SEC. 125. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond to its satisfaction, conditioned that he will faithfully execute his trust according to law, which bond may be enforced like other administration bonds.

SEC. 126. Every surviving partner, on the demand of any adminis-

trator of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement; and in case the administration thereof shall devolve upon such administrator, the said survivor or survivors shall surrender to him, on demand, all the property of such partnership, including their books, papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

SEC. 127. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal to appear before the probate court; and unless he comply with such provision, or show sufficient excuse for his omission, the probate court may commit him to the jail of the county, there to remain until he comply or be discharged by due course of law.

SEC. 128. The provisions of the foregoing sections of this act, shall not be so construed as to entitle the surviving partner of a deceased member of a co-partnership, to retain possession of the partnership property, after the executor or administrator of such deceased partner, or any person having an interest in a just administration of his estate, shall make and file with the probate judge an affidavit that there is good grounds for believing that the estate of such deceased partner, or the creditors of such partnership, will be damaged thereby, unless such surviving partner shall make, execute, and file a bond to the territory of Washington with the said probate judge, with securities to be by him approved, embodying in substance the provisions of the bond; the form of which is given in section 122 of this act.

SEC. 129. If the affidavit defined in the preceding section be made and filed as therein specified, it shall thereupon be the duty of said executor, or administrator, to give and file with said probate judge a sufficient bond, that he will forthwith take possession of such partnership property, and apply the same, or its proceeds, in payment of the debts due from the late firm, and that he will render to the survivor or survivors, his or their proportion of what remains after the payment of said liabilities, unless said surviving partner or partners shall forthwith comply with the provisions of the preceding section by giving his bonds as therein provided.

SEC. 130. After the filing of the affidavit and bond mentioned in the preceding section by the executor or administrator, it shall be his duty forthwith to take possession of said partnership effects, and if possession thereof be withheld from him, he may, upon application to the probate judge, have process directed to the sheriff, commanding him forthwith to seize such property and deliver its possession over to said executor or administrator.

SEC. 131. Letters testamentary, or of administration, shall not be granted to a non-resident in this territory; and when an executor or administrator shall become non-resident, the probate court having jurisdiction of the estate of the testator, or intestate of such executor or administrator, shall revoke his letters.

CHAPTER VI.

OF THE INVENTORY AND EFFECTS OF DECEASED PERSONS.

SEC. 132. Rights and duties of executors or administrators.
133. Proceedings where executors make affidavit that any person holds and refuses to deliver property belonging to the estate.
134. *Ib.*
Opposite party entitled to possession of such property, on making and filing affidavit and bond.
135. Judgment of court in such case may be reviewed.
136. Executors, &c., to return an inventory of the real and personal estate.
137. Such estate to be appraised.
Compensation of the appraisers.
138. Appraisers to take an oath.
Inventory, what to contain.
139. Further contents of inventory, as to moneys of deceased.
140. Naming an executor in a will, does not discharge his debt to the testator.
141. Discharge of bequest in a will of an executor's debt, not valid against creditors, when.
142. Inventory to be signed by appraisers, and executor, &c., to take oath as to its truth.
143. Penalty for neglect, &c., by executor, &c., to return inventory.
144. New assets discovered, to be appraised and inventoried.
Inventory to be returned.
145. Personal estate to be first liable for debts, &c., of deceased.
146. Penalty for embezzlement, before administration granted.
147. Proceedings in case of suspected embezzlement, &c.
148. Penalty in case suspected party refuses, upon citation, to appear, &c.
149. Persons entrusted with any part of estate, may be cited to appear, &c.
Penalty in case of refusal.

SEC. 132. Every executor or administrator shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the probate court, to the heirs or devisees, and shall keep in good tenantable repair all houses, buildings and fixtures thereon, which are under his control.

SEC. 133. If such executor or administrator shall make and file with the probate judge in open court, or in vacation, an affidavit that any person or persons hold and refuse to deliver the possession of any property that is believed by such executor or administrator, or other person, to be

long to such estate, it shall be the duty of the said probate judge forthwith to make issue, and deliver, attested by the clerk and under the seal of his court, an order to the sheriff of the county in which such property may be situated, forthwith to seize and take possession of the said property, and deliver the same to the said executor or administrator; unless the person or persons from whom such possession has been wrested, shall make and file with said probate judge an affidavit, setting forth facts, showing that he or they are the owners of said property, or are entitled to possession thereof, and shall also execute and file with said judge of probate a bond with sufficient security, conditioned that if upon a trial, as hereinafter provided, it shall be adjudged that the said property so taken was and does belong to said estate, the same shall be forthwith delivered, and the expenses of such adjudication, together with the damages sustained by such detention, be paid and satisfied.

SEC. 134. If any person or persons, from whom property has been taken under the provisions of the preceding section, shall make, execute and file, the affidavit and bond therein prescribed, he or they shall be entitled to the immediate delivery and possession of the same, and it shall be the duty of the said judge of probate to issue a process, properly authenticated, to the sheriff, commanding him to summon a jury not exceeding six in number, and possessing the qualifications hereinbefore defined, to appear at the next regular term of his court, and try and determine the ownership thereof; and after the trial of such issue by said jury, the probate court shall render judgment according to their finding thereon.

SEC. 135. Any judgment rendered by any probate judge upon the finding of a jury, as prescribed in the preceding section, may be reviewed by the party feeling himself aggrieved, on appeal, writ of error, or certiorari, in the same manner as judgment rendered by a justice of the peace.

SEC. 136. Every executor and administrator shall make and return, upon oath, into the probate court, within two months after his appointment, a true inventory of the real and personal estate of the deceased, which is by law to be administered, and which shall have come to his possession or knowledge.

SEC. 137. The estate and effects comprised in the inventory, shall be appraised by three suitable disinterested persons, who shall be appointed by the court of probate. If any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed either by the probate judge having jurisdiction of the case, or by the probate judge of such county, and such appraisers shall receive as compensation for their services three dollars per day, to be paid out of the estate.

SEC. 138. Before proceeding to the discharge of their duties, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability; then they shall proceed to estimate and appraise the property, and set down each article separately, with the value thereof in dollars and cents, in figures, opposite the respective articles. The inventory shall contain all the estate of the deceased, real and personal, which is by law to be administered, a statement of all debts, partnership and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, and their dates, and the sum which, in the judgment of the appraisers, may be collectable on each debt, interest, or security.

SEC. 139. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the possession or knowledge of the executor or administrator; and if none shall come to his possession or knowledge, the fact shall be so stated in the inventory.

SEC. 140. The naming any executor in a will shall not operate as a discharge from any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same, as for so much money in his hands, at the time the debt or demand became due.

SEC. 141. The discharge or bequest in a will of any debt or demand of the testator, against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

SEC. 142. The inventory shall be signed by the appraisers, and the executor or administrator shall take or subscribe an oath before the probate judge, that the inventory contains a true statement of all the estate of the deceased, which has come to his possession or knowledge, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased against the executor or administrator, and the oath shall be endorsed upon or annexed to the inventory.

SEC. 143. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time, not exceeding three months, as the court shall allow, the court shall revoke the letters testamentary or of administration; and the executor or

administrator shall be liable on his bond for any injury sustained by the estate through his neglect.

SEC. 144. Whenever property, not mentioned in any inventory that shall have been made, shall come to the knowledge or possession of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned, subscribed and sworn to, as is provided in this chapter, within two months after the discovery thereof; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

SEC. 145. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights, and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, the expenses of administration, and the allowance to the family of the deceased, the whole, or so much as may be necessary of the real estate, may be sold for that purpose by the executor or administrator, in the manner prescribed in this act.

SEC. 146. If any person, before the granting of letters testamentary or administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, in double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

SEC. 147. If any executor, administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge, on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the deceased, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of, or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim, demand, or last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the probate court for the county where he may be found, or before the court issuing the order or citation; but, in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

SEC. 148. If the person, so cited, refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain, in close custody,

until he shall submit to the order of the court, and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

SEC. 149. The probate judge, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been entrusted with any part of the estate of the deceased person, to appear before the probate court, and may require such person to give a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for such executor or administrator, and of his proceeding thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

CHAPTER VII.

POVISION FOR THE SUPPORT OF THE FAMILY.

SEC. 150. Provision for widow and minor children until letters granted and inventory returned.
151. On return of inventory, certain property to be set apart for their use.
152. Further allowance, if property set apart be insufficient.
153. Executor to pay such allowance in preference to other charges, except, &c.
154. How property set apart to be distributed.
155. If estate does not exceed three hundred dollars in value, all to be assigned to widow and minor children.
156. If no widow or minor children, how estate to be disposed of.

SEC. 150. When a person shall die, leaving a widow and minor child or children, the widow, child or children shall, until letters have been granted and the inventory returned, be entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

SEC. 151. Upon the return of the inventory, the court shall set apart for the use of the widow, minor child or children all the property of the estate by law exempt from execution.

SEC. 152. If the amount thus exempt be insufficient for the support of the widow and minor child or children, the probate court shall make such further reasonable allowance, out of the estate, as may be necessary for the maintenance of the family, according to their circumstances, during the progress in the settlement of the estate, but no such allowance shall be made after one year from the granting letters testamentary or of administration.

SEC. 153. Any allowance made by the court, in accordance with the provisions of the preceding section, shall be paid by the executor or administrator in preference to all other charges, except funeral charges and expenses of administration.

SEC. 154. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow, and no minor children, such property shall be the property of the widow; if he shall have left also a minor child or children, one half to the widow, and the remainder to such child, or in equal shares to such children, if there are more than one; if there be no widow, then the whole shall belong to the minor child or children.

SEC. 155. If, on the return of the inventory of any intestate's estate, who died leaving a widow or minor children, it shall appear that the value of the estate does not exceed three hundred dollars, the probate court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole estate, after the payment of the funeral expenses and expenses of administration, and there shall be no further proceedings in the administration, unless further estate be discovered.

SEC. 156. If intestate leave no widow or minor children, all his estate shall be assets in the hands of the administrator, after payment of funeral expenses and expenses of administration, for the payment of the debts of the deceased, or be distributed according to law.

CHAPTER VIII.

OF CLAIMS AGAINST THE ESTATE.

SEC. 157. Notice to be given to creditors of deceased.
158. Copy of notice with affidavit of printer to be filed in probate court.
159. Claims barred if not presented within one year after notice.
Proviso as to debts not then due.
160. Claim to be supported by affidavit.
Vouchers may be required.
161. Allowance or rejection to be endorsed on claim by executor, &c, and by probate judge.
162. Claims allowed to be filed in court.
To be ranked among debts of estate.
163. When a claim is presented by any probate judge.
Proceedings thereupon.
164. Rejected claims, within what time holder to bring suit upon.
165. Claim barred by statute of limitation, not to be allowed.
166. Claim must be presented to executor, &c., before action brought.
167. Time of vacancy in administration not to be included in limitation prescribed.

SEC. 168. Plaintiff in action pending against testator, &c., at time of his death, to present claim as in other cases.
169. When part of a claim allowed, to be stated in endorsement.
If creditor refuse the allowance, when not to recover costs in subsequent suit.
170. Effect of judgment against executor or administrator.
171. Judgment rendered against testator, &c., in his lifetime, no execution to issue after death.
Proviso as to liens on property.
172. Doubtful claim may be referred.
173. Proceedings upon such reference.
Return of award, and acceptions thereto.
Compensation of referees.
174. Claim by executor, &c., against deceased, to be presented.
175. Letters to be revoked on neglect to notify creditors.
176. Statement of claims presented to be returned.
Nature of statement.

SEC. 157. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper printed in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to present them, with the necessary vouchers, within one year after the date of such notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge of probate shall deem necessary, but not less than once in a week, for four successive weeks.

SEC. 158. After the notice shall have been published, a copy thereof, together with the affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator in the probate court.

SEC. 159. If a claim be not presented within one year after the first publication of the notice, it shall be barred: *Provided*, If it be not then due, or if it be contingent, it may be presented within one year from the time it shall become due or absolute.

160. Every claim presented to the administrator, shall be supported by the affidavit of the claimant, that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same, to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

SEC. 161. When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall endorse thereon his allowance or rejection, with the day and date

thereof. If he allow the claim, it shall be presented to the probate judge, who shall, in the same manner, endorse on it his allowance or rejection.

SEC. 162. Every claim which has been allowed by the executor or administrator and the judge of probate, shall be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in the course of the administration.

SEC. 163. Any probate judge may present a claim against the estate of any descedent for allowance, to the executor or administrator; and if the executor or administrator allows such claim, he shall, in writing, designate some probate judge of an adjoining county, and the said probate judge shall have the same power to allow or reject it as he would have, had letters issued in his court; and the claimant shall have, in the event of his claim being rejected, all the rights incident to any other creditor against the estate.

SEC. 164. When a claim is rejected by either the executor, administrator, or the probate judge, the holder must bring suit in the proper court against the executor or administrator within three months after it becomes due, otherwise the claim shall be forever barred.

SEC. 165. No claim shall be allowed by the executor, administrator or probate judge, which is barred by the statute of limitations.

SEC. 166. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

SEC. 167. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

SEC. 168. If any action be pending against the testator or intestate, at the time of his death, the plaintiff shall, in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as in other cases; and no recovery shall be had in the action, unless proof be made of the presentment.

SEC. 169. Whenever any claim shall have been presented to an executor or administrator and the probate judge, and a part thereof shall be allowed, the amount of such allowance shall be stated in the endorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs.

SEC. 170. The effect of any judgment rendered against any executor or administrator, shall be only to establish the claim, in the same manner as if it had been allowed by the executor or administrator and the probate judge; and the judgment shall be, that the executor or adminis-

trator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court, and no execution shall issue upon such judgment, nor shall it create a lien upon the property of the estate, or give the judgment creditor any priority of payment.

SEC. 171. When any judgment has been rendered against the testator or intestate, in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: *Provided*, however, that if it be a lien upon any property of the deceased, the same may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

SEC. 172. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing with the claimant, to refer the matter in controversy, to some disinterested person or persons, to be approved by the probate judge. Upon filing the agreement in the probate court, the court shall enter a rule, referring the matter in controversy to the persons so selected.

SEC. 173. The referee or referees having been sworn, shall proceed to hear and determine the case, and make return thereof; and their award, if not excepted to, shall be entered as the decision of the probate court. If exceptions in writing are filed, the court shall proceed to determine the case, in like manner as other claims are determined. The compensation of referees shall be the same as allowed by referees in the district court.

SEC. 174. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be presented for allowance or rejection to the probate judge, and its allowance by the judge shall be sufficient evidence of its correctness.

SEC. 175. If any executor or administrator shall neglect, for two months after his appointment, to give notice to creditors, as prescribed by this article, it shall be the duty of the court to revoke his letters.

SEC. 176. At the same time at which the executor or administrator is required to return his inventory, he shall also return a statement of all claims against the estate which shall have been presented to him, when required by the court, and from time to time thereafter, shall present a statement of claims subsequently presented to him; and in all such statements, he shall designate the names of creditors, the nature of each claim, when it did or will become due, and whether it was allowed or rejected by him.

CHAPTER IX.

SALES OF PROPERTY BY EXECUTORS AND ADMINISTRATORS.

SEC. 177. No sale valid, unless under order of court.
178. Applications for order of sale, how made.
Objections thereto.
179. Applications for order of sale, by executor, &c., when to be made.
180. Action of court upon such application.
181. Sales of personal property to be made at public auction.
182. When court may order private sale.
183. When real estate may be sold.
Petition for such order what to set forth.
184. When probate judge to grant order, requiring persons interested to show cause why order for sale should not be granted.
185. Service and publication of such order.
May be dispensed with; when.
186. When court to hear such petition.
187. When devisees, &c., being minors, have a general guardian, copy of order shall be served on guardian.
Court to appoint guardian; when.
188. Evidence on hearing of such petition.
189. Court may order sale of whole, or any part of estate.
190. Judge shall made order of sale; when.
191. What the order shall specify.
192. When other than executors, &c., may apply for order of sale.
193. Such order to be delivered to executor or administrator.
194. Notice of sale; how made.
195. Sale how, when and where to be made.
May be postponed.
196. Notice of adjournment of sale to be given.
197. When sale is on credit, executor, &c., to take certain security.
198. Proceedings to be returned.
Sale may be vacated.
199. When, and by whom, objection to confirmation of sale may be made.
200. Order confirming sale and directing conveyances, to be made; when.
201. Conveyances, by whom executed; what to contain; effect thereof.
202. Before order of confirmation, proof that notice of sale was given, necessary.
203. Real estate may be sold to pay a legacy.
204. When the will designates estate appropriated to pay debts, &c., to be paid accordingly.
205. When executor or administrator, with will annexed, may sell without order of court.
206. Further sale to be made if appropriation insufficient.
207. Estate of legatees, &c., liable for debts, &c.; when.
208. Devisees, &c., to contribute according to their respective interests.
209. Interest of deceased in contract for purchase of lands, may be sold.
In what manner.
210. Sale subject to payments to become due on contract.
Purchaser to execute bond.
211. Condition of bond.
212. Assignment of contract by executors, &c.

SEC. 213. When executor may be ordered to redeem property mortgaged by deceased.
214. When, and in what manner, such mortgaged property may be sold and conveyance executed.
215. Liability of execution, &c., for neglect, &c., in relation to sale.
216. *Ib.*—for fraudulent sale.
217. Limitation of action for recovery of estate sold by executor.
218. Limitation not to apply to minors, &c.
219. Verified account of sale to be returned by executor, &c.
220. Executor, &c., prohibited purchase of any property of the estate.

SEC. 177. No sale of any property shall be valid unless made under order of the probate court.

SEC. 178. All applications for orders of sale shall be by petition, in writing, in which shall be set forth the facts, showing the sale to be necessary, and upon the hearing, any person interested in the estate, may file his written objections, which shall be heard and determined.

SEC. 179. At the term of the court at which the inventory is returned, the executor or administor shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased.

If claims against the estate have been allowed, and a sale of property shall be necessary for the payment of the expenses of the administration, he may also apply for an order to sell so much of the personal estate as shall be necessary.

SEC. 180. If it appear to the court that a sale is necessary, it shall so order. In making such sale, the court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or not specially bequeathed, to be first sold.

SEC. 181. Sales of personal property shall be made at public auction, and after notice given, for at least two weeks; which notice shall be given by notices posted in the public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be stated the time and place of sale.

SEC. 182. If it be made to appear to the satisfaction of the probate court, that it will be for the interest of the estate to allow the executor or administrator to sell some, or the whole of the personal estate, at private sale, the court may so order.

SEC. 183. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family, and all the debts and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon the order of the judge of probate. To obtain such order, he shall present a petition

to the probate court, setting forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of, a list and the amounts of the debts outstanding against the deceased, as far as the same can be ascertained, a description of all the real estate of which the testator or intestate died seized, the condition and value of the respective lots and portions, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same.

SEC. 184. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator, to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole, or some portion of the real estate, for the payment of such debts, the probate judge shall thereupon make an order, directing all persons interested to appear before him, at a time and place specified, not less than four, nor more than eight weeks, from the time of making such order, to show cause why an order should not be granted to the executor or administrator, to sell so much of the real estate of the deceased as shall be requisite to pay such allowances, charges and debts.

SEC. 185. A copy of such order, to show cause, shall be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court shall order: *Provided*, however, if all persons interested in the estate shall signify, in writing, their assent of such sale, the notice may be dispensed with.

SEC. 186. The probate judge, at the time and place appointed in such order, or at such other time to which the hearing may be adjourned, upon proof of the due service or publication of a copy of the order, or upon filing the consent, in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate, who may oppose the application.

SEC. 187. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, the copy of the order shall be served on the guardian. If they have as such guardian, the court shall, before proceeding to act on the petition, appoint some disinterested person their guardian, for the sole purpose of appearing for them, and taking care of their interests in the proceedings.

SEC. 188. The executor or administrator may be examined under oath, and witnesses may be examined by either party, and process may

be issued to compel their attendance and testimony, by the probate court, in the same manner, and with like effect, as in other causes.

SEC. 189. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be adjudged necessary, and most for the interest of all concerned.

SEC. 190. If the probate judge shall be satisfied, after a full hearing upon the petition, and on examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate, is necessary for the payment of the allowance to the family, and all valid claims against the estate, and charges of administration, or if such sale be assented to by all the persons interested, he shall make an order of sale, authorizing the executor or administrator to sell the whole, or so much, and such parts, of the real estate described in the petition, as he shall judge necessary or beneficial.

SEC. 191. The order shall specify the lands to be sold, and the terms of sale, which may be either for cash, or on credit, not exceeding six months, as the court may direct. If it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the court shall order that part descended to heirs to be sold, before that so devised.

SEC. 192. If the executor or administrator shall neglect to apply for an order of sale, whenever it may be necessary, any person interested in the estate may make application therefor, in the same manner as an executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing.

SEC. 193. Upon making such order, the clerk of the probate court shall deliver it to the executor or administrator, who shall be thereupon authorized to sell the real estate as directed.

SEC. 194. When a sale is ordered, notice of the time and place of sale shall be posted in ten of the most public places in the county where the land is situated, at least twenty days before the day of sale, and shall be published in some newspaper in this territory, in general circulation in said county, for three successive weeks next before such sale, in which notice the lands and tenements shall be described with common certainty.

SEC. 195. Such sale shall be in the county where the lands are situated, at public auction, between the hours of ten o'clock in the morning and the setting of the sun the same day; but if the executor or administrator shall deem it for the interest of all concerned that the sale should

be postponed, he may adjourn it for any time not exceeding fourteen days.

SEC. 196. In case of such adjournment, notice thereof shall be given by a public proclamation at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing, as the time and circumstances may admit.

SEC. 197. The executor or administrator shall, when the sale is on credit, take the note or notes of the purchaser for the purchase money, with surety, and mortgage on the property, to secure their payment.

SEC. 198. The executor or administrator making any sale of real estate, shall, at the next term of the court thereafter, make a return of his proceedings to the probate judge, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of expenses of a new sale, may be obtained, he shall vacate such sale, and order another to be had, of which notice shall be given, and the sale shall be conducted, in all respects, as if no previous sale had taken place.

SEC. 199. When the return of the sale is made, any person interested in the estate may file written objections to the confirmation of the sale, and may be heard, and produce witnesses in support of his objections.

SEC. 200. If it appear to the court that the sale was legally made, and fairly conducted, and that the sum bidden was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum, as above specified, cannot be obtained, the court shall make an order confirming the sale, and directing conveyances to be executed; and such sale, from that time, shall be confirmed and valid.

SEC. 201. Such conveyances shall thereupon be executed to the purchaser, by the executor or administrator. They shall contain and set forth, at large, the original order authorizing a sale, and the order confirming the sale, and directing the conveyances; and they shall be deemed to convey all the estate, rights and interest of the testator or intestate, at the time of his death.

SEC. 202. Before any order is entered confirming the sale, it shall be proven to the satisfaction of the probate judge, that notice of the sale was given, as herein prescribed, and the order of confirmation shall state that such proof was made.

SEC. 203. When a testator shall have given any legacy, by will, that is effectual to charge real estate, and his goods, chattels, rights, and

credits, shall be insufficient to pay such legacy, together with his debts and charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate, for that purpose, in the same manner, and upon the same terms and conditions, as are prescribed in this act, in case of a sale for the payment of debts.

SEC. 204. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provision of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

SEC. 205. When any division has been made, or any property directed to be sold, the executor or administrator, with the will annexed, may proceed to sell, without the order of the probate court; but he shall be bound as an administrator, to give notice of the sale, and to proceed in making the sale, in all respects, as if he were under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions; but in all cases he shall make return of the sale to the probate court, who shall vacate such sale, unless the same shall appear, in all respects, to be made according to law, in like manner as upon sales made by administrators.

SEC. 206. If the provision made by the will, or the estate appropriated be not sufficient to pay the debts and expenses of administration, and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this act.

SEC. 207. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration, and of the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it appear to the court necessary, to carry into effect the intention of the testator, if there shall be other sufficient estate.

SEC. 208. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee, from whom the estate devised to him may be taken for the payment of the debts or expenses; and the probate court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

SEC. 209. If a deceased person, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land

under such contract, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this act, in respect to lands of which he died seized, except as hereinafter provided.

SEC. 210. Such sale shall be made subject to all payments that may thereafter become due on such contract; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate judge, until the purchaser shall have executed a bond to the executor or administrator, for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased, in the lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such securities as the probate judge shall approve.

SEC. 211. Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due, after the date of such sale, and will fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs and charges, and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

SEC. 212. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title, and interest, of the persons entitled to the interest of the deceased, in the lands sold at the time of the sale; and such purchaser shall have the same rights and remedies against the vendor of such lands, as the deceased would have had if living.

SEC. 213. If any person die, having mortgaged any real or personal estate, and shall not have devised the same, or provided for the redemption thereof by will, the probate court, upon the application of any person interested, may order the executor or administrator to redeem the estate, out of the personal assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate, and not injurious to creditors.

SEC. 214. If such redemption be not deemed expedient, the court shall order such property to be sold at public sale, which sale shall be with the same notice, and conducted in the same manner, as is required in other cases of real estate, provided for in this act, and the executor or administrator shall execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right,

title, and interest which the deceased would have had in the property, had not the same been mortgaged by him, and the purchase money, after paying the expenses of sale, shall first be applied to the payment and discharge of such mortgage, and the residue in due course of administration.

SEC. 215. If there shall be any neglect or misconduct in the proceedings of the executor of [or] administrator, in relation to any sale, by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

SEC. 216. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this act, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person or persons having an estate of inheritance therein.

SEC. 217. No action for the recovery of any estate, sold by any executor under the provisions of this act, shall be maintained by any person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

SEC. 218. The preceding section shall not apply to minors, or others under any legal disability to sue at the time when the right of action shall first accrue, but all such persons may commence such action at any time within three years after the removal of the disability.

SEC. 219. Whenever a sale shall have been made by an executor or administrator, of any property of the estate, real or personal, it shall be his duty to return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit.

SEC. 220. No executor or administrator shall, directly or indirectly, purchase any property of the estate.

CHAPTER X.

OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

SEC. 221. Duty of executor or administrator.
222—223—224, and 225. Action by and against executors and administrators.
226. Executors, &c., may compound with debtor of deceased; when.
227. In case of a deficiency of assets, fraudulent conveyances by deceased may be voided by executor, &c.
228. Executor not bound to sue in such case, unless on application, &c., of creditors.
229. Sale and appropriation of real estate and proceeds, so recovered.

SEC. 221. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and collect all debts due to the deceased.

SEC. 222. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

SEC. 223. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, carried away or converted to his own use, the goods of their testator or intestate in his lifetime, also may maintain actions for trespass committed on the estate of the deceased during his lifetime.

SEC. 224. Any person, or his personal representatives, shall have an action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods and chattels of any such person, or committed any trespass on the real estate of such person.

SEC. 225. Any administrator may in his own name for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor or of any former administrator of the same estate.

SEC. 226. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator may, with the approbation of the probate judge, compound with him and give him a discharge upon receiving a fair and just dividend of his effects.

SEC. 227. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate, or any right or interest therein, with intent to defraud his creditors or to avoid any right, duty or debt of any person, or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also for the benefit of the creditors, sue and recover all goods, chattels, right and credits which may have been so fraudently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 228. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of the creditors of the deceased, nor unless

the creditors making such application, shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the probate judge shall direct.

SEC. 229. The real estate so recovered shall be sold for the payment of debts in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the probate court, and the proceeds of all goods, chattels, rights and credits so recovered, shall be appropriated in payment of debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

CHAPTER XI.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SEC. 230. Court may direct conveyance, agreed upon by deceased, to be completed by executor, &c.
231. Petition for specific performance, and proceedings thereon.
232. Hearing of petition.
233. Decree for conveyance.
234. Appeal from decree to district court.
If decree confirmed, duty of executor, &c.
235. When petition to be dismissed, without prejudice.
Petitioner may proceed in district court.
236. Effect of conveyance decreed by probate court.
237. Effect of recorded and certified decree.
238. Recording of decree not to prevent its being enforced by other process.
239. Heirs, &c., of person entitled to conveyance, may prosecute.

SEC. 230. When any person who is bound by contract in writing to convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to make such conveyance.

SEC. 231. On presentation of a petition of any person claiming to be entitled to such conveyance, from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the court, and shall order notice of the pending thereof, and the time and place of hearing, to be published at least four successive weeks next before such hearing, in such newspaper in this territory as the court shall designate.

SEC. 232. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit

of the due publication of the notice, the court shall proceed to a hearing; and all persons interested in the estate may appear and defend such petition, by filing their objections in writing, and the court may examine on oath the petitioner, and all who may be produced before him for that purpose.

SEC. 233. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the probate judge is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, he shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

SEC. 234. Any person interested may appeal from such decree to the district court of the district embracing the county in which jurisdiction is exercised; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be confirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree; and a certified copy thereof shall be recorded with the deed. in the office of the recorder of the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make such conveyance.

SEC. 235. If upon a hearing in the probate court as hereinbefore provided, the probate judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petitioner without prejudice to the rights of the petitioner, who may at any time within six months thereafter, proceed in the district court to enforce a specific performance.

SEC. 236. Every conveyance made in pursuance of a decree of the probate court, as provided in this act, shall be effectual to pass the estate contracted for as fully as if the contracting party himself were still living, and then executed the conveyance.

SEC. 237. A copy of the decree for the conveyance made by the probate court, and duly certified and recorded in the office of the recorder where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and of holding the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

SEC. 238. The recording of any decree, as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by other process.

SEC. 239. If the person to whom the conveyance was to be made,

shall die before the commencement of the proceedings according to the provisions of this act, or before the completion of the conveyance, any person who would have been entitled to the conveyance under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person entitled, may commence such proceedings or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the same persons who would have been entitled to it, or in the executor or administrator for their benefit.

CHAPTER XII.

OF ACCOUNTS TO BE RENDERED BY EXECUTORS OR ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

SEC. 240. Executors, &c., not liable on certain promises, unless in writing.
241. How far chargeable with estate coming into their possession.
242. Not to profit by increase, or lose by decrease or destruction without fault.
To account for excess of sale over appraisement, and not responsible when it is less.
243. Not responsible for debts uncollected without his fault.
244. Expenses and compensation of executor.
245. Not to purchase claim against estate, and entitled only to actual amount paid on claim.
246. Commissions allowed executors.
247. When to render exhibit.
What to set forth.
248. Citation to issue if exhibit not rendered.
249. Petition before final settlement, to compel executor, &c., to render exhibit.
250. Citation, in such case, when to issue.
251. Objections to exhibit, how made, and trial thereof.
252. Proceedings in case of refusal, &c., to render exhibit after citation.
253. Executor, &c., to render account one year from appointment.
254. Citation to account at instance of successor.
255. Letters to be revoked, when.
256. Vouchers to accompany account.
257. When and what allowance may be made without vouchers.
258. Notice of settlement of account, how given and what to contain.
259. Exceptions to account may be filed.
260. Appointment of guardian to contest account.
261. Hearing may be adjourned.
262. Allowance of account conclusive, saving the rights of certain persons.
263. Proof of notice required, before allowance.
264. Order of payment of debts.
265. The extent of preference given to a mortgage.
266. A dividend to be paid, when.

SEC. 267. Funeral expenses, &c., when to be paid.
268. Order for payment on settlement of accounts.
269. Claims not due or disputed, how provided for.
270. Liability of executor, &c., to creditor, after decree for payment.
271. Liability of executor to creditor whose name is not included in order for payment.
272. Legacies, when to be paid, and estate distributed.
273. Executor, &c., to render final account and pray a settlement, when.
274. Proceedings if he neglact to render same.

SEC. 240. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate, out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

SEC. 241. Every executor or administrator shall be chargeable in his accounts, with the whole estate of the deceased which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with the interest, profit, and income of the estate.

SEC. 242. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excesss when he shall have sold any part of the estate for more than the appraisement, and if any has been sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

SEC. 243. No executor or administrator shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his fault.

SEC. 244. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the law provides, but when the deceased, by will, shall have made some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall by a written instrument, filed in the probate court, renounce all claim for compensation provided by the will.

SEC. 245. No administrator or executor shall purchase any claim against the estate he represents, and if he shall have paid any claim for less than its nominal value he shall only be entitled to charge in his account so much as he shall have actually paid.

SEC. 246. When no compensation shall have been provided by will, or the executor shall renounce his claim thereto, he shall be allowed commission on the whole estate, accounted for by him as follows: For the

first one thousand dollars, at the rate of seven per cent; for all above that sum and not exceeding two thousand dollars, at the rate of five per cent; for all above that sum at the rate of four per cent., and the same commission shall be allowed to administrators. In all cases such further allowance may be made as the probate judge shall deem just and reasonable, for any extraordinary services not required of an executor or administrator in the common course of his duty: *Provided*, that the total amount of such allowance shall not exceed the amount of commission allowed in this section.

SEC. 247. Within six months after his appointment, and thereafter at any time when required by the court, either upon its own motion or the application of any person interested in the estate, the executor or administrator shall render for the information of the court an exhibit, under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

SEC. 248. If the executor or administrator fail to render an exhibit within six months, as required in the last preceding section, it shall be the duty of the probate judge to issue a citation, requiring him to appear and render it.

SEC. 249. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts, showing that it is necessary and proper that such an exhibit shall be made.

SEC. 250. If the probate judge be satified, either from the oath of the applicant or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall issue a citation to the executor or administrator requiring him to appear on some day named in the citation, which shall be during the term of a court, and render and exhibit as prayed for.

SEC. 251. When an exhibit is rendered by an executor or administrator, any person interested may appear, and by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he have been guilty of negligence, or wasted, embezzled or mismanaged the estate, his letters shall be revoked.

SEC. 252. If any executor or administrator neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be issued against him, or his letters may be revoked in the discretion of the court.

SEC. 253. Every executor or administrator shall render a full account of his administration at the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the judge to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation shall have been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

SEC. 254. Whenever the authority of an executor or administrator shall cease, or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeding to the administration of the estate, in like manner as might have been cited by any person interested in the estate, during the time he was administrator or executor.

SEC. 255. If the executor or administrator resides without the county, absconds or conceals himself, so that citation cannot be personly served, and shall neglect to render an account within thirty days after having been committed, when the attachment has been executed, his letters shall be revoked.

SEC. 256. In rendering his account, the executor or administrator shall produce vouchers for all expenses and charges which he shall have paid, which vouchers shall be filed and remain in court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased, and the disposition thereof.

SEC. 257. On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath, positive to the fact of payment, specifying when, where, and to who payment was made, and if such oath be uncontradicted; but such allowances, in the whole, shall not exceed five hundred dollars for payment in behalf of any one estate.

SEC. 258. When the account is rendered for settlement, notice thereof shall be given by the probate judge, by causing notices to be posted in three of the most public places in the county. The notice shall set forth the name of the estate, of the executor or administrator, and the day appointed for the settlement of accounts, which shall be on some day of a regular term of court.

SEC. 259. On the day appointed, or on any subsequent day to which the hearing may have been adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

SEC. 260. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account, as any other person interested might contest it, and who shall be allowed by the court a reasonable compensation for his services.

SEC. 261. The hearing and allegations of the respective parties may be adjourned from time to time as shall be necessary.

SEC. 262. The settlement of the account and the allowance thereof, by the court or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, the rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall have ceased, and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

SEC. 263. The account shall not be allowed be [by] the court until it be first proven that notice has been given as required by this act, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

SEC. 264. The debts of the estate shall be paid in the following order:

1st—Funeral expenses.

2d—Expenses of the last sickness.

3d—Debts having preference by the laws of the United States.

4th—Taxes or any dues to the territory.

5th—Judgments rendered against the deceased in his lifetime on which execution might have issued, at the time of his death, and mortgages in the order of their date.

6th—All other demands against the estate.

SEC. 265. The preference given in preceding section to a mortgage, shall only extend to the proceeds of the property mortgaged, if the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

SEC. 266. If the estate be insufficient to pay the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall have been fully paid.

SEC. 267. It shall be the duty of the executor or administrator, as soon as he may have sufficient funds in his hands, to pay the funeral expenses, and expenses of the last sickness, and the allowance made to the

family of the deceased, and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt or any legacy until, as prescribed by this act, the payment has been ordered by the court.

SEC. 268. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this act, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid each creditor.

SEC. 269. If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed, as the circumstances of the case may require: *Provided*, That if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

SEC. 270. Whenever a decree shall have been made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon; and execution may be issued on such decree, as upon a judgement in the district court in favor of each creditor; and the same proceedings may be had under such execution, as if it had been issued from the district court. The executor or administrator shall also be liable on his bond to each creditor.

SEC. 271. When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose name was not included in the order for payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, legatees or devisees, to contribute for the payment of his claim; but if the executor or administrator shall have failed to give the notice to creditors as prescribed in this act, such creditor may recover on the bond of the executor or administrator, the amount of his claim, or such part thereof as he would have been entitled to, had it been allowed: *Provided*, That this section shall not apply to any creditor whose claim was not due one year before the day of settlement, or whose claim was contingent and did not become absolute, one year before such day.

SEC. 272. If all the debts shall have been paid by the first distribu-

tion, the court shall proceed to direct the payment of legacies, and the distribution of the estate among the heirs, legatees, or other persons entitled; but if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable, for the final settlement of the estate.

SEC. 273. At the time designated, or sooner, if within that time all property of the estate shall have been sold, or there shall be sufficient funds in his hand to pay all the debts due by the estate, the executor or administrator shall render a final account and pray a settlement of the estate.

SEC. 274. If he neglect to render his account, the same proceedings may be had as are prescribed in this act, in regard to the first account to be rendered by him, and all the provisions of this act relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

CHAPTER XIII.

OF THE PARTITION AND DISTRIBUTION OF THE ESTATE.

SEC. 275. Heir, legatee, &c., may petition for legacy, &c.; when.
276. Notice of application, to be given.
277. As to those who may oppose application.
Other heirs, &c., may make a similar application.
278. Application when allowed, and upon what terms.
279. Decree may order delivery of whole or part of legacy, &c.
280. Proceedings, if partition necessary.
281. Costs in such proceedings.
282. Petition by executor, &c., for order for payment of money secured.
283. Residue of estate, when to be distributed.
284. Decree of distribution, what to contain.
285. Decree, upon whose application, and when, may be made.
286. Partition of undivided shares.
287. Proceedings when real estate lies in different counties.
288. Notice of application for partition and distribution.
289. Partition when shares have been conveyed.
290. Shares, how to be set out.
291. When estate cannot be divided, court how to act.
292. When tract of greater value than either party's share.
Commissioners appointed to partition, how to act.
293. If partition impracticable, estate may be sold.
294. Testator's estate in common to be first severed.
295. Guardians to be appointed for minors, &c., and agents for non-residents.
Notice of partition.
296. Commissioners to report.
Proceedings thereon.
297. When partition may be dispensed with.
298. Questions relating to advancements, how determined.

SEC. 299. When court may appoint agent to take charge of estate for non-resident.
300. Agent to give bond—his compensation.
301. Unclaimed estate to be sold, and proceeds paid into county treasury.
302. Liability of agent.
303. Claim of proceeds by absentee.
Court when to grant certificate.
304. When court to discharge executor, &c., from future liability.
305. When letters of administration may be granted after final settlement.

SEC. 275. At any time, subsequent to the second term of the probate court, after the issuing letters testamentary or of administration, any heir, legatee, or devisee, may present his petition to the court, that the legacy, or share of the estate, to which he is entitled, may be given to him upon his giving bonds with security for the payment of his proportion of the debts of the estate.

SEC. 276. Notice of the application shall be given to the executor or administrator, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of the executor or administrator.

SEC. 277. The executor, administrator, or any person interested in the estate, may appear and resist the application; or any other heir, legatee, or devisee, may make a similar application for himself.

SEC. 278. If, on the hearing, it appear to the court that the estate is but little in debt, and that the share of the party or parties applying, may be allowed without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants: *Provided*, Each one of them shall first execute and deliver to the executor or administrator, a bond in such sum as shall be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the devisee or legatee, whenever required, of his proportion of the debts due from the estate.

SEC. 279. Such decree may order the executor or administrator to deliver to the heir, devisee or legatee, the whole portion of the estate to which he may be entitled, or only a part thereof.

SEC. 280. If in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

SEC. 281. The costs of the proceedings authorized by the preceding section, shall be paid by the applicant, or if there be more than one, shall be apportioned equally among them.

SEC. 282. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or admin-

istrator shall ascertain that it is necessary for the settlement of the estate, to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of the payment, shall make an order accordingly, designating the amount and giving the time within which it shall be paid; and if the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

SEC. 283. Upon the settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or any heir, devisee or legatee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled.

SEC. 284. In the decree the court shall name the person and the portion, or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

SEC. 285. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given in the manner required in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given as it may deem proper.

SEC. 286. When the estate, real and personal, assigned to two or more heirs, devisees or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate judge, who shall be duly sworn to the faithful discharge of their duties, and the court shall issue a warrant to them for that purpose.

SEC. 287. If the real estate be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county; and in such cases the estate in each county shall be divided separately, as if there were no other estate to be divided, but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate wherever situated within the territory.

SEC. 288. Such partition and distribution may be ordered on the petition of any of the persons interested in the estate; but before any partition shall be ordered, as directed in this act, notice shall be given to all

persons interested who shall reside in this territory, or to their guardians and to agents, attorneys or guardians, if there be any in this territory, of such as reside out of the territory, either personally or by public notice, as the probate judge may direct.

SEC. 289. Partition of the real estate may be made as provided in this act, although some of the original heirs or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs or devisees.

SEC. 290. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes, bounds and descriptions, that the same may be easily distinguished, unless two or more of the parties shall consent to have their shares set out so as to be held by them in common and undivided.

SEC. 291. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and among children, preferring the elder to the younger, providing the party so accepting the whole shall pay to the other parties interested, their just proportion of the true value thereof, or secure the same to their satisfaction, and the true value of the estate shall be ascertained by commissioners appointed by the probate court, and sworn for that purpose.

SEC. 292. When any tract of land or tenement, shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off, by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding sections; providing the party so accepting shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 293. When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, and distribute the proceeds.

SEC. 294. When partition of real estate among heirs or devisees shall be required, and such real estate shall be undivided and in common

with the real estate of any other person, the commissioners shall first divide and sever the estates of the deceased from the estate with which it lies in common; and such division so made and established by the probate court, shall be binding upon all the persons interested.

SEC. 295. Before any partition shall be made, or any estate divided, as provided in this act, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the territory, and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

SEC. 296. The commissioners shall make a report of their proceedings in writing, and the court may, for sufficient reasons, set aside such report, and remit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the probate court, and a copy thereof attested by the judge of probate, under seal of the court, shall be recorded in the office of the county auditor in the county where the land lies.

SEC. 297. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall have been decreed, or some of them, shall request that such partition be made.

SEC. 298. All questions as to advancements made, or alleged to have been made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners, and the final decree of the probate court, or in case of appeal, of the district or supreme courts, shall be binding on all parties interested in the estate.

SEC. 299. When any estate shall have been assigned by decree of the court, or distributed by commissioners, as provided in this act, to any person residing out of this territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same, for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absentee in the partition and distribution.

SEC. 300. Such agent shall give a bond to the county in which such estate shall be situated, to be approved by the probate judge, conditioned

faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

SEC. 301. When the estate shall have remained in the hands of the agent unclaimed for one year, it shall be sold under order of the court, and the proceeds, deducting the expenses of the sale, to be allowed by the court, shall be paid into the county treasury. When the payment is made the agent shall take triplicate receipts, one of which he shall file with the country auditor, and another with the probate court.

SEC. 302. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of sale as required by the preceeding section, and may be sued thereon by any person interested.

SEC. 303. When any person shall appear and claim the money paid into the treasury, the probate court making the distribution, being first satisfied of his right, shall grant him a certificate under its seal, and upon the presentation of the certificate to the county auditor, he shall draw his warrant on the county treasurer for the amount.

SEC. 304. When the estate has been fully administered, and it shall have been shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under order of the court, all property of the estate to the persons entiled, the court shall make a decree, discharging him from all liability to be incurred thereafter.

SEC. 305. The final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or it should become necessary and proper from any cause that letters should be again issued.

CHAPTER XIV.

DESCENT OF REAL ESTATE.

SEC. 306. Lands, &c., how to descend.
307. Illegitimate child, when to inherit.
Bastards legitimatized by marriage of parents, and acknowledgment and adoption.
Issue of marriages null in law or dissolved by divorce, legitimate.
308. Estate of illegitimate child to whom to descend.
309. Degrees of kindred, how computed.
Half-blood to inherit.
310. Advancement, how far considered part of intestates' estate.

SEC. 311. When advancement to exclude heir from further portion.
312. Advancement, how estimated.
313. Gifts and grants, when deemed advancements.
314. Value of advancement, how estimated.
315. In case of death of child, &c., advanced, before intestate, advancement to be allowed by representatives.
316. The words "issue," and "real estate" defined.
317. "Inheritance or succession by right of representation" defined.
Posthumous children considered as living at death of parent.
318. Construction of this act.

SEC. 306. When any person shall die seized of any lands, tenements, or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, as follows:

1st. In equal shares to his children, and to the issue of any deceased child, by right of representation, and if there be no child of the intestate living at the time of his death, his estate shall descend to all his other lineal descendants; and if all the same descendants are in the same degree of kindred to the intestate, they shall have the estate equally, otherwise they shall take according to representation.

2d. If he shall leave no issue, his estate shall descend to his father.

3d. If he shall leave no issue nor father, his estate shall descend, in equal shares, to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation: *Provided*, That if he shall leave a mother also, she shall take an equal share with the brothers and sisters.

4th. If the intestate shall leave no issue nor father, and no brother nor sister living at his death, his estate shall descend to his mother, to the exclusion of the issue of his deceased brothers or sisters.

5th. If the intestate shall leave no issue, father, mother, brother or sister, his estate shall descend to his next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote: *Provided*, however,

6th. If any person shall die leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation.

7th. If at the death of such child who shall die under age, not hav-

ing been married, all the other children of said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent, shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the estate equally, otherwise they shall take according to the right of representation.

8th. If the intestate shall leave no kindred, his estate shall escheat to the county in which such estate may be situate.

SEC. 307. Every illegitimate child shall be considered as an heir of the person who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father after such marriage shall have acknowledged him as aforesaid and adopted him into his family, in which case such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate and without issue, the others shall inherit his estate and be theirs as hereinbefore provided, in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estate of all the said children as provided hereinbefore, in like manner as if all had been legitimate. The issue of all marriages deemed null in law or disolved by divorce shall be legitimate.

SEC. 308. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or in case of her decease to her heirs at law.

SEC. 309. The degrees of kindred shall be computed according to the rules of the civil law, and the kindred of the half blood shall inherit equally with those of the whole blood, in the same degree.

SEC. 310. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child, or other lineal descendant, shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child, or other descendant, towards his share of the intestate's estate.

SEC. 311. If the amount of such advancement shall exceed the share of the heir, so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so re-

ceived shall be less than his share, he shall be entitled to so much more as will give him his full share of the estate of the deceased.

SEC. 312. If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if it be in personal estate, and if in either case it shall exceed the share of real or personal estate, respectively, that would have come to the heir, so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make the whole share equal to those of the other heirs, who are in the same degree with him.

SEC. 313. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing, by the intestate, as an advancement, or acknowledged in writing as such by the child, or other descendant.

SEC. 314. If the value of the estate, so advanced, shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered of that value in the division and distribution of the estate, otherwise it shall be estimated at its value when given.

SEC. 315. If any child or lineal descendant, so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

SEC. 316. The word "issue," as used in this act, includes all the lawful lineal descendants of the ancestor; and the words "real estate," include all lands, tenements, and hereditaments, and all rights thereto, and all interests therein possessed, and claimed in fee simple, or for the life of a third person.

SEC. 317. "Inheritance, or succession by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person, that their parent would have taken if living. Posthumous children are considered as living at the death of their parent.

SEC. 318. The provisions of this act shall in no way affect the title of a husband as tenant by the courtesy, nor that of a widow as tenant in dower.

CHAPTER XV.

DISTRIBUTION OF PERSONAL ESTATE.

SEC. 319. Order of application and distribution of personal estate.
320. Widow entitled to one-half of estate, deducting advancements.

SEC. 319. When any person shall die possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1st—The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessaries for the use of herself and family under her care, as shall be allowed and ordered in pursuance of the provisions of this act, and this allowance shall be made as well when the widow waives the provision made for her in the will of the husband, as when he dies intestate.

2d—The personal estate remaining after such allowance, shall be applied to the payment of the debts of the deceased, with the charges for his funeral, and the settling of the estate.

3d—The residue, if any, of the personal estate shall be distributed among the same persons as would be entitled to the real estate by this act, and in the same proportion, as provided, excepting as herein further provided.

4th—If the intestate were a married woman, her husband shall be entitled to the whole of the said residue of the personal estate.

5th—If the intestate leave a widow and issue, the widow shall be entitled to one-half of said residue.

6th—If there be no issue, the widow shall be entitled to the whole of said residue.

7th—If there be no husband, widow, or kindred of the intestate, the said personal estate shall escheat to the county in which the administration is had, and a receipt by the county treasurer of the county to whom the said personal property shall be conveyed by the administrator, shall be a full discharge of all responsibility to the said administrator.

SEC. 320. If the intestate leave a widow and issue, and any of the issue have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the one-half part to be assigned to the widow, but she shall be entitled to the one-half only of the said residue, after deducting the value of the advancement.

CHAPTER XVI.

THE APPOINTMENT AND DUTIES OF GUARDIANS.

SEC. 321. Appointment of guardians, by probate judge.
322. When judge to nominate and appoint guardian.
Minor may moninate, when.
323. When judge may appoint, as if minor were under the age of fourteen years.
324. Guardian, appointed by judge, not to be removed when minor arrives at the age of fourteen, except for cause.
325. Father, if living, and mother, if he be dead, entitled to guardianship of minor.
326. Guardian to have custody and tuition of ward, when.
327. Custody, &c., to continue until majority.
Males and females, when to be deemed of age.
328. Guardians may prosecute and defend for their wards.
329. Bond to be given by guardian.
Condition thereof.
Not void upon first recovery.
330. Probate courts may oblige guardians to render accounts, and compel them to give supplementary security.
331. Duty of guardians generally.
332. Court may order guardian to make any change in the investment of minor's estate.
333. Court may remove guardians and appoint others.
334. Provisions relative to bonds by executors, to apply to those of guardians.
335. The father, by his will, may appoint guardians.
Their powers and duties.
336. This act not to impair certain powers of courts to appoint guardians, &c.
337. Sale of real estate of minor may be ordered by court, when.
338. Application therefor, how to be made.
339. Court, when to authorize sale.
340. Provisions as to sales by executors, &c., applicable to those by guardians.
341. Guardian to make report of sale.
342. Value at which real estate to be sold.
343. Court, how governed in confirming sale and directing conveyance.
344. Guardian may join in and assent to partition of real estate of minor.
345. Expenses and compensation of guardians to be allowed.
346. Sureties in bonds of guardians, how discharged from liability.
347. Appeals to district court allowed, as in case of executors, &c.

SEC. 321. The probate judge of each county, when it shall appear to him necessary or convenient, may appoint guardians to minors resident in said county, who have no guardian appointed by will; or who may reside out of the territory, having estate within the county.

SEC. 322. If the minor is under fourteen years of age, the probate judge may nominate and appoint his guardian; if said minor be over fourteen years of age, he or she may nominate the guardian, who, if approved by the probate judge, shall be appointed accordingly.

SEC. 323. If the guardian nominated by the minor be not approved by the judge, or if the minor shall reside out of the territory, or if, after being duly cited by the court, he shall neglect for ten days to nominate a suitable person, the judge may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

SEC. 324. When a guardian has been appointed for any minor under the age of fourteen, such guardian shall not be removed when such minor arrives at the age of fourteen, except for good cause shown.

SEC. 325. The father of the minor if living, and, in case of his decease, the mother, while she remains unmarried, being themselves, respectively, competent to transact their own business, shall be entitled to the guardianship of the minor.

SEC. 326. If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

SEC. 327. Every guardian appointed as aforesaid shall have the custody and tuition of the minor, and the care and management of the estate of such minor, until he or she shall have attained the age of majority; and males shall be deemed of full and legal age when they shall be twenty-one years old, and females shall be deemed of full and legal age when they shall be eighteen years old, or at any age under eighteen, when, with the consent of the parent, guardian, or other person under whose care or government they may be, they shall have been lawfully married.

SEC. 328. Guardians, by virtue of their office as such, shall be allowed, in all cases, to prosecute and defend for their wards.

SEC. 329. The court of probate shall take, of each guardian appointed under this act, bond with approved security, payable to the territory of Washington, in a sum double the amount of the minor's estate, real and personal, conditioned as follows: "The condition of this obligation is such, that if the above bound A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian according to law, and shall render a fair and just account of his said guardianship to the court of probate for the county of ———, from time to time, as he shall thereto be required by said court, and comply with all orders of said court, lawfully made relative to the goods, chattels, and moneys of such minor, and render and pay to such minor all moneys, goods and chattels, title papers and effects which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall thereto be entitled, or to any subsequent guardian, should such court so direct, this obligation shall be void, or otherwise to remain in full force

and virtue;" which bond shall be for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time against all, or any one or more of the obligors, in the name, and to the use and benefit of any person entitled by a breach thereof, until the whole penalty shall be recovered thereon.

SEC. 330. Courts of probate shall have power in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts, upon oath, touching their guardianships, to said courts for adjustment; and shall have power to compel such guardian to give supplementary security, whenever it shall judge proper, and in default thereof to remove such guardian.

SEC. 331. It shall be the duty of every guardian of any minor—

1st—To make out and file, within three months after his appointment, a full inventory, verified by oath, of the real and personal estate of his ward, with the value of the same; and failing so to do, it shall be the duty of the proper court to remove him and appoint a successor.

2d—To manage the estate for the best interest of his ward.

3d—To render, on oath, to the proper court, an account of his receipts and expenditures as such guardian, verified by such vouchers or proof, at least once in every two years, or whenever cited so to do; and failing so to do, he shall receive no allowance for services, and be liable to his said ward on his bond, for ten per cent. in damages, on the whole amount of estate, both real and personal, in his hands, belonging to such ward.

4th—At the expiration of his trust, fully to account for and pay over to the proper person, all the estate of said ward remaining in his hands.

5th—To pay all just debts due from such ward out of the estate in his hands, and collect all debts due such ward; and in case of doubtful debts, to compound the same, and appear for and defend, or cause to be defended, all suits against such ward.

6th—When any ward has no father or mother, or such father or mother is unable, or fails to educate such ward, it shall be the duty of his guardian to provide for him such education as the amount of his estate may justify.

SEC. 332. The probate court may, on the application of a guardian or any other person, said guardian having due written notice thereof, order and decree any change to be made in the investment of the estate of any ward, that may to such court seem advantageous to such estate.

SEC. 333. The court of probate, in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered

on record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties, as heretofore prescribed in this act; and when any guardian shall be removed, or die, and a successor be appointed, the court shall have power to compel such guardian to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such minor which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who may have the same, and upon failure, to commit the party offending to prison, until he, she or they comply with the order of the court.

SEC. 334. All the provisons of this act relative to bonds given by executors and administrators, shall apply to bonds taken of guardians.

SEC. 335. The father of every legitimate child who is a minor, may, by his last will in writing, appoint a guardian or guardians for his minor children, whether born at the time of making such will or afterwards, to continue during the minority of such child, or for any less time; and every such testamentary guardian shall give bond in like manner and with like condition as hereinbefore required; and he shall have the same powers, and perform the same duties with regard to the person and estate of the ward, as a guardian appointed as aforesaid.

SEC. 336. Nothing contained in this act shall effect or impair the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein, nor to appoint or allow any person as the next friend of a minor to commence and prosecute any suit in his behalf.

SEC. 337. Whenever necessary for the education, support or payment of the just debts of any minor, or for the discharge of any liens on the real estate of such minor, or whenever the real estate of such minor is suffering unavoidable waste, or a better investment of the value thereof can be made, the probate judge may, on the application of such guardian, order the same, or a part thereof, to be sold.

SEC. 338. Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth :

1st—The value and character of all personal estate belonging to such ward that has come to the knowledge or possession of such guardian.

2d—The disposition made of such personal estate.

3d—The amount and condition of the ward's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

4th—The annual value of the real estate of the ward.

5th—The amount of rent received and the application thereof.

6th—The proposed manner of re-investing the proceeds of the sale, if asked for that purpose.

7th—Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.

8th—The age of the ward, where and with whom residing.

9th—All other facts connected with the estate and condition of the ward necessary to enable the court fully to understand the same. If there is no personal estate belong to such ward, in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the application.

SEC. 339. If it shall appear to the court from such petition and from the hearing thereon, that it is necessary, or would be beneficial to the ward that such real estate or some part of it should be sold, the court may authorize the said guardian to sell the same at public sale, on the same terms and notice required for sales of real estate by executors and administrators; or if the court be satisfied that a sale at private sale will conduce to the advantage of said minor's estate, it may so order.

SEC. 340. All the provisions of the act regulating sales by executors and administrators shall be applicable to sales made by guardians.

SEC. 341. At the term of the court next after such sale, such guardian shall make report thereof to such court, and produce the proceeds of such sale, and the notes or obligations or other securities taken to secure the payment of the purchase money.

SEC. 342. Whenever such real estate is ordered by the court to be sold at private sale, the same shall not be sold for less than its appraised value; and when ordered to be sold at public auction, at not less than two-thirds of its appraised value.

SEC. 343. The court in confirming such sale and directing a conveyance, shall be governed by the law regulating the confirming of sales of real estate made by executors or administrators, and the making of conveyances on such sales.

SEC. 344. The guardian of any minor may join in and assent to the partition of the real estate of such minor, under the directon of the court, upon a petition for partition.

SEC. 345. Every guardian shall be allowed by the court, on settling his accounts, the amount of all reasonable expenses incurred in the execution of his trust; and also, such compensation for his services as the court shall deem reasonable.

SEC. 346. Sureties in the bond of any guardian may be discharged

from liability therein, under the same rule and regulation prescribed for the discharge of the sureties in the bond of executors and administrators, and the provisions of this act regulating the same shall apply to guardians and guardians' bonds and sureties.

SEC. 347. Appeals shall be allowed, in all cases, from any order or judgment of the probate court to the district court, embracing the county exercising jurisdiction, in the same manner as provided in this act regarding executors and administrators and the settlement of estates.

CHAPTER XVII.

RELATING TO IDIOTS AND INSANE PERSONS.

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SEC. 374. Recovery by the county when expenses paid out of its treasury.
375. The father, mother, children, &c., of insanse person, shall, if able, maintain such person.

SEC. 348. The several probate courts in their respective counties in this territory, shall have power to appoint guardians to take the care, custody and management of all idiots, insane persons, and all who are incapable of conducting their own affairs, and their estates, real and personal, and to provide for the safe keeping of such persons, the maintenance of themselves and families, and the education of their children.

SEC. 349. That if any person shall give information in writing, under his hand, to the judge of said court, that any person in their county is or has become insane, and pray that an inquiry thereof be had, such court, if satisfied that there is good cause for the exercise of his jurisdiction, shall cause the said person to be brought before such court, and inquire into the facts by a jury, if the facts be doubtful.

SEC. 350. If it be found by the jury that the person so brought before the court, is of unsound mind, and incapable of managing his own affairs, the court shall appoint a guardian for the person, and of the estate of such insane person.

SEC. 351. When any person shall be found to be insane, or coming within the provisions of this act, the cost of the proceeding shall be paid out of his estate; or if that be insufficient, by the county.

SEC. 352. If the person alleged to be insane shall be discharged, and it shall be thought by the court or jury (if a jury be called) that there was no grounds for such impression of insanity, then the cost shall be paid by the person at whose instance the proceeding was had, and an execution may issue for the same.

SEC. 353. Every such guardian so appointed, shall, before entering upon the duties assigned him, enter into bond to the board of county commissioners, in such sum, and with such security, as the court shall approve, conditioned that he will take proper care of such insane person, and manage and minister his effects to the best advantage, according to law; and that he will faithfully discharge all duties as such guardian which may by law, or by the order, sentence or decree of any court of competent jurisdiction, devolve upon him; which bond shall be filed in the office of the probate court, a copy thereof, duly certified, shall be evidence in all respects as the original.

SEC. 354. It shall be the duty of every such guardian, within twenty days after his appointment, to cause notice thereof to be published in some newspaper printed in this territory, or otherwise publish such notice at such time and place, and in said manner, as the court shall direct.

SEC. 355. Every such guardian shall take charge of the person of such lunatic; and if it be thought necessary for the safety of his person, or the person, or property of others, it shall be the duty of such guardian to confine or guard such insane person.

SEC. 356. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys, effects, and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship.

SEC. 357. Within forty days after his appointment, such guardian shall make out and file in the office of the probate court by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, as the same shall have come so his view.

SEC. 358. And if, after having filed such inventory, it shall be found that there is other property belonging to said estate, it shall be the duty of such guardian to make out and file an additional inventory, containing a just and full amount of the same, from time to time, as the same may be discovered.

SEC. 359. All such inventories shall be made in the presence of, and attested by two credible witnesses of the neighborhood, and shall be verified by the oath of the guardian.

SEC. 360. It shall be the duty of every such guardian to prosecute all actions commenced at the time of his appointment, or thereafter, to be commenced by, or on account of his ward, and to defend all actions pending or which may be brought against such ward.

SEC. 361. Every such guardian is authorized and required to collect all debts due to his ward, and give acquittances and discharges thereof, and adjust, settle and pay all demands due and becoming due from his ward, so far as his estate and effects will extend.

SEC. 362. Every probate court shall have power to make order for the restraint, support, and safe keeping of such person, for the management of his estate, and the support and maintenance of his family and education of his children, out of the proceeds of his estate; to set apart and reserve, for the use of such family, and property, real or personal, not necessary to be sold for the payment of debts; and to let, sell or mortgage, any part of such estate, real or personal, when necessary for the payment of debts, the maintenance of such insane person or his family, or the education of his children.

SEC. 363. Whenever the personal estate of such person shall be found to be insufficient to meet the foregoing requisitions, it shall be the duty of such guardian to lay the same before the probate court by whom

he was appointed, setting forth the particulars relative to the estate, real and personal, of such person, and the debts by him owning, accompanied by a correct and true account of his doings therewith; whereupon it shall be the duty of such court to make an order, directing the mortgage, lease, or sale, at his discretion, of the whole or such part of the real estate as may be necessary.

SEC. 364. The court making such order shall direct the time and terms of such sale, mortgage, or lease of such estate, and the manner in which the proceeds shall be applied; and shall give due notice thereof, together with a full description of the property to be thus disposed of, at which time and place it shall be the duty of the guardian to execute the order of said court, and to make a full report of his doings therein, which report shall be accompanied by the affidavit of the guardian verifying the report, and stating that such guardian did not directly or indirectly become the purchaser thereof; or if otherwise disposed of, that he is not directly or indirectly interested personally in the agreement.

SEC. 365. When any such sale, mortgage or lease, is approved of by the court ordering the same, as having been performed according to law, and not under such circumstances as to operate prejudicial to the interest of such ward, it shall be the duty of the court to execute a deed, mortgage, or other instrument of writing, which shall be as valid and effective in law as if executed by such ward when of sound mind and discretion.

SEC. 366. If such report be disapproved of by said court, as not doing justice to said ward, the court may set aside the proceedings, and proceed in like manner as if no sale had been made.

SEC. 367. Every such guardian, as often as required by the court appointing him, shall render a true and perfect account of his guardianship.

SEC. 368. No such ward shall be held to bail, or his body be taken in execution, in any civil action; and in all actions commenced against him the process shall be served upon his guardian; and in all judgments against such ward (or his guardian as such) the execution shall be against the property of the ward only, and in no case against his body, nor against that of his guardian, nor the property of said guardian, unless he shall have rendered himself liable thereunto, by false pleading or otherwise.

SEC. 369. Whenever the court shall receive information that such ward has recovered his reason, he shall immediately inquire into the facts; and if he finds that such ward is of sound mind, he shall forthwith discharge such person from care and custody; and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands belonging or appertaining to such ward.

SEC. 370. In case of the death of any such ward, while under guardianship, the power of the guardian shall cease, and the estate descend and be disposed of in the same manner as if said ward had been of sound mind; and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his legal representatives.

SEC. 371. The several probate courts shall have the power to remove any such guardian at any time, for neglect of duty, mismanagement, or for disobedience to any lawful order, and appoint another in his place; whereupon such guardian shall immediately settle his account, and render to his successor the estate and effects of his ward.

SEC. 372. All the expenses of taking care of such insane person and the management of his estate, shall be paid out of his estate, if it be sufficient; if not, out of the county treasury.

SEC. 373. If the estate of such lunatic be insufficient for his maintenance, and the maintenance of his family, he shall be entitled to all the benefits of the laws of this territory for the relief of paupers, in which case it shall be the duty of the court of probate to issue an order to the overseer of the poor, requiring him to take charge of such person according to the provisions of the laws of this territory for the relief of paupers, which overseer shall have power to arrest and confine such person, if necessary, until the next ensuing session of the board of county commissioners, at which time it shall be the duty of said board to dispose of the same as may to them seem right and proper, consistent with the principles of humanity and justice.

SEC. 374. In all cases of appropriation out of the county treasury for the support and maintenance, or confinement of any insane person, the amount thereof may be recovered by the county from any person who by law is bound to provide for the support and maintenance of such insane person, if there be any such of ability to pay the same.

SEC. 375. The father or mother of such insane person shall maintain them at their own charge, if of sufficient ability; and if not, then the children, grand-children, or grand-parents, shall, if of sufficient ability, maintain them at their own charge.

CHAPTER XVIII.

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SEC. 376. All orders, settlements, trials, and other proceedings intrusted by this act to the probate court, shall be had or made in the county in which letters testamentary, or of administration, were granted.

SEC. 377. All orders and decrees made by the probate court during its term, shall be entered at length on the records of the court, and also all orders which the judge is empowered to make out of term time, and which are by this act specially required to be so entered, and upon the close of each term, the judge shall sign the minutes of the proceedings.

SEC. 378. Whenever personal notice is required by this act to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation, issued from the court, signed by the judge, and under the seal of the court, directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings.

SEC. 379. The officer to whom the citation is directed, shall serve it by delivering a copy to the person named therein, or to each of them, if there be more than one, and shall return the original to the court according to its direction, endorsing thereon the time and manner of service.

SEC. 380. When no other time has been specially prescribed, citation shall be served at least five days before return day.

SEC. 381. All writs and processes issued from the probate court, shall be signed by the judge, and under the seal of the court.

SEC. 382. The practice in the district court shall be applicable to proceedings in the probate court, so far as the same does not conflict with any enactment specially applicable to the probate court, or is not inconsistent with the provisions of this act.

SEC. 383. Issues of fact joined in the probate court shall be certified by the probate judge to the district court of the district embracing his county, for trial, on the application of any person interested in or to be affected by the decision thereof, in the cases following:

1st. On granting or revoking letters testamentary or of administration.

2d. On admitting a will to probate.

3d. On revoking the probate or determining the validity of a will.

4th. On setting apart property, or making allowance for a widow or child.

5th. On application for the sale or conveyance of real property.

6th. On the settlement of an executor or administrator.

7th. On declaring, allowing or directing the payment of a debt, legacy, claim or distributive share of the estate.

8th. Orders and decrees in the matter of sales of property by guardians, and in the settlement of guardians accounts—and in the removal of guardians.

SEC. 384. A probate judge shall certify to a district court for trial, any issue of fact mentioned in the preceding section, on the applicant filing a written notice with the clerk of the probate court, at any time within sixty days after the rendition of the decision of the said probate court, to the effect, that the applicant requires the issue to be certified to a district court for trial.

SEC. 385. Such issue to the district court, shall be tried like any other issue of fact in the district court; and at the trial, like objection and exception to the decision of the court may be taken and settled; after the trial of such issue, the district court shall remit the proceedings upon such trial, together with the finding and decision, to the probate court, which shall form part of the record of the cause in the probate court. The probate court shall render judgment according to the finding and decision in the district court: *Provided*, Nothing in this section contained, shall be so construed as to prevent any party appealing from the said decision of the district court, to the supreme court.

SEC. 386. An appeal to the supreme court, must be taken within sixty days after the rendition of the decision in the district court. In all other matters, the law regulating appeals in civil actions in the district court shall, so far as the same may be applicable, govern appeals allowed by this act.

SEC. 387. When an issue is certified for trial, the clerk of the probate court shall transmit all papers and records necessary for the trial of the issue to the district court. After such trial, the clerk of the district

court shall return the same with the proceeding of the court to the probate court.

SEC. 388. The following named acts, to-wit: "An act respecting executors, administrators, and the distribution of real and personal estate," passed at first session of [the] legislative assembly; "An act establishing probate courts for the Territory of Washington," passed April 14th, 1854; "an act relating to wills," passed at the first session of [the] legislative assembly; the act entitled "an act to amend an act entitled an act establishing probate courts for the Territory of Washington," passed February 29th, 1855; "an act touching the relation of guardian and ward," passed January 26th, 1855; "an act enlarging the jurisdiction of probate courts and justices of the peace in criminal cases," passed January 27th, 1857; "an act to confer civil jurisdiction on judges of probate," passed Jan. 29, 1857; "an act to amend an act entitled an act respecting executors, administrators, and the distribution of real and personal estate," passed January 29th, 1857; "an act to amend an act entitled an act establishing probate courts for the Territory of Washington," passed February 2nd, 1858; and the act entitled "an act to construe an act entitled an act to amend an act entitled an act respecting executors, administrators, and the distribution of real and personal estate," passed January 11th, 1859; and all acts and parts of acts inconsistent with the provisions of this act, be, and the same are hereby repealed. But nothing hereinbefore contained shall be so construed as to affect the validity of proceedings heretofore commenced, or lawfully done under, and by virtue of any of the above recited acts; and all matters and things now pending in relation to the settlement of the estates of decedents or minors, or accounts of guardians, executors or administrators, shall hereafter be so conducted as to conform to the practice established by this act: *Provided*, That laws conferring jurisdiction upon judges of probate in certain special cases, and not included in any of the acts enumerated in this section, not in conflict with any of the provisions of this act, be, and the same shall continue in full force and effect.

Passed January 27th, 1860.

AN ACT

RELATING TO JUSTICES OF THE PEACE AND CONSTABLES, AND THE PRACTICE BEFORE JUSTICES OF THE PEACE.

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" II. *Of constables.*
" III. *Jurisdiction of justices of the peace.*
" IV. *Commencement of action; service and return of process.*
" V. *Pleadings and adjournments.*
" VI. *Of witnesses and depositions.*
" VII. *Title to land.*
" VIII. *Trial by jury.*
" IX. *Of judgment.*
" X. *Stay of executions and filing of transcripts.*
" XI. *Setting off judgments.*
" XII. *Of executions and proceedings thereon.*
" XIII. *Of replevin.*
" XIV. *Forcible entry and detainer.*
" XV. *Action to recover possession of a mining claim.*
" XVI. *Of proceedings for contempt before justices of the peace.*
" XVII. *Certiorari and proceedings thereon.*
" XVIII. *Of appeals to the district court.*
" XIX. *Forms in civil actions in justice's court.*
" XX. *Criminal jurisdiction.*
" XXI. *Forms of proceedings in criminal cases.*

CHAPTER I.

OF JUSTICES.

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5. Justice to give bond; form of.
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SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the qualified voters of each election precinct, in the several organized counties of this territory, shall at the time and place of holding the annual election, elect one or more justices of the peace.

SEC. 2. Each precinct shall be entitled to one justice of the peace, but the board of county commissioners, at the time of organizing such precinct, or at any time afterwards, may, if they deem proper, authorize an additional juitice of the peace to be elected therein.

SEC. 3. No person shall be eligible to the office of justice of the peace who is not a qualified voter, and who has not been a resident of the county in which he is elected six months next preceding his election; nor shall any sheriff, coroner, or clerk of the district court be eligible to, or hold such office.

SEC. 4. The election of justice of the peace shall be conducted, and return of such election made in the same manner, as other elections; and every person duly elected, shall be entitled to a certificate of election, and shall take an oath of office; which oath shall be endorsed on the back of the certificate of election, and together with the certificate, filed in the office of the county auditor.

SEC. 5. Every person elected a justice of the peace, shall, at the time of filing his oath of office in the office of the county auditor, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said auditor, in the sum of five hundred dollars, conditioned that he will faithfully pay over, according to law, all moneys which shall come into his hands by virture of his office as justice of the peace; said bond may be in the following form:

Know all men by these presents, that we, J. P., A. B. and C. D. are held and firmly bound unto the board of commissioners of the county of ———— in the territory of Washington, in the sum of five hundred dollars, for the payment of which, we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals. Dated this —— day of —— A. D. 18—.

Whereas, the said J. P. has been duly elected a justice of the peace, in and for the precinct of ———— in the county of ———— A. D. 18—. Now the condition of the above obligation is such, that if the said J. P. shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise, in full force.

J. P. [L. S.]
A. B. [L. S.]
C. D. [L. S.]

SEC. 6. Such bond shall be filed in the office of the county auditor; and every person aggrieved by a breach of the condition thereof, may, by an action upon the bond, have judgment against the justice, and his sureties, for such sum as he may show himself entitled to, with costs, and interest at the rate of twenty-five per cent. per annum; and upon any such judgment, stay of execution shall not be allowed.

SEC. 7. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified; and every justice heretofore elected and qualified, shall continue to act as such until his term of office expires, and until his successor is elected and qualified.

SEC. 8. All vacancies existing in the office of justice of the peace, whether happening by death, resignation or otherwise, may be filled by appointment by the board of commissioners of the proper county. Every person so appointed shall hold his office until the next election; and is required to qualify in the same manner, as if he had been duly elected to the office of justice of the peace, under the provisions of this act.

SEC. 9. The jurisdiction of justices of the peace, elected in pursuance of the provisions of this act, shall be co-extensive with the limits of the county in which they are elected or appointed; and no other or greater, whether said county be attached to any other county for judicial purposes, or not. But every justice of the peace shall continue to reside in the precinct for which he was elected, or appointed during his continuance in office.

SEC. 10. When a precinct shall be divided, and any justice of the peace of the original precinct shall fall into the new one, he shall continue to discharge the duties of justice of the peace until his term of office expires, and his successor is elected and qualified.

SEC. 11. If any justice of the peace shall die, resign, or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records, and papers appertaining to his office, or relating to any suit, matter or controversy, committed to him in his official capacity, shall be delivered to the nearest

justice in the precinct, who may thereupon proceed to hear, try and determine such matter, suit or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such matter or suit was commenced to have done: *Provided*, That if there be no other justice of the peace in said precinct, such docket, books, records and papers, shall be delivered to the county auditor, who on demand shall deliver the same to a justice of said precinct, when there shall be one qualified therein, who shall exercise the same powers as though they had been originally delivered to him.

SEC. 12. Every person whose duty it is to deliver over the docket, books, records and papers, as prescribed in the last section, shall forfeit and pay, for the use of the county, fifteen dollars for every three months neglect to perform such duty, which sum may be recovered at the suit of any person.

CHAPTER II.

OF CONSTABLES.

SEC. 13. Constables, when and where elected.
14. Vacancies, how filled.
15. Election of, how conducted.
16. Constable to take an oath.
17. Shall give bond.
18. Jurisdiction of.

SEC. 13. At each general election, there shall be elected by the qualified electors of each precinct in the several organized counties of this territory, as many constables as there are justices of the peace elected, or authorized to be elected, in such precinct.

SEC. 14. All vacancies existing in the offices of constable, whether happening by death, resignation or failure to elect, or otherwise, may be filled by appointment by the board of commissioners of the proper county; and every person so appointed shall hold his office until the next election.

SEC. 15. The election of constables shall be conducted, and the return of such election made and certificates of election issued, in the same manner as in elections of justices of the peace.

SEC. 16. Every person elected or appointed a constable shall, within twenty days after receiving his certificate of election, take an oath before any person authorized to administer oaths, that he will support the constitution of the United States, and the laws of this territory, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be endorsed on the back of the

certificate of election, or appointment, and filed, together with the certificate, in the office of the auditor of the proper county.

SEC. 17. Every person elected or appointed to the office of constable, shall, within the time prescribed for filing his oath of office, enter into a bond to the proper county, with two or more sureties, residents of the county, to be approved by the county auditor, in the sum of one thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office; and in every respect discharge all the duties of constable according to law. The auditor shall endorse thereon his approval of the sureties therein named, and shall file the same in his office.

SEC. 18. Any constable may within his county serve any writ, process or order, lawfully directed to him by any justice of the peace, judge of probate, or coroner, and generally do and perform all acts by law required of constables.

CHAPTER III.

JURISDICTION OF JUSTICES OF THE PEACE.

SEC. 19. Jurisdiction to extend to county for which elected.
20. Office to be in the precinct for which elected.
May issue process in any place in county.
21. Not to hold his office with an attorney, unless, &c.
22. Authority of justice, and powers of justice's court.
23. Justice to have jurisdiction and cognizance of certain actions, &c.
24. Jurisdiction conferred by last section not to extend to certain actions.

SEC. 19. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater, unless otherwise expressly provided by statute.

SEC. 20. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere, but he may issue process in any place in the county.

SEC. 21. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice of the peace.

SEC. 22. Every justice of the peace elected in any precinct in this territory, is hereby authorized to hold a court for the trial of all actions in the next section enumerated, to hear, try and determine the same according to law; and for that purpose, where no special provision is

otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this territory; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter.

SEC. 23. Every justice of the peace shall have jurisdiction over, and cognizance of, the following actions and proceedings:

1st—Of an action arising on contract for the recovery of money only, if the sum claimed do not exceed one hundred dollars.

2d—Of an action for damages, for an injury to the person or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars.

3d—Of action for a penalty, not exceeding one hundred dollars.

4th—Of an action upon a bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment, as it shall become due.

5th—Of an action on an undertaking or surety bond, taken by him, if the amount claimed do not exceed one hundred dollars.

6th—Of an action for the foreclosure of any mortgage, or the enforcement of any lien on personal property, when the debt secured does not exceed one hundred dollars.

7th—Of an action for damages, for fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed one hundred dollars.

8th—Of an action for a forcible or unlawful detention of lands, tenements, or other possessions.

9th—Of an action to try the right of occupancy or possession to a mining claim.

10th—To take and enter judgment on the confession of a defendent, when the amount does not exceed one hundred dollars.

11th—And shall, in all cases, have power to issue writs of attachment upon good, chattels, moneys and effects where the amount does not exceed one hundred dollars.

SEC. 24. The jurisdiction conferred by the last section, shall not however extend to the civil actions,

1st—In which the title to real property shall come in question.

2d—Nor to an action for the foreclosure of a mortgage, or the enforcement of a lien on real estate.

3d—Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction.

4th—Nor to any action against an executor or administrator, as such.

CHAPTER IV.

COMMENCEMENT OF ACTIONS—SERVICE AND RETURN OF PROCESS.

SEC. 25. Justice to keep a docket; what to be entered therein.
26. How actions may be instituted before justice.
27. Plaintiff a non-resident, may be required to give security for costs.
28. Process, how issued and directed.
29. First process to be a notice.
Form thereof.
30. Notice, by whom to be served.
31. Constable or sheriff to make return thereon.
32. Warrant of arrest, when it may be issued.
33. Before issuing warrant, plaintiff to give bond.
34. Warrant, how served.
35. Officer making the arrest to give notice to the plaintiff.
Warrant to be endorsed.
36. How long defendant in warrant may be detained.
37. On what conditions defendant may have a continuance.
38. When justice may appoint a special officer to execute a process.
39. Penalty for failing to execute process, or making false return.
40. How infant plaintiff may sue.
41. Guardian for infant defendant.
42. Parties entitled to one hour to make their appearance.
When justice may postpone time of appearance.

SEC. 25. Every justice of the peace shall keep a docket, in a well bound book, in which he shall enter:

1st—The titles of all actions commenced before him.

2d—The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand.

3d—The date of the notice and the time of its return; and if an order to arrest the defendant be made, the statement of the facts on which the order issued.

4th—The time when the parties, or either of them, appear, or their non-appearance, if default be made.

5th—A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any set-off be pleaded, a similar statement of the set-off, and the amount estimated.

6th—Every continuance, stating at whose request, and for what time.

7th—The demand of a trial by jury, when the same is made, and by whom made; the order for the jury, and the time appointed for the trial, and return of the jury.

8th—The names of the jury who appear and are sworn; the names of all witnesses sworn, and at whose request.

9th—The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge.

10th—The judgment of the court, and the time when rendered.

11th—The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt and costs, and the fees due to each person separately.

12th—The fact of an appeal having been made and allowed, and the time when.

13th—Satisfaction of the judgment, or any money paid thereon, and the time when.

14th—And such other entries as may be material.

SEC. 26. Actions may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process.

SEC. 27. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs before the commencement of the action.

SEC. 28. All process issued by justices of the peace, shall run in the name of the United States, be dated the day issued, and shall be signed by the justice granting the same, and shall be directed to the sheriff or any constable of the proper county.

SEC. 29. All civil actions in justices' courts shall be commenced by service upon the defendant of a copy of the complaint and the notice, which notice shall attach to the copy of the complaint, and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six, nor more than twenty days from the date of the filing of the complaint. The notice shall be substantially as follows:

Territory of Washington,

———— County, ss.

To ————:

You are hereby notified to be and appear at my office, in ————, on the ——— day of ————, 186—, at the hour of ———— M, to answer to the foregoing complaint, or judgment will be taken against you, as confessed, and the prayer of the plaintiff granted.

————, J. P.

Dated ———, 186—.

SEC. 30. The service shall be made by the sheriff or constable of the county, unless otherwise directed, who shall certify to such service upon the body of the complaint on file in the justices' office.

SEC. 31. Every constable or sheriff serving any process, shall return thereon, in writing, the time and manner of service, and shall sign his name to such return.

SEC. 32. A justice of the peace shall issue a warrant of arrest in such cases within his jurisdiction, and for such causes, and upon such proof, as is provided for an order for a warrant in the act regulating civil actions.

SEC. 33. Before issuing the warrant of arrest, the justice shall require a bond on part of the plaintiff, with one or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which may be sustained by reason of the arrest, not exceeding the sum specified in the bond, which shall be at least one hundred dollars.

SEC. 34. The warrant will be served by arresting the defendant, and taking him before the justice of the peace who issued the same; but if such justice, at the return thereof be absent, or unable to try the action, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself.

SEC. 35. The officer making the arrest, shall immediately give notice thereof to the plaintiff, his agent, or attorney, and endorse on the warrant the time of the arrest, and the time of serving notice on the plaintiff.

SEC. 36. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer, until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant.

SEC. 37. If the defendant, on his appearance, demand a continuance, the same may be granted, on condition that he remain in custody, execute and file with the justice a bond, with one or more sufficient sureties to be approved by the justice, to the effect that he will render himself amenable to the process of the court; or that the sureties will pay to plaintiff the amount of any judgment, which he may recover in the action. On filing such bond, the justice shall order the defendant to be discharged from custody.

SEC. 38. Every justice, issuing any process authorized by this chapter, upon being satisfied that such process will not be executed for want of an officer, to be had in time to execute the same, may, by an indorsement upon the process, empower any suitable person, not being a party

to the action, to execute the same; and the person so empowered, shall thereupon possess all the authority of a constable, in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

SEC. 39. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured, ten dollars, and all damage such party may have sustained, by reason thereof, to be recovered in a civil action founded upon this statute.

SEC. 40. No action shall be commenced by an infant plaintiff, except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, and who shall be responsible for the costs therein.

SEC. 41. After the service and return process against an infant defendant, the action shall not be further prosecuted, until a guardian for such infant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action.

SEC. 42. The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the summons for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice, being present, is actually engaged in the trial of another action or proceeding; in such case, he may postpone the time of appearance, until the close of such trial.

CHAPTER V.

PLEADINGS AND ADJOURNMENTS.

SEC. 43. Pleadings to take place on appearance of parties, unless, &c.
44. What the pleadings shall be.
45. When the pleadings shall be in writing.
46. When the pleadings are oral, substance to be entered on the docket; when in writing, to be filed.

SEC. 46. No particular form required.
47. Statement of want of sufficient knowledge, equivalent to denial.
48. In cause of action accruing out of an account or instrument for the payment of money, sufficient to deliver the account or instrument to the court, and state the specific sum claimed, adverse party entitled to inspection of the original.
49. Pleadings to be verified by oath of the party, or by that of attorney or agent.
50. All material allegations not denied to be taken to be true; exceptions.
51. Either party may object to the pleading of the other; proceedings thereupon.
52. Variance between proof and pleading to be disregarded, unless adverse party has been misled.
53. Amendments to the pleadings.
54. Set off to be alledged in the answer.
Defendant may have judgment for the balance found due.
55. When the set off of the defendant, proved, exceeds claim of plaintiff, and such excess in amount exceeds jurisdiction of justice, court how to proceed.
56. Continuance, when and for how long justice may grant.

SEC. 43. The pleadings in justices' court shall take place upon the appearance of the parties, unless they shall have been previously filed, or unless the justice shall, for good cause shown, allow a longer time than the time of appearance.

SEC. 44. The pleadings in justices' court shall be:

1st. The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

2d. The answer of the defendant, which may contain a denial of the complaint, or any part thereof; and also a statement, in a plain and direct manner, of any facts constituting a defense.

3d. When the answer sets up a set-off by way of defense, the reply of the plaintiff.

SEC. 45. The pleadings shall be in writing, when the action is for one of the following causes:

1st. For the foreclosure of any mortgage, or the enforcement of any lien on personal property.

2d. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions.

3d. To recover the occupancy or possession of a mining claim. In all other cases, the pleadings may be oral or in writing.

SEC. 46. When the pleadings are oral, the substance of them shall be entered by the justice in his docket. When in writing, they shall be filed in his office, and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

SEC. 47. A statement in an answer or reply, that the party has not

sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party to form a belief, shall be deemed equivalent to a denial.

SEC. 48. When the cause of action, or set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set-off. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if it be not so exhibited, may prohibit its being given in evidence.

SEC. 49. Every complaint, answer, or reply, shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified.

SEC. 50. Every material allegation in a complaint, or relating to a set-off in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case.

SEC. 51. Either party may object to a pleading by his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 52. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 53. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omission in the allegations or denials, necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party, in consequence of such amendment, a continuance shall be granted. The court may, also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

SEC. 54. To entitle a defendant to any set-off he may have against the plaintiff, he must allege the same in his answer; and the statute regulating set-offs in the district court, shall in all respects be applicable to a set-off in a justice's court, if the amount claimed to be set-off after deducting the amount found due the plaintiff, be within the jurisdiction of a justice of the peace; and judgment may, in like manner, be rendered by the justice in favor of the defendant, for the balance found due from the plaintiff.

SEC. 55. When the set-off of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case, the court shall not render judgment for any further sum in favor of the defendant.

SEC. 56. When the pleadings of the parties shall have taken place, the justice shall upon the application of either party, if the defendant be not under arrest, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects, shall be governed by the law as applicable to continuance in the district court.

CHAPTER VI.

OF WITNESSES AND DEPOSITIONS.

SEC. 57. Subpœna valid to compel attendance of witnesses, if within twenty miles.
58. By whom and how subpœna may be served.
59. Witness failing to appear, justice may issue an attachment, when.
60. Attachment, to whom directed.
Fees of office by whom to be paid.
61. Person subpœnaed neglecting to appear liable for damages.
62. Party to action may be examined as a witness at instance of adverse party.
63. Testimony of party may be rebutted.
64. Party refusing to testify, judgment may be taken against him.
65. Party examined by adverse party, may be examined in his own behalf.
66. When depositions may be taken.
67. Notice of, how served, and deposition how to be taken, certified and returned.
68. When depositions may be read on trial.
Changes of venue may be allowed.

SEC. 57. A subpœna issued by a justice of the peace shall be valid

to compel the attendance of a witness in a justice's court, if such witness be within twenty miles of the place of trial.

SEC. 58. A subpœna may be served by any white person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy thereof, if he require it, or by leaving a copy at his usual place of abode.

SEC. 59. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpœnaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpœna, and the party in whose behalf such subpœna was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided*, That no attachment shall issue against a witness in any civil action, unless his fees for mileage, and one day's attendance, have been tendered or paid in advance, if previously demanded by such witness, from the person serving the subpœna.

SEC. 60. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs.

SEC. 61. Every person subpœnaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for all damages which such party may have sustained by reason of his non-appearance: *Provided*, That such witness had the fees allowed for mileage, and one day's attendance paid, or tendered him, in advance.

SEC. 62. A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken.

SEC. 63. The examination of a party thus taken, may be rebutted by adverse testimony.

SEC. 64. If a party refuse to attend and testify at the trial, or give his deposition before trial, when required, his complaint, answer, or reply, may be stricken out, and judgment taken against him.

SEC. 65. A party examined by an adverse party, may be examined

on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received.

SEC. 66. Either party, in an action depending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go, more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial.

SEC. 67. The notice shall be served, and the deposition taken, certified, and returned, according to the law regulating the taking of depositions to be read in the district court.

SEC. 68. The justice shall allow every deposition taken, certified, and returned, according to law, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness, whose deposition is so offered,

1st. Is dead, or resides more than twenty miles from the place of trial; or,

2d. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity;

3d. That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party offering the deposition.

Change of venue may be allowed for the same causes for which they are allowed in the district court.

CHAPTER VII.

TITLE TO LAND.

SEC. 69. Justice how to proceed when title to land comes in question on the trial of any cause.

SEC. 69. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the district court of the county, a transcript of all the entries made in his docket, relating to the cause, together with all the process and other papers relating to

the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the district court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein; and the costs shall abide the event of the suit.

CHAPTER VIII.

TRIAL BY JURY.

SEC. 70. Either party may demand a jury.
71. Number of jurors.
72. Justice shall issue a venire.
73. Sheriff or constable to execute the venire.
74. Either party may challenge the jurors.
75 Challenges for cause.
76. Justice to administer oath to jury.
77. Verdict to be delivered to justice, and entered on docket.
78. Jury in civil cause unable to agree, justice may discharge them, and issue a new venire, unless, &c.
79. Penalty for not appearing or rendering reasonable excuse, when summoned as juror.

SEC. 70. Before the justice shall commence an investigation of the merits of the cause, by an examination of the witnesses, or the hearing of any other testimony, either of the parties may demand of the justice that the cause be tried by a jury.

SEC. 71. The jury shall consist of six persons, unless the parties agree upon any number of jurors less than six, to try the cause; in which case the jury shall consist of such number, not exceeding six, as the parties may agree upon.

SEC. 72. The justice shall issue a venire, directed to the sheriff, or any constable of the county where the cause is to be tried, commanding him to summon six (or such number as the parties may have agreed upon,) good and lawful men of the county, qualified to serve as jurors in the district court of the same county, who shall be no wise of kin to either party, nor interested in the action, to appear before said justice, at a time and place to be named therein, to make a jury for the trial of the cause between the parties therein named.

SEC. 73. The sheriff or constable shall execute such venire fairly and impartially, and shall not summon any person whom he has reason to believe is biased or prejudiced for or against either of the parties. He shall summon the jurors personally, and shall make a list of the persons, which he shall certify and annex to the venire, and return to the justice. If a sufficient number of competent jurors cannot be obtained from the

panel returned, the sheriff or constable shall immediately summon others to serve in their place.

SEC. 74. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual jurors, and shall be peremptory, or for cause. Each party shall be entitled to two peremptory challenges.

SEC. 75. Challenges for cause may be taken on any ground that would be a good cause of challenge on the trial of an action in the district court. Challenges for cause shall be tried by the justice.

SEC. 76. When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause.

SEC. 77. When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket.

SEC. 78. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment, on the evidence before him, or upon such other evidence as they may produce.

SEC. 79. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine, not exceeding ten dollars.

CHAPTER IX.

OF JUDGMENT.

SEC. 80. When judgment dismissing the action, without prejudice, may be entered.
81. When judgment shall be given upon failure of defendant to appear.
82. If a jury be not demanded, justice to hear and determine the cause.
83. Judgment when to be rendered.
84. Effect of defendant's offering, before trial, to allow judgment for a specified sum to be taken against him.
85. Costs, disposition of.

SEC. 80. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

1st. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2d. When he fails to appear at the time specified in the summons, upon continuance, or within one hour thereafter.

3d. When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county; but if the objection be

taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal.

SEC. 81. When the defendant fails to appear and answer at the time specified in the summons, or within one hour thereafter, judgment shall be given as follows:

1st. When the defendant has been served with a copy of the complaint, judgment shall be given without further evidence for the sum specified in the summons.

2d. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceeding the amount specified in the summons.

SEC. 82. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly.

SEC. 83. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases, it shall be entered within three days after the close of the trial.

SEC. 84. If the defendant, at any time before the trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer, before trial, and fail to recover in the action a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided.

SEC. 85. When the prevailing party is entitled to costs, by this act, the justice shall add their amount to the judgment; or, in case of the failure of the plaintiff to recover, or in case of a dismissal of the action, he shall enter up judgment in favor of the defendant for the amount of such costs.

CHAPTER X.

STAY OF EXECUTION AND FILING OF TRANSCRIPTS.

SEC. 86. Execution, how long it may be stayed.
87. In what manner it may be stayed.
Bond to be given.
88. Form of bond.
89. At the expiration of the stay, how execution to be satisfied.
90. Bail may have judgment against defendant, when,
91. If a judgment be stayed, justice to be revoke execution, in same manner as on an appeal.

SEC. 86. The execution upon a judgment by a justice of the peace, may be stayed in the manner hereinafter provided, upon reasonable notice the opposite party, and for the following periods of time, to be calculated from the date of the judgments:

1st—If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month.

2d—If it be for more than twenty-five dollars, two months.

SEC. 87. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after endering of the judgment, enter into a bond before the justice, to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment, at the expiration of the stay.

SEC. 88. Such bond shall be signed by the person entering into the same, and may be in the following form:

Whereas, A. B. has obtained a judgment before J. P., one of the justices of the peace in and for ———— county, on the ——— day of ————, 18—, against C. D., for ——— dollars. Now, therefore, I, E. F., acknowledge myself bound to A. B., in the sum of ——— dollars; this bond to be void, if such judgment shall be paid at the expiration of ———— month after the time it was rendered.

Dated the —— day of ———, 18—.

E. F.

SEC. 89. If at the expiration of such stay the judgment be not paid, the execution shall issue against both the principal and bail. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money, collected by him on the execution, was collected from the bail, and the time when the same was received.

SEC. 90. After the return of such execution, the bail shall be en-

titled, on application to the justice, to have the judgment, or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his use; and he may collect the same from the defendant by execution, together with interest at the rate of twelve per cent. per annum.

SEC. 91. If a judgment be stayed, in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with like effect, as he is hereinafter directed to revoke an execution, after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody.

CHAPTER XI.

SETTING OFF JUDGMENTS.

SEC. 92. When mutual judgments may be set-off againts each other.
93. Method of proceeding where the judgment proposed as a set-off was rendered before another justice.
94. Action of justice after allowance or disallowance.

SEC. 92. If there be mutual justice's judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, one may be set-off against the other, by the justice before whom the judgment, against which the set-off is proposed, may be.

SEC. 93. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off, shall produce before the justice a transcript of such judgment, upon which there is a certificate of the justice before whom such may be, that it is unsatisfied in whole or in part; and that there is no appeal; and that such transcript was obtained for the purpose of being set-off against the judgment to which it is offered as a set-off. The justice granting such transcript, shall make an enty thereof, on his docket, and all further proceedings on such judgment shall be stayed, unless such transcript be returned with the proper justice's certificate thereon, that it has not been allowed in set-off.

SEC. 94. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgdment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such tran-

script as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

CHAPTER XII.

OF EXECUTIONS AND PROCEEDINGS THEREON.

SEC. 95. Execution issued on the application of the party, entitled to the same. Exception.
96. Judgment rendered by a justice not satisfied during his continuance in office, his successor to issue execution.
97. Execution unsatisfied in one county, transcript to be sent to justice of another county, who shall issue execution.
98. Execution, to whom directed, when dated and when returnable. To be against goods and chattels.
99. Before delivery of execution, certain entries to be made in docket and on execution.
100. In case execution be not satisfied, it may be renewed.
101. Notice of sale, by whom, and how to be given. What to contain.
102. Goods and chattels to be sold at public sale to highest bidder. Return of execution.
103. Officer not to be a purchaser at such sale.
104. When execution may be issued against the person of defendant.
105. When garnishees may be summoned.
106. Justice may issue execution against prevailing party for fees and costs; when.
107. Method of proceeding upon adverse claim to property levied on.
108. Construction of the last two sections.

SEC. 95. Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, in the manner hereinafter prescribed; but after the lapse of five years form the date of the judgment, no execution shall issue except by leave of the justice before whom such judgment may be, upon reasonable notice to the defendant.

SEC. 96. When any judgdment shall have been rendered by any justice of the peace, and the same shall not be satisfied, during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered, shall issue execution upon such unsatisfied judgment in the same manner, and with like effect, as if he himself had rendered the judgment.

SEC. 96. If the defendant have not goods and chattels in the county in which judgment was rendered, sufficient ts satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certificate transcript of the same, which may

be delivered to a justice in any other country, who shall make an entry thereof in his docket, and issue execution thereon, for the amount of the judgment, or such part as shall be unsatisfied, with costs as in other cases.

SEC. 98. The execution shall be directed (except when it is otherwise specially provided,) to the sheriff or any constable of the county where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and it shall be against the goods and chattels of the person against whom the same is issued.

SEC. 99. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall endorse thereon the the time of the reception of the same.

SEC. 100. If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice who issues the same, or the justice to whom his docket is transferred, by an endosement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on the execution. Every such endorsement shall renew the execution in full force in all respects for thirty days, and no longer; and an entry of such renewal shall be made in the docket of the justice.

SEC. 101. The officer, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county, of the time and place, when and where they will be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

SEC. 102. At the time and place so appointed, if the goods and chattels be present for inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

SEC. 103. No officer shall directly, or indirectly, purchase any goods or chattels at any sale made by him upon execution, and every such purchase shall be absolutely void.

SEC. 104. If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued after the return of an execution against his property unsatisfied in whole or in part. An execution against the person

may likewise be issued after such return, where the defendant has been arrested upon a warrant and not discharged according to law.

SEC. 105. If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall, on demand of the plaintiff, summon in writing as garnishees, such persons as may be named to by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees, and the like proceeding shall be had thereon, before the justice to final judgment, as in proceedings by attachment.

SEC. 106. Any justice of the peace may issue an execution against the prevailing party to collect fees and costs for which such party may be liable, after an execution has been first issued against the other party, and returned "no property found."

SEC. 107. If any property levied on, be claimed by any person other than the defendant in the execution, the sheriff or constable shall summon from his county, six persons qualified as jurors between the parties to try the validity of the claim; such officer shall also give reasonable notice of the claim, and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses of the parties shall be sworn by the officer, and if their verdict be in favor of the claimant, the officer may relinquish the levy unless the plaintiff give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff or constable and the witnesses shall be the same as for similar services in a justice's court, and shall be paid by the claimant if the verdict be against him, otherwise by the plaintiff. On the trial, the defendant and the claimant may be examined as witnesses by the plaintiff.

SEC. 108. Nothing contained in the last two sections shall be so construed as to prevent the claimant of property levied on by execution from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed.

CHAPTER XIII.

OF REPLEVIN.

SEC. 109. Plaintiff may claim delivery of property, when.
110. Affidavit to be made by plaintiff.
Its contents.
111. Justice to order the delivery.
Order to be endorsed on the affidavit.
Bond to be given.

SEC. 112. On receipt of order, affidavit and bond, sheriff to take the property. Copies to be served on the defendant.
113. Defendant may except to the sureties.
114. Defendant may require the return of the property upon giving a proper bond.
115. Defendent's sureties to justify. Officer responsible until their justification, &c.
116. Action of the officer in case the property is concealed.
117. Disposition of the property.
118. Method of proceeding in case of adverse claim to the property.
119. Officer to make return of affidavit, &c., to the justice, when.

SEC. 109. The plaintiff in an action to recover the possession of personal property may at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property as provided in this act.

SEC. 110. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing

1st—That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth;

2d—That the property is wrongfully detained by the defendant;

3d—The alleged cause of the detention thereof, according to his best knowledge, information and belief;

4th—That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure, and

5th—The actual value of the property.

SEC. 111. The justice shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff or any constable of the county, to take the same from the defendant and deliver it to the plaintiff upon receiving a proper bond.

SEC. 112. Upon the receipt of the affidavit and order with a bond, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect, that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property of the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order and bond, by deliver-

ing the same to him personally, if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual abode of either within the county, with some person of suitable age and discretion; or if neither have any known place of abode in the county, putting them into the post office, directed to the defendant at the post office nearest to him.

SEC. 113. The defendant may within two days after the service of a copy of the affidavit, order and bond, give notice to the officer that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they justify, or new sureties be substituted, and they justify. If the defendant except to the sureties, he cannot re-claim the property as provided in the next section.

SEC. 114. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the officer a bond executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this act.

SEC. 115. The defendant's sureties, upon one day's notice to the plaintiff, or his attorney, shall justify before the justice, and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is complete, or expressly waived, and may retain the property until that time, but if they, or others in their place, fail to justify at the time appointed, he sall deliver the property to the plaintiff.

SEC. 116. If the property, or any part thereof, be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession.

SEC. 117. When the officer shall have taken property as in this act provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 118. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by a bond executed by two sufficient sureties accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent, shall be valid against the officer unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 119. The officer shall return the order and affidavit with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

CHAPTER XIV.

FORCIBLE ENTRY AND DETAINER.

SEC. 120. Entry into lands, in what cases and how to be made.
121. Person entitled to the premises to be restored to the possession.
122. Complaint in writing to be made to a justice of the peace.
123. Justice to issue summons.
124. How summons shall be served.
125. Jury to be summoned.
126. Sufficient jurors not attending, &c., justice may order others to be summoned.
127. Plaintiff failing to attend, to be non-suited.
128. Defendant failing to appear, case may be tried ex parte, or continued.
129. If defendant appear to file his answer in writing, setting forth his defense.
130. Mode of trial, and proof required on the part of the plaintiff.
131. Proceeedings on finding the defendant guilty.
132. Verdict to be in writing; form of.
133. Proceedings in case of verdict of "not guilty."
134. New trial may be granted, when.
135. Title shall in no issue be inquired into.
136. One year's quiet possession may be pleaded in bar, when.
137. Person entitled to any premises, may recover possession in certain specified cases.
138. Upon complaint for any of the causes mentioned in the last section, jury not necessary, unless demanded.
139. In action for recovery of premises, demised or let, for neglect or refusal to pay rent, defendant may, before judgment, pay the amount due, with interest and costs.

SEC. 140. Justice to have power to continue, as in other cases.
141. Nothing in this act to bar or prevent the party injured from bringing his action to recover possession of the premises, or damages for trespass, or injury committed.

SEC. 220 No person shall make entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases, he shall not enter with force, but only in a peaceable manner.

SEC. 121. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person entitled to the premises may be restored to the possession thereof, in the manner hereinafter provided.

SEC. 122. The person entitled to the possession of the premises may make complaint in writing, on oath, to a justice of the peace of the county in which the premises are situated, setting forth that the person complained of is in possession of the lands or tenements in question—describing them; and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be, and the time when.

SEC. 123. Upon receiving such a complaint, the justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the justice, on a day in such summons named.

SEC. 124. The summons shall be served by the officer as in other caseses, and at the same time; a copy of the complaint shall, in like manner, be served on the defendant. The officer shall, in his return, state the time and manner of such service.

SEC. 125. The justice shall, at the time of issuing the summons, issue a venire to the sheriff or constable, commanding him to summon six good and lawful men, qualified to serve as jurors, to appear at the time and place appointed for the trial of the complaint, to be a jury in the case. Such venire shall be returned on or before the day appointed for the trial; and the officer shall endorse thereon the list of the jurors summoned.

SEC. 126. If a sufficient number of jurors do not attend, or attending, are set aside by challenging peremptorily, or for cause, the justice may order the sheriff or constable to complete the number, by summoning other jurors.

SEC. 127. If the plaintiff fail to attend at the time appointed for hearing the complaint, in person, by agent, or attorney, and prosecute his action, he shall be non-suited, and the defendant shall recover his costs.

SEC. 128. If the defendant fail to appear at the time appointed for

hearing the complaint, the justice may proceed ex parte, or continue the cause, at his discretion; but he shall not continue it for a longer time than ten days, nor to any other place than that named in the summons, for the hearing of the cause.

SEC. 129. If the defendant appear, he shall, before the trial, file his answer in writing, and under oath, in which he shall set forth his defense.

SEC. 130. The jury shall consist of six persons, unless the parties agree on a less number; and when duly empaneled and sworn, the justice shall cause the complaint to be read to them, and then call on the plaintiff to support the same by proof; but the plaintiff shall not be required to make further proof of the forcible entry and detainer, than that he was lawfully possessed of the premises, and that the defendant unlawfully entered and detains the same.

SEC. 131. If the jury on the trial find the defendant guilty, the justice shall record the verdict, and give judgment thereon, with costs, and also issue a writ of restitution, directed to the sheriff or constable, to cause the plaintiff to be repossessed of the premises, to which shall be added a clause commanding the officer to levy the costs of the goods and chattels of the defendant.

SEC. 132. The verdict of the jury shall be in writing, and shall be in the form, or to the effect following:

"We, the jury, find the defendant guilty," or, if in favor of the defendant, "not guilty, of said forcible entry and detainer, in manner and form as the plaintiff in his complaint hath alleged;" or the jury may find the defendant guilty as to part, and not guilty as to the balance of the charge, as laid in the plaintiff's complaint; if so, they shall state it specially in their verdict.

SEC. 133. When the jury find a verdict of "not guilty," generally, for the defendant, the verdict shall be so recorded, and the justice shall enter judgment against the plaintiff for costs, and issue execution therefor against his goods and chattels.

SEC. 134. In all cases of forcible entry and detainer, the justice shall have power to grant a new trial, if the same be applied for on the day the verdict is rendered, and good cause be shown, on affidavit, therefor, which shall be within ten days after granting the same, but not more than one new trial shall be granted to either party.

SEC. 135. The title shall in no issue be inquired into, on any complaint for a forcible entry or detainer.

SEC. 136. One year's quiet possession of the premises, immediately preceding the filing of the complaint, by the party complained of, or those

under whom he holds, may be pleaded by any defendant, in bar of the plaintiff's demand of possession, unless his estate therein be ended.

SEC. 137. The person entitled to any premises, may recover possession thereof in the manner hereinbefore provided, in the following cases:

1st—When any person shall hold over any lands or tenements after the time for which they are demised or let to him, or to the person under whom he holds, or contrary to the conditions or covenants of any lease or agreement under which he holds.

2d—When any rent shall have become due on any such lease or agreement, and the tenant or person in possession shall have neglected or refused, for ten days after demand of the possession, made in writing, to deliver up possession of the premises, or to pay the rent so due.

3d—When any person shall continue in possession of any premises, sold by virtue of any mortgage or execution, after the sheriff's deed therefor shall have been recorded.

4th—When any tenant, at will or by sufferance, shall hold over after the determiuation of his estate, by a notice to quit, as provided by law.

SEC. 138. When the plaintiff shall file a complaint for an unlawful detainer, for any one of the causes mentioned in the last section, it shall not be necessary for the justice to issue a venire for a jury, at the time of issuing the summons; but the justice shall, at the time of trial, proceed to hear and determine the complaint, unless either party shall call for a trial by jury, in which case the justice shall issue a venire, in the same manner, and the same proceedings shall thereupon be had as in cases of forcible entry and detainer.

SEC. 139. When the action shall be brought to recover the possession of premises demised or let, for the reason that the tenant or person in possession has refused or neglected to pay the rent due, it shall be lawful for the defendant, at any time before judgment, to pay to the justice, for plaintiff, the rent then in arrear, with interest, and the costs of the action, and thereupon no writ of restitution shall be awarded.

SEC. 140. The justice shall have the same power to continue actions for forcible entry and detainer, as in other cases.

SEC. 141. Neither the judgment, nor anything contained in this act, shall bar or prevent the party injured from bringing an action to recover the possession of the premises, or to recover damages for the trespass or injury committed against the aggressor, or party offending.

CHAPTER XV.

ACTION TO RECOVER POSSESSION OF A MINING CLAIM.

SEC. 142. By whom, and in what manner, complaint to be made.
143. Mode of proceeding.
144. Proof of usages, customs, &c., may be admitted--shall govern decisions, when.

SEC. 142. Any person claiming the right to the occupancy and possession of a mining claim, withheld by another, may make complaint in writing, and on oath, to a justice of the peace of the county in which the mining claim is situated, setting forth the facts constituting his right to such possession and occupancy, and such a description of the mining claim as can conveniently be given, and that the defendant wrongfully withholds the possession from him.

SEC. 143. Upon filing such complaint, the same proceeding shall be had before the justice as in actions for a forcible entry and detainer, and if judgment be rendered for the plaintiff, a writ of restitution may in like manner be issued, to place the plaintiff in possession of such mining claim.

SEC. 144. In an action to recover possession of a mining claim, proof shall be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such usages, customs, and regulations, when not in conflict with the laws of the United States or of this territory, shall govern the decision of the action.

CHAPTER XVI.

OF PROCEEDINGS FOR CONTEMPT BEFORE JUSTICES OF THE PEACE.

SEC. 145. Justice may punish for contempt in certain cases.
146. Contempt, how punished.
147. Person to have an opportunity to be heard.
148. If the offender be present he may be summarily arraigned.
149. Form of warrant for contempt.
150. Proceedings in case of conviction.
Form of judgment.
151. Mode of enforcing judgment.

SEC. 145. In the following cases, and no others, a justice of the peace may punish for contempt:

1st. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings which tend to interrupt such proceedings, or impair the respect due to his authority.

2d. Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice.

3d. Persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

SEC. 146. Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding two days, at the discretion of the justice, unless otherwise provided by statute.

SEC. 147. No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defense; and for that purpose the justice may issue his warrant to bring the offender before him.

SEC. 148. If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

SEC. 149. The warrant for contempt may be in the following form:

Territory of Washington, } ss.
County of ——— }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to apprehend A. B., and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt alleged to have been committed on the ——— day of ——— A. D., 18—, before the said justice, while engaged as a justice of the peace in judicial proceeding.

Dated this ——— day of ———, A. D., 18—. J. P.,
Justice of the Peace.

SEC. 150. Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offense, and the judgment rendered thereon, and may be in the following form:

Territory of Washington, } ss.
County of ——— }

Whereas, on the ——— day of ———, A. D., 18—, while the undersigned, one of the justices of the peace of the said county, was engaged in the trial of an action between C. D., plaintiff, and E. F., defendant, in said county, A. B., of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly:) And whereas, the said A. B. was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof. And whereas, the

said A. B. did not show cause against the said charge—be it therefore ordered, that the said A. B. is adjudged to be guilty, and is convicted of the contempt aforesaid, and is adjudged by the undersigned to pay a fine of ——— dollars, (or be imprisoned, &c.)

Dated this —— day of ———, A. D., 18—. J. P.,
Justice of the Peace.

SEC. 151. If any person, convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice. If he be adjudged to pay a fine, process may be issued to collect the same; and when so collected, it shall forthwith be paid by the justice into the county treasury.

CHAPTER XVII.

CERTIORARI AND PROCEEDINGS THEREON.

SEC. 152. Any person conceiving himself injured by any error in any process, proceeding, &c., may remove the same to the district court.
153. When and in what manne; a *certiorari* can be obtained.
154. How served.
155. Justice to make a special return of all the facts and proceedings.
156. Justice may be compelled to make or amend such return.
157. When the case may be brought to argument.
158. Judgment of the district court, how given.
159. Proceedings in case of a reversal of a judgment which had been collected.

SEC. 152. If any person shall conceive himself injured by error in any process, proceeding or judgment, or order given by any justice of the peace within this territory, it shall be lawful for such person to remove such process, proceeding, judgment or order, to the district court as hereinafter provided.

SEC. 153. Within twenty days after the rendition of the judgment, or if the error be committed after judgment, then within twenty days after such error was committed, the party applying for such certiorari, his agent, or attorney, shall file in the office of the clerk of the district court for the proper county, an affidavit, stating that in his belief there is reasonable cause for granting such certiorari, for error in such judgment or proceeding, (setting forth the ground of error alleged,) and that the application is made in good faith, and not for the purpose of delay, and further shall execute a bond to the adverse party, with one or more sureties, to be approved by the clerk in double the amount of the judgment and costs rendered before the justice, to the effect that the party applying will prosecute the writ of certiorari to final judgment, and abide any order the court may make therein.

SEC. 154. The writ of certiorari shall be served on the justice within ten days after it has been issued; and if a bond be executed in pursuance of the last section, and a certificate of the clerk to that effect be served on the justice, all further proceedings in law in such case shall cease; and if the execution shall have issued on such judgment, the justice shall immediatelp recall the same.

SEC. 155. Upon the service of a writ of certiorari to reverse a judgment, it shall be the duty of the party serving the same, to deliver at the same time to the justice, a copy of the affidavit on which the certiorari was procured, and the justice shall make a special return as to all the facts contained in such affidavit, and of the proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court, within ten days after the service of the writ, together with all the papers in the action; and he shall also certify the time when the writ was served upon him.

SEC. 156. The district court shall have power to compel such justice to make or amend such return by rule, attachment or mandamus, as the case may require.

SEC. 157. When the writ of certiorari and return shall be filed with the clerk, the case may be brought on to argument before the district court at any time thereafter, according to the statutes relating thereto.

SEC. 158. The district court shall, after hearing the case, give judgment as the right of the matter may appear, without regarding technical omissions, imperfections or defects in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part, and issue execution as upon other judgments rendered before said court.

SEC. 159. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, such court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue therefor.

CHAPTER XVIII.

OF APPEALS TO THE DISTRICT COURT.

SEC. 160. Who may appeal.
161. When and how appeal shall be taken.
162. No appeal allowed unless a bond shall be executed.
163. In case of appeal from a judgment for the delivery of the possession of premises, a writ of restitution to be issued unless appellant executes a bond.
164. Appeal being allowed, all further proceedings before justice to be suspended.

SEC. 165. Property taken on execution to be released, and defendant discharged from imprisonment.
166. When and in what manner the district court becomes possessed of the cause.
167. Issue to be tried on the same pleadings unless otherwise directed.
168. District court may compel the justice to make a transcript of the proceedings, and amend such transcript, when defective, &c.
169. Appeal not to be dismissed on account of a defective bond, when.
170. Judgment against appellant, how rendered.

SEC. 160. Any person considering himself aggrieved by any judgment or decision of a justice of the peace, may, in person or by his agent, appeal therefrom to the district court of the same county where the judgment was rendered, or the decision made.

SEC. 161. Such appeal shall be taken within twenty days after the judgment is rendered, or the decision made, and shall be by filing a notice of appeal with the justice, and serving a copy thereof on the adverse party or his attorney.

SEC. 162. No appeal shall be allowed in any case, unless a bond shall be executed on part of the appellant by one or more sureties in the sum of one hundred dollars, to the effect that the appellant will pay all costs which may be awarded against him on the appeal, or if a stay of proceeding before the justice be claimed, a bond with two or more sureties in a sum equal to twice the amount of the judgment, to the effect that the appellant will pay the costs and judgment, provided the sum appealed from be affirmed, or if affirmed only in part, then to the extent in which it may be affirmed.

SEC. 163. If the judgment appealed from direct the delivery of the possession of premises in an action of forcible entry and detainer, or of a mining claim, a writ of restitution may be issued and executed unless a bond be entered into on the part of the appellant with two or more sureties to the effect that during the possession of such premises or mining claim by the appellant, he will not commit, nor suffer to be committed, any waste, destruction, or injury thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the premises or mining claim, from the time of the appeal until the delivery of possession thereof, and all costs of the appeal. The amount of such bond shall be fixed by the justice before whom the action was tried.

SEC. 164. Upon appeal being made, and a bond filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if, in the meantime, execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed.

SEC. 165. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution; and if the body of the defendant have been taken on execution, he shall be discharged from imprisonment.

SEC. 166. On or before the first day of the term of the district court, next after the appeal has been taken, the appellant shall furnish the district court with a transcript of all the entries made in the justice's docket relating to the case, together with all the process and other papers relating to the action, and filed with the justice, which shall be certified by such justice to be correct, and upon the filing of such transcript the district court shall become possessed of the cause, and shall proceed in the same manner as near as may be, as in actions originally commenced in that court, except as herein otherwise provided.

SEC. 167. The issue before the justice shall be tried in the district court without other or new pleadings, unless otherwise directed by the court.

SEC. 168. Upon an appeal being made and allowed, the district court may by rule and attachment compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may by rule and attachment compel him to amend the same.

SEC. 169. No appeal allowed by a justice shall be dismissed on account of the bond being defective, if the appellant will, before the motion is determined, execute and file in the district court such a bond as he should have executed by the allowance of the appeal, and pay all costs that shall be incurred by reason of such defect.

SEC. 170. In all cases of appeal to the district court, if on the trial anew in such court the judgment be against the appellant, in whole or in part, such judgment shall be rendered against him, and his sureties in the bond for the appeal.

CHAPTER XIX.

FORMS IN CIVIL ACTIONS IN JUSTICE'S COURT.

The following or equivalent forms may be used by justices of the peace, in civil actions and proceedings under this chapter, to wit:

Territory of Washington, }
County of ————, }

To any sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to

summons C. D., if he be found in your county, to be and appear before the undersigned, a justice of the peace in and for said county, on the —— day of ———, 18—, at —— o'clock in the —— noon, at his office in ———, to answer to A. B., in a civil action, and have you then and there this writ.

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

J. P.,
Justice of the peace.

FORM OF A WARRANT.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to take the body of C. D., if he be found in your county, and bring him forthwith before the undersigned, one of the justices of the peace in and for said county, at his office in———, to answer A. B., in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff, his agent or attoruey; and have you then and there this writ.

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

J. P.,
Justice of the peace.

FORM OF SUBPŒNA.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, on the —— day of ———, 18—, at — o'clock in the ——noon, at his office in ———, to give evidence in a certain cause, then and there to be tried, between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff, (or defendant, as the case may be.)

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

J. P.,
Justice of the peace.

FORM OF AN EXECUTION.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C. D. for the sum of ——— dollars, and

for —— dollars, costs of suit, was recovered on the —— day of ———, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A. B. These are, therefore, in the name of the United States, to command you to levy on the goods and chattels of the said C. D., (excepting such as the law exempts,) and make sale thereof according to law, to the amount of the said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A. B. for his debt, interest and costs.

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

J. P.,
Justice of the peace.

FORM OF A VENIRE FOR A JURY.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to summon six good and faithful men of your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the ——— day of ——— 18—, at —— o'clock in the ——noon of said day, at his office in ———, to make a jury for the trial of a civil action, between A. B., plaintiff, and C. D., defendant; and have you then and there this writ.

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

J. P.,
Justice of the peace.

FORM OF EXECUTION AGAINST THE BODY.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C. D., for the sum of ——— dollars, and for —— dollars, costs of suit, was recovered on the —— day of ———, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A. B., and an execution against his property returned unsatisfied; these are, therefore, in the name of the United States, to command you to take the body of the said C. D., and him convey and deliver to the keeper of the jail of said county, who is hereby commanded to receive and keep the said C. D. in safe custody in prison, until the aforesaid sum, and all legal expenses be paid and satisfied, or

until he be discharged therefrom by due course of law; and of this writ make due return within thirty days.

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

J. P.,
Justice of the peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION.

Territory of Washington, } ss.
County of ———, }

To the sheriff or any constable of said county:

Whereas, judgment against C. D., for the sum of ——— dollars, and for —— dollars, costs of suit, was recovered on the —— day of ———, 18—, before the undersigned, one of the justices of the peace, at the suit of A. B. And whereas, on the ——— day of ———, 18—, E. F. became surety to pay said judgment and costs, in —— month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C. D. and E. F. have failed. These are, therefore, in the name, &c., (as in the common form.)

FORM OF ORDER IN REPLEVIN.

Territory of Washington, } ss.
County of ———, }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless, before such delivery, the defendant enter into a sufficient undertaking, for the delivery thereof to the plaintiff, if delivery be adjudged.

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

J. P.,
Justice of the peace.

FORM OF A WRIT OF ATTACHMENT.

Territory of Washington, } ss.
County of ———, }

To the sheriff or any constable of said county:

In the name of the United States, you are commanded to attach, and safely keep, the goods and chattels, moneys, effects, and credits of C. D., (excepting such as the law exempts,) or so much thereof as shall satisfy the sum of —— dollars, with interest and cost of suit, in whosoever

hands or possession the same may be found in your county, and to provide that the goods and chattels so attached may be subject to further proceedings thereon, as the law requires; and of this writ make legal service and due return.

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

J. P.
Justice of the peace.

FORM OF SUMMONS IN FORCIBLE ENTRY AND DETAINER.

Territory of Washington, } ss.
County of ———, }

To the sheriff or [any] constable of said county:

Whereas, A. B., of ———, hath exhibited unto the undersigned, one of the justices of the peace in and for said county, a complaint against C. D., for a forcible entry and detainer of the following premises, to-wit:— hereby commanded to summons the said C. D., if he be found in your county, to appear before the undersigned, on the ——day of ———, 18—, at —— o'clock in the ——noon, at his office in ———, then and there to make answer to, and defend against the complaint aforesaid. And you are also hereby commanded to serve a copy of the said complaint, on the said C. D., and of this writ make due return, with your doings thereon.

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

J. P.,
Justice of the peace.

FORM OE WRIT OF RESTITUTION IN FORIBLE ENTRY AND DETAINER.

Territory of Washington, } ss.
County of ———, }

To the sheriff or any constable of said county:

Whereas, A. B. did make complaint in writing to the undersigned, a justice of the peace in and for said county, against C. D., of the said county, that he had been guilty of a forcible entry and detainer of a certain tract of land (or other possessions,) of the said A. B.: And whereas, a jury was empaneled and sworn to enquire of said complaint, and did return their verdict, that the said C. D. was guilty of a forcible entry and detainer of the following described tract of land, to wit:—(here describe the premises of which the defendant is found guilty of forcibly entering and detaining;) And whereas, judgment was entered thereon by said justice, and that the said A. B. should have restitution of the premises; therefore, in the name of the United States, you are hereby commanded to cause the said C. D.

to be removed forthwith from the premises aforesaid, and that the said A. B. have peaceable restitution of the same, and also that you levy of the goods and chattels of C. D., found in your county, the sum of —— dollars, being the amount of costs on the trial aforesaid, together with —— dollars for this writ, and also own your fees, and make return of this writ within thirty days next after the date hereof.

FORM OF UNDERTAKING FOR AN ARREST.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for ——— county, for a warrant to arrest C. D., defendant, founded upon an affidavit of the said plaintiff, setting forth that C. D. (here state the cause for the arrest): Now, therefore, we, A. B. plaintiff, and E. F., acknowledge ourselves bound to C. D., in the sum of —— dollars, to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of —— dollars.

Dated this —— day of ———, 18—.

A. B.
E. F.

FORM OF UNDERTAKING IN REPLEVIN.

Whereas, A. B., plaintiff, has commenced an action before J. P., one of the justices of the peace in and for ——— county, against C. D., defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to wit: (here set forth the property claimed.) Now, therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto C. D. in the sum of ——— dollars, for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the —— day of ———, 18—.

A. B.
E. F.
G. H.

FORM OF UNDERTAKING IN ATTACHMENT.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for ——— county, for a writ of attachment against the personal property of C. D., defendant, (a foreign corporation, a non-resident, or because he has assigned, secreted, &c.):— Now, therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D., in the sum of —— dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be award-

ed to the defendant, and all damages which he may sustain by reason of the said attachment, not exceeding the sum of —— dollars.

Dated the —— day of ———, 18—. A. B.
E. F.

FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT.

Whereas, a writ of attachment has been issued by J. P., one of the justices of the peace in and for ——— county, against the personal property of C. D., defendant, in an action in which A. B. is plaintiff: Now, therefore, we, C. D., defendant, E. F. and G. H., acknowledge ourselves bound unto J. K., constable, in the sum of —— dollars, (double the value of the property,) engaging to deliver the property attached, to wit: (here set forth a list of the articles attached,) or pay the value thereof to the sheriff or constable, to whom execution upon a judgment obtained by the plaintiff in the aforesaid action may be issued.

Dated this —— day of ———, 18—. C. D.
E. F.
G. H.

FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE ON CLAIM OF PROPERTY BY A THIRD PERSON.

Whereas, L. M. claims to be the owner of, and have the right to possession, of certain personal property, to wit: (here describe it,) which has been taken by J. K., constable in ——— county, upon an execution by J. P., justice of the peace in and for the county of ———, upon a judgment obtained by A. B., plaintiff, against C. D., defendant: Now, therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto the said J. K., constable, in the sum of ——— dollars, to indemnify the said J. K. against such claim. A. B.
E. F.
G. H.

CHAPTER XX.

CRIMINAL JURISDICTION.

SEC. 171. Jurisdiction of justices of the peace.
172. To issue warrant on complaint being made.
173. Authority of justice when an offense is committed within his view.
174. Proceedings of justice on return of warrant.
Prisoner or territory may demand a jury.
Finding of the jury.
Defendant may plead guilty.

SEC. 174. No fine assessed or judgment entered without examination of witnesses.
In case of injury to person or property, party injured must be a witness.
175. What witnesses to be summoned.
176. Continuance; on what terms granted.
Judgment on conviction.
Stay of execution.
177. Person convicted may appeal.
Witnesses to recognize, or their names to be endorsed on copy of proceedings.
178. Justice to transmit copy of proceedings to the clerk of the court appealed to.
179. Appellant not required to advance fees on appeal.
If convicted may be required to pay costs of prosecution.
Proceeding on failure to enter and prosecute appeal.
180. Justice at certain dates to pay over to the county treasurer certain moneys.

SEC. 171. The jurisdiction of justices of the peace in criminal prosecutions, shall be co-extensive with their respective counties, and they shall have concurrent jurisdiction with the district court, in affrays, assaults, assaults and battery, violation of estray laws, obstructing of highways and bridges, charging extra tolls at ferries and bridges, neglect of roads by supervisors, public indecency, having obscene books, pamphlets for exhibition or otherwise, forcible entry and detainer, malicious trespass, and on conviction shall have power to fine the person so offending, in any sum not exceeding one hundred dollars.

SEC. 172. Any justice shall, on complaint made on oath in writing before him, charging any person with the commission of any crime or misdemeanor, of which he has jurisdiction, issue a warrant for the arrest of such person, and cause him to be brought forthwith before him for trial.

SEC. 173. Where any offense is committed in view of any justice, he may, by verbal direction to any constable, or if no constable be present, to any citizen, cause such constable or citizen to arrest such offender, and keep him in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant.

SEC. 174. On the return of any warrant issued by him, it shall be the duty of the justice to docket the cause, and unless continuance be granted, forthwith to hear and determine the cause, and either acquit, convict and punish, or hold to bail the offender, if the offense be bailable and prove to be one which should be tried in the district court, or in default of bail, commit him to jail, as the facts and the law may justify.

The prisoner or the territory may demand a jury, which may be empaneled and sworn as in civil cases, or he may be tried by the justice.

Such justice or jury, if they find the prisoner guilty, shall assess his

punishment, or if in their opinion the punishment they are authorized to assess, is not adequate to the offense, they may so find; and in such case, the justice shall order such defendant to enter into recognizance to appear at the next term of the district court, and shall also recognize the witnesses, and proceed as provided by the act regulating criminal proceedings in like cases.

The defendant may plead guilty to any offense charged, but no justice shall assess a fine or enter judgment thereon, until a witness or witnesses have been examined, to state the circumstances of the transaction; and he shall have power either to enter judgment and assess a fine, or order the defendant to enter into recognizance to appear at the next term of the district court; and where the offense charged is an injury to the person or property, the party injured in person or property must be present and examined as a witness, unless prevented by sickness, or beyond the reach of process.

SEC. 175. In all cases arising under this act, it shall be the duty of the justice of the peace to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment, if necessary.

SEC. 176. Continuance may be granted, either on application of the prisoner, or the prosecuting attorney, or prosecuting witness, under the same rules as in civil cases; the costs of such continuance shall abide the event of the prosecution in all cases, and the justice shall recognize the defendant and the witnesses to appear from time to time, in the same manner as is provided in other criminal examinations before him.

In all cases of conviction, under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him to jail until the judgment is satisfied, or the payment thereof be secured, and further proceedings therein shall be had as in like cases in the district court.

Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties to be approved by the justice to enter into recognizance before him for the payment of the fine and costs, the entry of such recognizance shall be made on the docket of the justice, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the justice shall proceed as in like cases in the district court.

SEC. 177. Every person convicted before a justice of the peace of any offense, may appeal from the sentence within ten days thereafter, to the district court then next to be held in the same county, and such appellant shall be committed to abide the sentence of said justice, until he shall recognize to the territory in such reasonable sum, with such sureties

as said justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal, and abide the sentence of the court thereon, and in the meantime to keep the peace, and be of good behavior. The justice shall also recognize the wituessces, or if they are not present, eudorse their names on the copy of proceedings.

SEC. 178. The justice on such appeal shall make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance and an abstract bill of the costs, to the clerk of the court appealed to, who shall issue a subpœna for the witnesses, if they are not under recognizance.

SEC. 179. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same, but if convicted in the district court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of the sentence, to pay the costs of the prosecution. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and district court may award sentence against him for the offense whereof he was convicted, in like manner as if he had been convicted thereof in that court, and if he be not then in custody, process may be issued to bring him into court to receive sentence.

SEC. 180. It shall be the duty of every justice, on the first Mondays in January and July in each year, and on going out of office, to pay over to the treasurer of his county, all money he may have received on account of fines, and all fees which may have remained unclaimed in his hands for twelve months, and he shall at the same time deliver to such treasurer a statement in writing, showing by items the sources from which such money was derived, and shall append thereto an affidavit, that he has received no other money for fines, not before paid over to such treasurer, and has no other fees unclaimed for twelve months, in his hands; and the treasurer's receipt therefor, he shall file with the auditor, who shall give him a quietus.

CHAPTER XXI.

FORMS OF PROCEEDINGS IN CRIMINAL CASES.

SEC. 181. The following, or equivalent forms, may be used by justices of the peace in criminal proceedings under this act:

FORM OF WARRANT.

Territory of Washington, }
County of ———, } ss.

To the sheriff or constable of said county:

Whereas, A. B. has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that on the —— day of ———, 18—, at ———, in said county, (here insert the substance of the complaint, whatever it may be.) Therefore, in the name of the United States, you are commanded forthwith to apprehend the said C. D., and bring him before me, to be dealt with according to law.

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

J. P.,
Justice of the peace.

FORM OF SEARCH WARRANT.

Territory of Washington, }
County of ———, } ss.

To the sheriff or constable of said county:

Whereas, A. B. has this day made complaint on oath to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels, to-wit: (here describe them,) the property of the said A. B. have within —— days past, or were on the —— day of ———, by some person or persons unknown, been stolen, taken and carried away out of the possession of the said A. B., in the county aforesaid; and also that the said A. B. verily believes that the said goods or a part thereof, are concealed in or about the house of C. D., in said county, (describing the premises to be searched.) Therefore, in the name of the United States, you are commanded that with the necessary and proper assistance, you enter into the said house, (describe the premises to be searched) and then diligently search for the said goods and chattels; and if the same, or any part thereof, be found on such search, bring the same and also the said C. D. forthwith before me, to be disposed of according to law.

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

J. P.,
Justice of the peace.

FORM OF COMMITMENT WHERE JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION OF THE CASE.

Territory of Washington, }
County of ———, } ss.

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

Whereas, C. D. of, &c., has been brought this day before the undersigned, one of the justices of the peace in and for said county, charged on the oath of A. B., with having on the —— day of ———, 18—, in said county, committed the offense of, (here state the offense charged in the warrant,) and in the progress of the trial of said charge, it appearing to the said justice that the said C. D. has been guilty of the offense of, (here state the new offense found on the trial) committed at the time and place aforesaid; and whereas, the said C. D. has failed to give bail in the sum of —— dollars, for his appearance to answer at the next term of the district court, as required by me; therefore, in the name of the United States, &c., (as in the last form) to receive the said C. D. into your custody in the said jail, and him there safely keep until he be discharged by due course of law.

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

J. P.,
Justice of the peace.

FORM OF COMMITMENT TO ANSWER IN THE DISTRICT COURT.

Territory of Washington, }
County of ———, } ss.

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

Whereas, on the —— day of ———, 18—, A. B. made complaint in writing and on oath before the undersigned, one of the justices of the peace in and for said county, charging C. D. with having on the —— day of ———, 18—, committed the crime of larceny (or other crime as the case may be,) and the said C. D. having been brought before and examined by me, and it being sufficiently proved to me that the said C. D. has in said county, committed the crime of larceny (or other crime) by stealing one bay horse of the value of ——— dollars, of the goods and chattels of the said A. B., and he the said C. D., having failed to give bail for his appearance to answer at the next term of the district court in the sum of ——— dollars, as required by me; therefore, in the name of the United States, you, the said constable, are commanded forthwith to convey and deliver the said C. D. to the said keeper, and you the said keeper are hereby commanded.

FORM OF WARRANT TO KEEP THE PEACE.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

Whereas, A. B. has this day complained in writing and under oath,

to the undersigned, one of the justices of the peace in and for said county, that he has just cause to fear, and does fear that C. D., late of said county, will, (here state the threatened injury or violence, as sworn to.) Therefore, in the name of the United States, you are commanded to apprehend the said C. D., and bring him forthwith before me, to show cause why he should not give surety to keep the peace and be of good behavior towards all the people of this territory, and the said A. B. especially, and further to be dealt with according to law.

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

J. P.,
Justice of the peace.

FORM OF COMMITMENT UPON SENTENCE.

Territory of Washington, }
County of ———, } ss.

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

Whereas, at a justice's court held at my office in said county, for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having, on the —— day of ———, 18—, in said county, committed, (here state the offense) and upon conviction, the said court did adjudge and determine that the said C. D. should be imprisoned in the common county jail of said county, for —— days; therefore, you, the said constable, are commanded in the name of the United States, forthwith to convey and deliver the said C. D. to the said keeper; and you, the said keeper, are hereby commanded to receive the said C. D. into your custody in the said jail, and him there safely keep until the expiration of said —— days, or until he shall thence be discharged by due course of law.

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

J. P.,
Justice of the peace.

FORM OF CERTIFICATE OF CONVICTION.

Territory of Washington, }
County of ———, } ss.

At a justice's court, held at my office in said county before me, one of the justices of the peace, in and for said county, for the trial of C. D., for the offense hereinafter stated, the said C. D. was convicted of having on the —— day of ———, 18—, at ———, in said county of ———, (here insert the offense,) and upon conviction the said court did adjudge

and determine that the said C. D. should pay a fine of —— dollars, (or be imprisoned as the case may be,) and the said fine has been paid to me.

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

J. P.,
Justice of the peace.

FORM OF AN EXECUTION.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

Whereas, at a justice's court held at my office in said county for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having on the —— day of ———, 18—, in said county, committed, (here state the offense,) and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of —— dollars, and —— dollars costs; and whereas the said fine and costs have not been paid; these are therefore, in the name of the United States, to command you to levy on the goods and chattels, &c., as in execution in civil cases.

Passed January 31, 1860.

AN ACT

RELATING TO LIENS OF MECHANICS AND OTHERS, FOR LABOR AND MATERIALS.

SEC. 1. Labor done or materials furnished, a lien on the property.
2. Notice of lien to be filed and recorded in auditor's office within sixty days.
3. Sub-contractor or journeyman may have a lien.
4. How a lien may be enforced.
5. Trial of liens.
Judgment and sale of the property.
When property may be removed by purchaser.
Several actions may be consolidated.
6. Pro rata division of the proceeds may be made.
7. Bond may be filed to release property, by defendant.
8. Satisfaction of demand to be entered.
Penalty for failure.
9. Sub-contractor's lien may be a set off.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That mechanics, and all persons performing labor, or furnishing materials for the construction or repair of any building, may have a lien, separately or jointly, upon the building which they may have constructed or repaired, or upon any building, mill or other manufactory for which they may have furnished materials of any description, and on the interest of the owner in the lot or land on which it stands, to the extent of the value of any labor done or materials furnished, or for both, when the amount shall exceed fifty dollars. That all persons furnishing labor, materials or supplies to any ship, vessel or boat, shall have and be entitled to a lien on such ship, vessel or boat, to take effect immediately after such labor has been performed, or such materials or supplies have been furnished.

SEC. 2. Any person wishing to acquire such lien, whether his claim be due or not, shall file in the recorder's office of the county in which such building is situated, at any time within sixty days after the completion of such building or repairs, a notice of his intention to hold a lien upon such building, for the amount due, or to become due, specifically setting forth such amount, and containing a deseription of the building upon which the labor was performed, or for which the materials were furnished, which notice shall be recorded by the auditor, in a book kept for that purpose.

SEC. 3. Any sub-contractor, journeyman or laborer employed in the construction or repair, or furnishing materials for any building, may give to the owner thereof notice in writing, particularly setting forth the amount of his claim and services rendered, for which his employer is indebted to him, and that he holds the owner responsible for the same; and the owner shall be liable for such claim, but not to exceed the amount due from him to the employer at the time of notice, which may be recovered in an action.

SEC. 4. Any person having such lien, may enforce the same by filing his complaint in the district court of the county where the work was done, or materials furnished, at any time within one year from the completion of the work, or furnishing materials; or, if a credit be given, from the expiration of the credit.

SEC. 5. In such actions, all persons whose liens are recorded, as herein provided, may be made parties, and all, or any number, may join in one action, stating their claims distinctly, and issues shall be made up and trials had, as in other cases; and the court may, by the judgment, direct a sale of the defendant's interest in the lot or land (if he have any such saleable interest,) and building for the satisfaction of the lien or liens, and costs; such sale to be under and by virtue of an execution, and without prejudice to the rights of any prior incumbrance, owner, or other persons,

not parties to the action. If the defendant or defendants in such action be not entitled to such interest in the lot or land on which such building is erected, as is liable to sale under execution, then the purchaser, at the sale herein provided for, shall be entitled to remove from the premises such property, so sold by execution and purchased. If several such actions be brought by different claimants, and be pending at the same time, the court may order them to be consolidated.

SEC. 6. If the proceeds of the sale be insufficient to pay all the claimants, then the court shall order them to be paid in proportion to the amount due each, and any other property of the owner of the building may be taken and sold on execution to satisfy the same.

SEC. 7. In all proceedings to enforce liens, the defendant may file a bond with surety, to be approved by the court, to the effect that he will pay the judgments that may be recovered, and costs, and thereby release his property from the liens hereby created.

SEC. 8. Whenever any person, having a lien by virtue of the provisions of this act, shall have received satisfaction for his claim, and the costs of his proceedings thereon, he shall, upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction, within six days after such payment or tender, enter satisfaction of his demand in the office where the same is recorded; and upon failure to do so, he shall forfeit fifty dollars to the party aggrieved, and all damages which he may have sustained in consequence of such failure or neglect.

Whenever any sub-contrator, journeyman, or laborer, shall recover any such claim from the owner of the building, the same may be set off by such owner in any action brought against him by the person who otherwise would be entitled to recover the same under the contract.

LIENS ON PERSONAL PROPERTY.

SEC. 10. How liens on personal property is acquired.
Claimant may hold possession.
11. Lien of a carrier, or one who feeds animals.
Claimant may hold possession.
12. Sale of property under lien.
Notice to be given.
13. Proceedings where property is of a perishable nature.
14. Disposition of the proceeds of such sales.
15. Proof of notice to be filed and kept.

SEC. 10. Any person who shall make, alter, repair, or bestow labor on any article of personal property, at the request of the owner or lawful possessor thereof, shall have a lien on such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reason-

able charges for the labor he has performed and the materials he has furnished; and such person may hold and retain possession of the same until such just and reasonable charges shall be paid.

SEC. 11. Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey or transport the same from one place to another, and any person who shall safely keep or store any personal property, at the request of the owner or lawful possessor thereof, and any person who shall depasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care or attention upon the same, at the request of the owner or lawful possessor thereof, shall have a lien upon such property, for his just and reasonable charges for the labor, care, and attention he has bestowed, and the food he has furnished, and he may retain the possession of such property until such charges be paid.

SEC. 12. If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell, at public auction, the property mentioned in the last two sections, or a part thereof, sufficient to pay such just and reasonable charges. He shall, before such sale, give public notice of the time and place thereof, by posting a written notice for at least ten days, in three public places in the county, precinct, town, or city where he resides, one of which shall be in some conspicious part of his shop or place of business; or if the value of the article be fifty dollars or more, then by publishing the same three weeks successively in a newspaper in the county, if any, in addition to the notices herein required to be posted.

SEC. 13. If the property be horses, cattle, hogs, or other live stock, and in all cases embraced in this act, where the property is of a perishable nature, and will be greatly injured by delay, the person to whom such charges may be due, may, after the expiration of twenty days from the time when such charges shall have become due, proceed to dispose of so much of such property as may be necessary, as hereinbefore provided.

SEC. 14. The proceeds of such sales, after the payment of the lien, all charges for keeping and selling such property, shall, if the owner be absent, be deposited with the treasurer of the proper county by the person making such sale, he taking the treasurer's receipt therefor, and shall be subject to the order of the person legally entitled thereto.

SEC. 15. Attested copies of the notices required by this act, and proof of the publication thereof, and an affidavit of the person claiming the lien, or some competent witness on his behalf, setting forth his claims, shall be filed and kept in the recorder's office of the proper county, and

the same, or copies thereof, attested and sealed by such clerk, shall be received as testimony, and shall be presumptive evidence of the matter therein contained.

Passed January 19th, 1860.

AN ACT

REGULATING THE TIME WITHIN WHICH CIVIL ACTIONS MAY BE COMMENCED.

SEC. 1. Actions to begin within the periods fixed by this act.
In district court objection to be made by answer.
2. Actions which may be commenced within twenty years.
3. Actions which may be commenced within six years.
4. Actions which may be commenced within three years.
5. Actions which may be commenced within one year.
6. Actions to recover penalties to begin within one and two years after the offense is committed.
7. Action for relief not provided, to begin within two years.
8. Cause of action to date from the last item in an account.
9. This act to apply to actions in the name of the territory.
10. Actions against persons absent from the territory, or concealed.
11. Time of disability when not to be a part of the time limited.
12. Actions for and against decedents, limitation of.
13. Aliens not to count time of war.
14. Time of injunction not to be a part of time of limitation.
15. New action may be commenced within one year after reversal of judgment on error or appeal.
16. No person to plead disability unless it existed at the time.
17. When two disabilities exist, both to be removed.
18. Acknowledgments to be in writing.
The effect of principal and interest not altered.
19. Limitation to begin from the last payment made.
20. Limitations in other states or territories a bar in this.
21. This act not to effect actions already commenced.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That actions can only be commenced within the periods herein prescribed, after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute. But in the district court, the objection that the action was not commenced within the time limited, can only be taken by answer.

SEC. 2. The period prescribed in the preceding section for the commencement of actions, shall be as follows:

Within twenty years,

1st—Actions for the recovery of real property, or for the recovery of the possession thereof, and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question, within twenty years before the commencement of the action.

SEC. 3. Within six years,

1st—An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

2d—An action upon a contract in writing, or liability express or implied, arising out of a written agreement.

3d—An action for the rents and profits, or for the use and occupation of real estate.

SEC. 4. Within three years,

1st—An action for waste or trespass upon real property.

2d—An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another, not hereinafter enumerated.

3d—Actions upon all contracts, express or implied, which are not in writing, and do not arise out of any written instrument.

4th—An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

5th—An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

6th—An action upon a statute for penalty or forfeiture, where action is given to the party aggrieved, or to such party and the territory, except where the statute imposing it prescribed a different limitation, and for seduction and breach of marriage contract.

SEC. 5. Within one year,

1st—An action for libel, slander, assault, assault and battery, and imprisonment;

2d. An action upon a statute for a forfeiture, or penalty to the territory;

3d. An action against a sheriff or other officer, for the escape of a prisoner arrested, or imprisoned on civil process.

SEC. 6. An action upon a statute for a penalty given in the whole, or in part to the person who will prosecute for the same, shall be com-

menced within one year after the commission of the offense, and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter in behalf of the territory, by the prosecuting attorney of the district in which the county is situated where the offense was committed.

SEC. 7. An action for relief, not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

SEC. 8. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item, proved in the account on either side.

SEC. 9. The limitations prescribed in this act, shall apply to actions brought in the name of the territory, or for its benefit, in the same manner as to actions by private parties.

SEC. 10. If when the cause of action shall accrue against any person, who shall be out of the territory or concealed, such action may be commenced within the terms herein respectively limited after the return of such person into the territory, or the time of his concealment, and after such cause of action shall have accrued, such person shall depart from and reside out of this territory or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

SEC. 11. If a person entitled to bring an action mentioned in this act, except for a penalty or forfeitnre, or against a sheriff or other officer for an escape, be at the time the cause of action accrued; either

1st. Within the age of twenty-one years;
2d. Insane;
3d. A married woman.

The time of such disability shall not be a part of the time limited for the commencement of the action.

SEC. 12. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of the time, and within one year from his death.

If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary, or of administration.

SEC. 13. When a person shall be an alien subject, or a citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

SEC. 14. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

SEC. 15. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he die and the cause of action survives, his heirs or representatives, may commence a new action within one year after the reversal.

SEC. 16. No person shall avail himself of a disability unless it existed when his right of action accrued.

SEC. 17. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

SEC. 18. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this act, unless the same is contained in some writing signed by the party to be charged thereby, but this section shall not alter the effect of any payment of principal or interest.

SEC. 19. Whenever any payment of principal or interest has been, or shall be, made upon an existing contract, whether it be bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

SEC. 20. When the cause of action has arisen in another state, territory or country between non-residents of this territory, and by the laws of the state, territory or country where the cause of action arose, an action cannot be maintained thereon, by reason of the lapse of time, no action shall be maintained thereon in this territory.

SEC. 21. This act shall not extend to actions already commenced, but the statutes now in force shall be applicable to such cases according to the subject of the action and without regard to form, nor shall any cause of action, barred by the statutes now in force, be revived by the provisions of this act, but cause of action now existing, and not already barred, shall not be barred, by reason of any time already elapsed, prior to this act taking effect.

Passed January 23d, 1860.

AN ACT

TO PROVIDE FOR THE SELECTION AND LOCATION OF THE LANDS RESERVED FOR UNIVERSITY PURPOSES, AND TO APPOINT A BOARD OF COMMISSIONERS.

SEC. 1. Names of commissioners appointed.
2. Where and when to meet.
To take oath and elect one of their number as president of the board.
Further duties.
3. President to notify land office of tracts selected, &c.
4. Commissioners to report, &c., to legislature.
5. Vacancy in board, how filled.
6. Compensation of commissioners.
Accounts to be audited.
Limitation of time of employment of commissioners.
7. Board to fix subsequent meetings.
Limited to certain number yearly.
8. Repealing clause.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That A. B. Dillinbaugh, John Clinger, and —— Newland, be, and they are hereby, constituted a board of commissioners, to select and locate the lands donated by congress to the territory of Washington for university purposes.

SEC. 2. It shall be the duty of said commissioners, or a majority of them, to meet at the office of John Clinger, in Lewis county, on the first Monday of May next, or so soon thereafter as practicable, after having taken an oath before any officer authorized to administer oaths in this territory, to faithfully discharge the duties imposed upon them in this act, and elect one of their number as the president of said board, whose duty it shall be, not only to preside, but to keep all records that may be deemed necessary, of the proceedings of said board, and to make out such reports as may be required by this act, or which the legislature may hereafter require. They shall also agree upon a plan of operations for the selection of said lands, and make such a division of the work thus entrusted to them, as may be deemed most advisable for the fulfilment of the provisions of this act.

And the board are hereby directed to proceed, forthwith, to make selection of said lands in detached portions, in different parts of the territory, and in no case to exceed 320 acres in one body, distributing the same proportionally to the surveys already made, having reference, however, both to the locality and quality of the lands thus selected, and in no case to select more than the one-third of the lands authorized to be se-

lected by act of congress, before the next annual meeting of the legislature.

SEC. 3. It shall be the duty of the president of the board to inform the proper officer or officers of the land office, from time to time, of the precise tract or tracts thus selected and located, and have the same properly entered in the name of the territory of Washington, for university purposes.

SEC. 4. Said commissioners shall report, through their president, and present a schedule of the sub-divisions or sections selected by them, and approved by the proper officer or officers of the land office, to the legislative assembly, at its annual sessions, on or before the sixth day of each session, respectively.

SEC. 5. In case of any vacancy occurring by death, resignation, or otherwise, the governor may, upon being apprised of the same by the remaining commissioner or commissioners, proceed to fill the same by appointment, until the vacancy shall be regularly filled by the act of the legislature.

SEC. 6. Each of said commissioners shall be allowed, out of the treasury of the territory, from monies not otherwise appropriated, ——— dollars for each and every day actually and necessarily employed in the performance of the duties of his office, together with all other expenses necessarily incurred in the discharge of his duties as herein required. *Provided, however*, that it shall be the duty of each commissioner, in connection with the report required by section four, of this act, to report the number of days, or parts of days, he has been so employed, and the separate items of expense so incurred; and before the same, or any part thereof, shall be paid, the same shall be audited and approved by the legislative assembly; and, provided further, that the time employed shall not exceed thirty days to each commissioner, or a total of ninety days.

SEC. 7. It is further provided, that said board, at their first meeting, and at each subsequent meeting, may fix the time and place for their future meetings, but in no case shall they hold more than three meetings during any one year.

SEC. 8. The act entitled "An act to provide for the selection and location of two townships of land to aid in the establishment of a university," passed January 31st, 1855, be, and the same is hereby repealed.

Passed January 20th, 1860.

AN ACT

TO PROVIDE FOR ELECTION RETURNS IN CERTAIN COUNCIL AND REPRESENTATIVE DISTRICTS.

SEC. 1. Where two or more counties united, duty of county auditor.
2. Votes, how canvassed.
Governor to proclaim election.
3. In case of a tie, governor to order new election.
4. Secretary may send for returns.
5. Conflicting acts, &c., repealed.
6. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That where two or more counties are united in one council or representative district, for the election of any officer, it shall be the duty of the county auditor of the county or counties thereof, to immediately after making abstracts of the vote given in his county, transmit by mail, a certified copy of said abstract to the secretary of the territory, at the seat of goverment.

SEC. 2. It shall be the duty of the secretary of the territory, with the marshal of the territory or his deputy, in the presence of the governor, to proceed within thirty days after the election, and sooner, if the returns be all received, to canvass the votes given for member of council or representative district, or officer; and the governor shall, by proclamation, proclaim the person having the highest number of votes duly elected to such office.

SEC. 3. In case there shall be no choice, by reason of any two or more persons having an equal and the highest number of votes, the governor shall, by proclamation, order a new election.

SEC. 4. The secretary of the territory shall have power to send for election returns, as provided for by law in election for delegate to congress.

SEC. 5. All acts or parts of acts conflicting with this act, are hereby repealed.

SEC. 6. This act to take effect and be in force from and after its passage.

Passed December 20th, 1859.

AN ACT

FOR THE SUPPRESSION OF HOUSES OF ILL-FAME.

SEC. 1. Penalty for keeping houses of ill-fame.
2. Remedy of lessor against a lessee convicted of keeping such house.
3. Power of justice of peace, upon complaint made.
4. Costs of prosecution, when to be paid by person prosecuted. Penalty on failure to do so.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That every person who shall keep a house of ill-fame in this territory, resorted to for the purposes of prostitution or lewdness, or who shall reside in such house for the purposes aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in a common jail for a term not exceeding six months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment, at the discretion of the court.

SEC. 2. Whenever the lessee of any house shall be convicted of the offense of keeping such house of ill-fame as aforesaid, the lease or contract for letting such house shall, at the option of the lessor, become void, and such lessor shall thereupon have the like remedy to recover the possession of such house, as is provided against a tenant holding over after the termination of his lease.

SEC. 3. Every justice of the peace may, on the complaint of any citizen of the county, require sureties of the peace and good behavior for any person who shall be guilty of keeping or maintaining houses reputed to be houses of bawdry and ill-fame; and every person being so ordered to find sureties of the peace and good behavior, who shall neglect or refuse to comply with such order may, by said justice, be committed to the common jail in the county where the offense was committed, for a term not exceeding thirty days; and the bond required, as aforesaid, shall be filed with the county auditor of the county where the offense was committed, and from said order the accused shall have the right to appeal to the next district court in the county within which the offense was committed.

SEC. 4. When any person, prosecuted under the next preceding section of this act, shall be required to procure sureties of the peace and good behavior, such person shall pay costs of prosecution; and on failure so to do, shall be imprisoned in the county jail, at the discretion of the court having cognizance thereof, until such costs be paid and satisfied.

Passed January 20th, 1860.

AN ACT

TO AMEND AN ACT, ENTITLED "AN ACT, ADDITIONAL TO AN ACT, TO AMEND AN ACT, ENTITLED AN ACT, ESTABLISHING A COMMON SCHOOL SYSTEM FOR THE TERRITORY OF WASHINGTON.

[*Repealed; see Act 24th January*, 1860.]

SEC. 1. Act 20th January, 1857, amended.
School District, when to draw its apportioned fund.
2. Act 20th January, 1857, amended.
County Superintendent when to issue order for payment of District fund.
3. When act to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section first of an act passed January 20th, 1857, entitled an act, additional to an act, to amend an act, entitled an act, establishing a common school system for the territory of Washington, be amended so as to read: That no school district shall be allowed to draw its apportioned county school fund from its treasury, until it shall satisfy the county superintendent that a school has been kept in the district by a qualified teacher for at least three months in the year, for which such application is made.

SEC. 2. That section two of said act be so amended as to read: When the clerk of any school district shall satisfy the county superintendent that a school has actually been kept by a qualified teacher as provided for in the preceding section, the superintendent shall issue an order on the county treasurer in favor of the clerk of such district for the amount of funds in the treasury to the credit of such district.

SEC. 3. This act to take effect and be in force from and after its passage.

Passed December 14th, 1859.

AN ACT

TO PREVENT FRAUDULENT CONVEYANCES.

SEC. 1. Certain deeds of gift, conveyances, &c., void as against existing or subsequent creditors.
2. Certain agreements, contracts, &c., void, unless some note or memorandum thereof be in writing.
3. No contract for sale of goods, &c., to value of fifty dollars or more, valid, unless purchaser comply with certain conditions.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void, as against the existing or subsequent creditors of such person.

SEC. 2. In the following cases specified in this section, any agreement, contract and promise, shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto, by him lawfully authorized; that is to say,

1st. Every agreement that by its terms is not to be performed in one year from the making thereof;

2d. Every special promise to answer for the debt, default, or misdoings of another person;

3d. Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promises to marry.

4th. Every special promise made by an executor or administrator, to answer damages out of his own estate.

SEC. 3. No contract for the sale of any goods, wares, or merchandise, for the price of fifty dollars or more, shall be good and valid, unless the purchaser shall except and receive part of the goods so sold, or shall give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

Passed January 19th, 1860.

AN ACT

RELATING TO DEEDS.

SEC. 1. All conveyances, &c., of real estate, or interest therein, to be by deed.
2. Requisites of a deed.
3. To bind a married woman, she must join in conveyance.
Her acknowledgment, how taken.
4. Deeds to be recorded.
Valid from date of record.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of*

Washington, That all conveyances of real estate, or of any interest therein, and all contracts creating or evidencing any incumbrance upon real estate, shall be by deed.

SEC. 2. A deed shall be in writing, signed and sealed by the party bound thereby, witnessed by two witnesses, and acknowledged by the party making it before a judge of the supreme court, a judge of a probate court, a justice of the peace, or a notary public, or county auditor.

SEC. 3. A married woman shall not be bound by any deed affecting her own real estate, or releasing dower, unless she shall be joined in the conveyance by her husband; and shall, upon an examination by the officer taking the acknowledgment, separate and apart from her husband, acknowledge that she did voluntarily, of her own free will and without the fear of or coersion from her husband, execute the deed, and the officer shall make known to her the contents of the deed, and shall certify that he has made known to her its contents, and examined her separate and apart from her husband, as is above provided.

SEC. 4. All deeds and mortgages shall be recorded in the office of the county auditor of the county where the land is situated, and shall be valid as against bona fide purchases from the date of their filing or recording in said office; and when so filed or recorded shall be notice to all the world.

Passed January 23d, 1860.

AN ACT

RELATIVE TO THE TAKING UP OF DRIFT SAW-LOGS, AND OTHER TIMBER OF VALUE.

SEC. 1. Person taking up saw logs, &c., found adrift, to what part, &c., thereof entitled.
Owner, when not liable to pay for taking up.
2. Estray saw logs, &c., found lodged on a bar, when not to be taken up.
3. Saw logs, &c., taken up, not to be disposed of within a certain time.
4. Owner, upon certain conditions, entitled to his property.
5. Penalty for violation of this act.
6. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That any person taking up any saw-logs, hewn or other timbers of value, found adrift, and estrayed from the boom or fastening of

the owner; and the said logs or timbers shall be found upon any sound, bay, or river, within this territory, shall be entitled to one-fourth part or value thereof: *Provided*, That nothing herein shall be so construed as to make any person liable to pay for the taking up of any logs or timber, which he may have marked and turned loose for the purpose of driving; and notice of the same hath been duly given to the settlers in the vicinity, or on the river below.

SEC. 2. It shall not be lawful for any person in this territory to take up any estray saw-logs, hewn or other timbers of value, (as provided for in the foregoing section,) which may be found lodged on a bar, bank, or in a drift, or dam, so as the same be stationary: *Provided*, The same has not been so lodged for fifteen or more days.

SEC. 3. Any person taking up logs or timber of value under the provisions of this act, shall not be at liberty to dispose thereof for the space of twenty-five days from the time the same be so taken up; and there being no owner found claiming said logs or timber, during said time.

SEC. 4. The owner of any estray logs or timbers, that shall be taken up under the provisions of this act shall, upon proof of the same being his and paying one-fourth of the value thereof to the taker up, shall be entitled to his property.

SEC. 5. Any person violating the provisions of this act, shall, upon proof thereof before any acting justice of the peace for this territory, be subject to a fine of not less than ten, nor over one hundred dollars; the same to be collected in the name of the territory and for the use of the county thereof.

SEC. 6. This act to take effect and be in force from and after its passage.

Passed January 23d, 1860.

AN ACT

TO PREVENT PERSONS FROM ENTICING SEAMEN TO DESERT.

SEC. 1. Penalty for enticing seamen to desert.
2. Penalty for harboring or secreting seaman, with a view to persuade, &c., his desertion.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, If any person or persons shall entice any seaman to desert

from any vessel belonging to any citizen or citizens of the United States or any foreign country, while lying within the waters of this territory, and on board of which said seaman shall have shipped for a term or voyage unexpired at the time of such enticement, such person or persons shall be deemed guilty of a misdemeanor, and on conviction by any court of competent jurisdiction, shall be sentenced for the first offense, to imprisonment in the county jail not less than two months, nor more than six months, or to a fine not less than fifty dollars nor more than five hundred dollars; and for each subsequent offense, to imprisoment not less than six months, nor more than two years, or a fine of not less than five hundred dollars, nor more than one thousand.

SEC. 2. Any person or persons who shall harbor or secrete any seaman shipped as aforesaid, knowing him to be so shipped, and with a view to persuade or enable said seaman to desert, shall be deemed guilty of a misdemeanor, and punished as provided in the first section of this act.

Passed January 20th, 1860.

AN ACT

IN RELATION TO BILLS OF EXCHANGE AND PROMISSORY NOTES.

SEC. 1. All promissory notes to have the same effect as inland bills of exchange.
2. Note signed by agent to bind principal.
3. Construction of word "person."
4. Who may maintain actions on such notes.
In what manner.
5. Notes payable to the maker thereof, or to a fictitious person.
6. Days of grace.
7. What days considered as Sunday.
8. Acceptance to be in writing.
9. Acceptance written on a paper other than a bill.
When binding.
10. When a promise to accept made before the bill is drawn, deemed an acceptance.
11. Holder may require the acceptance to be written on the bill.
12. Last four sections not to be construed to impair the right of the party to whom promise to accept was made to recover damages.
13. Drawee destroying a bill or refusing to deliver it, deemed to have accepted it.
14. Rate of damages upon protest.
15. What such damages in lieu of.

SEC. 15. What additional damages holder may recover.
16. This act not to apply to bills, &c., drawn or made before its passage.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all notes in writing made and signed by any person, whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange according to the custom of merchants.

SEC. 2. Every note signed by the agent of any person, under a general or special authority, shall bind such person and have the same effect, and be negotiable as provided in the preceding section.

SEC. 3. For the purposes of this act, the word person shall be construed to extend to every corporation capable by law of making contracts.

SEC. 4. The payees and endorsees of every such note, payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

SEC. 5. Such notes made payable to the maker thereof, or the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to the bearer.

SEC. 6. On all bills of exchange payable at sight, or at a future day certain within this territory; and on all negotiable promissory notes, orders and drafts, payable at a future day certain within this territory, in which there is not an express stipulation to the contrary, three days grace shall be allowed by the custom of merchants on foreign bills of exchange, payable at the expiration of a certain period after date, or at sight.

SEC. 7. The fourth day of July, and the twenty-fifth day of December, shall, for all purposes whatsoever as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, promissory notes, drafts and checks, be treated and considered as Sunday.

SEC. 8. No person within this territory shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

SEC. 9. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

SEC. 10. An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of every person who, upon the faith thereof, shall have received the bill for a valuable consideration.

SEC. 11. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill; a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

SEC. 12. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, or his refusal to accept such bill.

SEC. 13. Every person, upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted, or non-accepted, to the holder, shall be deemed to have accepted the same.

SEC. 14. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange drawn or endorsed within this territory, if payable without the limits of the United States, shall be ten per cent. upon the contents thereof; and if such bill be payable out of this territory, but within some state or territory of the United States, such rate of damages shall be five per cent. upon the contents thereof.

SEC. 15. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of giving notice of non-payment, but the holder of such bill shall be entitled to demand and receive lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given and payment demanded.

SEC. 16. Nothing in this act shall apply to bills of exchange, promissory notes, or other negotiable instruments made or drawn before the passage of this act.

Passed January 23d, 1860.

AN ACT

ESTABLISHING A COMMON SCHOOL SYSTEM FOR THE TERRITORY OF WASHINGTON.

CHAPTER I.

SCHOOL FUND.

SEC. 1. School fund, how provided.
Annual division of interest.
2. Duty of county commissioners to levy annual tax for school purposes.
Appropriation thereof.
3. Fines, &c., to be added, to be appropriated to school fund.
4. County Auditor to report yearly tax, and clerk of district court, and justice of peace, to report fines imposed, &c.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the principal of all moneys accruing to this territory from the sale of any land heretofore given, or which may hereafter be given by the Congress of the United States for school purposes, shall constitute an irreducible fund; the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of children or youths in each between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

SEC. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to lay an annual tax of two mills on a dollar, on all taxable property of the county, as shown by the assessment rolls made by the county assessors for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect the said tax in the same manner as the other county tax is collected, and the said money so collected shall be paid over to the county treasurer, to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed; neither shall it be lawful for any county treasurer to receive county orders in payment for county school tax, nor to pay out any school money on county orders.

SEC. 3. For the further support of common schools, there shall be set apart by the county treasurer, all moneys paid into the county treasury, arising from all fines for a breach of any law regulating license for the sale of intoxicating liquors, or for the keeping of bowling alleys or billiard saloons, or of any penal laws of this territory. Such moneys shall

be paid into the county treasury, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

SEC. 4. That it shall be the duty of the county auditor of each county to report to the county superintendent of common schools, at least twenty days before the first Friday in November of each year, the amount of school tax levied in their respective counties for that year; and that it be the duty of the clerk of the district court, at the close of every term thereof, to report to the superintendent the amount of fines imposed during said term of court; and that it be the duty of all justices of the peace to report to the superintendent, at least twenty days before the first Friday in November of each year, the amount of fines imposed and collected by them for the past year.

CHAPTER II.

COUNTY SUPERINTENDENTS.

SEC. 1. Election, and term of office of county superintendents.
2. To qualify—oath to be filed.
3. To divide county into districts.
Keep a map, and lay off new and divide old districts.
4. Notice of formation of district, and proceedings thereon.
5. Superintendent, when to be at county seat to examine teachers, &c.
To give notice.
His compensation.
6. Examination of teachers.
Certificates to be given, and may be revoked, when.
7. Superintendent to visit schools, yearly—his duty as visitor.
8. Annual report of superintendent.
9. Annual apportionment of school fund to be made, when.
Notice thereof to be given.
10. Distribution of school fund, how made.
11. Superintendent to collect fines, take care of lands, and prosecute for trespass thereon.
12. Trespass on school lands indictable.
Penalty.
13. Compensation of superintendent.

SEC. 1. There shall be elected by the legal voters of the respective counties, at the annual elections, a county superintendent of common schools for each county, who shall hold his office for the term of three years, and until his successor is duly qualified.

SEC. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath faithfully to discharge the duties of his office, and to the best of his ability promote the interest of education within his county; which oath shall be in writing, and placed on file in the county clerk's office.

SEC. 3. It shall be the duty of the superintendent to district the whole county, so that every resident of the county shall be included in some district; and to divide such portion of his county as shall be inhabited into convenient school districts; to define the boundaries and numbers; and to prepare and keep in his office a map of the districts of the county, upon which the lines and boundaries of each district shall be clearly defined; he shall lay off new districts, or divide old ones, when the public good shall require it.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district, who shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants fail to attend in sufficient numbers to do business as hereafter directed, notice may be renewed at such times as may be thought proper.

SEC. 5. It shall be the duty of the county superintendent to be at the county seat on the third Friday and Saturday of May and November of each year, for the purpose of making any alterations desired in districts, and for the purpose of examining teachers; and said superintendent shall give ten days public notice of the same, by posting up hand bills or otherwise. And any district applying on different days for the transaction of such business, shall pay the superintendent a reasonable compensation for his trouble, not exceeding the sum of two dollars, and all teachers examined on different days shall pay to the superintendent the sum of one dollar.

SEC. 6. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county; he shall examine them in orthography, reading, writing, arithmetic, English grammar and geography; and if he be of the opinion that the person examined is competent to teach said branches, and that he or she is of good moral character, he shall give such person a certificate, certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only, and may be revoked sooner by the superintendent for good cause.

SEC. 7. The superintendent shall visit all the schools taught in his

county by a qualified teacher, at least once a year; he shall give such information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county.

SEC. 8. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office; and he shall, on or before the first day of December of each year, make out from the district reports a statement of the number of the scholars in the county; the number of school libraries; the number of school houses; the number of districts; in how many districts a school has been kept in the past year; what school books are principally used; what proportion of all the scholars in the county have attended school for the past year, and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper in this territory.

SEC. 9. It shall be the duty of the superintendent at the same time to make an apportionment of the school fund in the county treasury among the several school districts in their respective counties, in proportion to the number of persons in the district over the age of four, and under twenty-one years, and certify the amount due to each district, which shall be drawn as hereafter directed; and shall forthwith notify the clerks of the school districts of the amount due their respective districts.

SEC. 10. When the districts shall have complied with the law, as hereafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts for the amount of the school funds appropriated to each; on the presentation of which order the treasurer of the county shall pay over to the clerks of the districts all moneys due the respective districts, and the clerks shall endorse on said order a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt, which shall be deposited with the superintendent, who shall credit the treasury of the county therewith, and charge the same to the proper district.

SEC. 11. The superintendent shall, in the name of the county, collect, or cause to be collected, all moneys due the school fund from fines, or from any other source, in his county; and until the legislature shall make some provision for the disposal of the school lands given by congress to the territory for school purposes, it shall be the duty of the superintendent to preserve said lands from injury and trespass; and when it shall come to his knowledge that any trespass has been committed on such lands, he shall make complaint of the same before the grand jury of the proper

county, at the first regular term of court after he has obtained a knowledge of such trespass; and all fines and other moneys thus collected shall be paid over to the treasurer of the county for the use of common schools, and divided in said county in the same manner as other school funds.

SEC. 12. Any person trespassing upon or injuring the school lands, as mentioned in the preceding section, shall be liable to be indicted for the same, and upon conviction shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

SEC. 13. The said superintendent shall be allowed out of the county treasury, in compensation for his services, the sum of twenty-five dollars a year. The county commissioners may, in their discretion, if they think the services rendered demand it, increase his salary to any sum not exceeding five hundred dollars a year; but in all cases where the salary exceeds the sum of twenty-five dollars, one-half of the excess shall be paid out of the school fund; provided also that a proper allowance shall be made in addition thereto for necessary books and stationery, and for the preparing of the map required by Sec. 3; and in each county where there are not less than ten organized districts capable of supporting a school as required by law, a reasonable allowance shall be made out of the county treasury for office rent; but no rent shall in any case be allowed until the map required by Sec. 3 shall be placed in said office.

CHAPTER III.

SEC. 1. School meeting to organize new district may be called.
What shall constitute a quorum.
2. Powers of such meeting.
3. Organization of meeting.
Election of directors and their term of office.
4. Further as to term of office of directors.
5. Directors to qualify.
Oath to be filled.
6. Duty of directors.
7. Two directors a quorum.
8. Further duties of directors.
To prescribe punishment of disorderly scholars.
9. Election of district clerk.
His term of office.
10. His duties.
11. Annual report of clerk.
What to contain.
12. Annual accounts of clerk.
To be read at meeting.

SEC. 12. To pay over funds to successor.
Upon failure to do so, suit to be brought.
13. Duty of clerk, where directors examine teachers.
14. Clerk to be treasurer of district.
15. To retain money coming into his hands, subject alone to order of directors.
16. Teachers to procure certificate.
Further duties.

SEC. 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, under the title of county superintendent. No number less than five legal voters shall constitute a quorum, to do business in any district meeting.

SEC. 2. Such school meeting shall have power to do all necessary business the same as the regular annual school meeting would have.

SEC. 3. Such meeting when assembled, shall organize by the appointment of a chairman and secretary. It shall then proceed by ballot to elect three directors. Of those so elected, the person having the highest number of votes, shall hold his office for the term of three years, and the person having the next highest number shall hold his office for two years, and the person next highest one year, and each shall continue in office until his successor is elected and qualified. In case two or more persons of those so elected receive an equal number of votes, the duration of their term of office shall be determined by lot, in presence of the chairman and secretary.

SEC. 4. The term of office of a director not elected at the regular annual meeting, shall continue for the term of one, two or three years, as he may have been elected, from the next annual school meeting, unless such director shall be elected to fill vacancy, in which case he shall continue in office for the unexpired term. So that at every annual school meeting after the first, there shall be elected one school director for the term of three years.

SEC. 5. The directors shall qualify within ten days after their election, by taking an oath or affirmation faithfully to discharge the duties of the office, to the best of their abilities, and to promote the interest of education within their district. This oath shall be in writing and filed with the clerk of the district.

SEC. 6. It shall be the duty of the directors of every school district:

1st—To call special meetings of the district whenever they shall deem it necessary.

2d—To make out a tax list of every district tax, containing the names of the taxable inhabitants in the district, and the amount of tax payable by each inhabitant set opposite his name.

3d—To annex to such tax list a warrant directed to the clerk of the

district for the collection of the sums in such list mentioned, including such per centage for fees of clerk as they may deem just, not exceeding five per cent.

4th—To purchase or lease a site for the district school house as designated by a meeting of the district, and to build, hire or purchase, keep in repair and furnish such school house with necessary fuel and appendages out of the funds collected and paid to the clerk for such purpose, and to have the custody and safe keeping of the district school house.

5th—To contract with and employ teachers; and they may be judges of the qualifications of teachers in their districts, but may require a teacher to get a certificate from under the hand of the county superintendent, as provided for in section 6, chapter II. And in case the directors choose to be the judges of the qualifications of these teachers, they shall examine them in the various branches specified in said section 6, chapter II, and shall give certificate to that effect, stating the branches upon which said teacher has been so examined by them, and that he or she is of good moral character, and is qualified to teach a common school; such certificate to be signed by each of the directors, and shall be for the term of three months only. No engagement with a teacher shall be valid so as to entitle any district to draw their apportionment of public money, unless such examination has been previously made either by the directors or county superintendent.

6th—To give orders to the teachers on the district clerk for their wages.

7th—To discharge any school teacher for any neglect of duty, or any cause that in their opinion renders his services unprofitable as a teacher, by first paying him for what time he has been teaching.

SEC. 7. Any two of said directors shall constitute a quorum to do business.

SEC. 8. It shall be the duty of the directors to visit and examine the school or schools of their respective districts, at least twice in each term; they shall endeavor, in connection with the county superintendent, to procure the introduction of a good and uniform system of school books in their district; and when the teacher experiences difficulty in the government of the school, it shall be his duty to refer the cases of disorderly scholars to the directors, who shall decide how such scholars shall be punished, or whether they shall be dismissed from school.

CLERKS.

SEC. 9. The first annual school meeting shall also elect a district clerk, who shall continue in office for the term of three years. He shall

qualify within ten days after his election, in the same manner as the directors, and give bond to the district directors in such sum as they may require, that he shall well and truly perform the duties of his office, and pay over all moneys coming into his hands by virtue of his office, as by law directed. If a clerk be elected to fill a vacancy, he shall continue in office for the unexpired term; and if elected at the first meeting, not being the regular annual meeting, he shall continue in office three years from the next annual meeting.

SEC. 10. It shall be the duty of the clerk of each district:

1st—To record the proceedings of his district in a book to be provided for that purpose by the district.

2d—To give notice of annual or special meetings.

3d—To procure a list of all persons in the district between the ages of four and twenty-one years.

4th—To give due notice, at least ten days before any tax that may be assessed shall be collected, by written or printed notices in three of the most public places in the district.

5th—To collect all district taxes which he shall be required by the warrant from the directors to collect within the time limited in each warrant for its return; and he shall have the same authority to enforce the collection of such tax as the county collector has for collecting the county tax, and he shall be allowed for collecting such per centage as the directors may deem proper.

6th—To retain a copy of all reports made to the county superintendent relating to the affairs of the district.

SEC. 11. It shall be the duty of the clerk to furnish the county superintendent, within ten days afer the first Friday in November of each year, a report containing the number and names of scholars in his district, over four and under twenty-one years of age; how long a school has been kept in his district the past year; what school books are principally used; what proportion of the scholars in the district have attended school; and the amount of money paid to teachers, or otherwise expended.

SEC. 12. The clerk of each district shall, at the close of each year of his office, make out in writing a just and true account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual district meeting. The clerk shall pay over all moneys remaining in his hands belonging to the district to his successor, when his successor has legally qualified, and upon a refusal or neglect so to do, the directors shall forthwith bring suit upon his bond.

SEC. 13. In all cases where the directors elect to examine their

own teachers, it shall be the duty of the clerk to furnish the county superintendent with a copy of the certificate given by said directors within ten days thereafter.

SEC. 14. District clerks shall be treasurers of their respective districts.

SEC. 15. All money coming into the hands of the district clerks, shall remain in the hands of such clerk or clerks, subject to the order of the directors, and shall not be paid out in any other way.

TEACHERS.

SEC. 16. It shall be the duty of every teacher of a common school to procure a certificate of qualification and good moral character, before entering on the duties of a teacher. It shall be his duty to keep a register of the names of the children attending school, their age, the time when they begin, the time they continue, and of their daily attendance, which register shall be filled with the clerk of the district at the close of every term.

CHAPTER IV.

MISCELLANEOUS PROVISIONS.

SEC. 1. Minntes of first meeting by whom to be signed, and by whom and where kept.
2. Who to be chairman and secretary at meetings.
3. Meetings may alter, repeal, &c., their proceedings.
4. District meetings may levy tax.
5. New districts failing to organize or report, not entitled to school funds. Proviso.
6. Funds to be apportioned to organized districts only.
7. When a district shall be allowed to draw tbe fund.
8. When superintendent to issue order for funds of a district in favor of clerk thereof.
9. District to forfeit its apportionment; when.
Disposition thereof in such case.
10. Provision where district has less than twelve scholars between ages of four and twenty-one, and is not able to support a school.
11. An organized district shall be a body corporate; its powers.
Duty of directors to prosecute and defend.
12. Scholars not in district may attend school, with or without charge, when.
13. Provision in case of person wishing to send a child to school out of their own district.
14. *Ib.*
15. Teacher at end of each term to make a certificate relative to attendance of scholars not belonging to district.
16. Clerk of district where scholar resides, upon presentation of certificate to pay the parents of such scholar the apportionment due them.

SEC. 17. When certificate to be presented to superintendent.
18. Scholar thus receiving his portion, not entitled to further benefit until after next annual apportionment.
19. When parents, &c., may be assessed for their portion of necessary expenses of school.
20. For what purposes and when districts may levy a tax.
21. Notices of meeting to state purpose of tax.
22. Assessment of property of non-resident holders.
23. Directors may add a per centum to remunerate the clerk as collector. Per centage when to be deducted.
24. Scholars not in district may attend school.
25. Meetings to be held annually. Notice thereof, what to state, &c.
26. Who shall be allowed to vote at meeting.
27. Meeting may adjourn.
28. By a majority vote, meeting may levy tax.
29. Taxes for erection of school houses may be paid in labor.
30. Holding other office not to disqualify superintendent, director or clerk.
31. A librarian to be appointed, by whom and when.
32. Certain persons authorized to administer oaths under this act.
33. Repealing clause.

SEC. 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

SEC. 2. In all school meetings, the directors whose term of office shall first expire, shall act as chairman, and the clerk of the district shall act as secretary.

SEC. 3. Districts shall have power to repeal, alter or modify their proceedings from time to time, as occasion may require.

SEC. 4. District meetings legally called shall have power to levy a tax upon the property of the district for any purpose whatever, connected with and for the benefit of schools, and the promotion of education in the district, subject to the restrictions hereinafter provided.

SEC. 5. Any new district failing to organize and report to the county superintendent the number of children over four and under twenty-one years of age in said district, at least ten days after the first Friday in November, or any district having been organized for the term of one year or more, failing to report to the county superintendent, as is required in section eleven, of the chapter entitled "school meetings," in this act, shall not be entitled to any portion of the county school fund for the year: *Provided*, That if the clerk of any school district shall fail to make such report, any inhabitant of such district may make such report, verified on oath, and the county superintendent shall receive it, the same as if made by the clerk.

SEC. 6. The county superintendent shall apportion all the county

school fund for that year among those districts only which have organized and reported according to law.

SEC. 7. No district shall be allowed to draw its apportioned county school fund from the treasury, until it shall satisfy the county superintendent that a school has been kept in the district by a qualified teacher for at least three months, except as hereinafter provided.

SEC. 8. When the clerk of any school district shall satisfy the county superintendent that any amount has been raised in his district for the support of teachers, or building school houses, and that a school has actually been kept by a qualified teacher, as provided for in the preceding section, the superintendent shall issue an order on the county treasurer in favor of the clerk of such district, for its apportionment of county school funds in the treasury to the credit of such district.

SEC. 9. Any district failing to comply with the provisions of the two preceding sections for the term of one year after any apportionment, shall forfeit its apportionment, and the amount thereof shall be again added to the county school fund, and divided again among all the districts.

SEC. 10. Districts having less than twelve scholars between the ages of four and twenty-one years, and which, in the opinion of the directors are not able to support a school, shall be excepted from the requirements of the three preceding sections, and may, by organizing and reporting to the superintendent according to law, draw their proportion of the school money without being required to comply with the provisions of the school law any further than the said organization and report is concerned. And in such districts three legal voters shall constitute a quorum to do business; and it shall be the duty of the clerk of such districts to let out all county school funds so received at interest, for the use of the district, on good security, until such time as it may be required for school purposes in said district. The clerk of the district and his securities shall also be responsible for such money: *Provided*, that if the term of three years shall elapse before such weak districts shall have at least three months school, such districts shall not be entitled to any apportionment of the county school funds after the expiration of the said three years, until they shall have complied with the law in the same manner as regularly organized districts are required to do.

SEC. 11. When a district is organized, it shall be to all intents and purposes a body corporate, capable of suing and being sued, and fully competent to transact all business appertaining to schools or school houses in their own district; and it shall be the duty of the directors to prosecute or defend any demands for or against their district, and notice shall be served upon one of the directors of any suit brought against a district.

SEC. 12. The directors of any district may permit scholars living out of the district to attend school, with or without charge, as they may deem proper.

SEC. 13. Any person or persons that shall be desirous of sending the child or children under their care to any other district school, may do so, by first getting a permit in writing from the directors of the district in which they reside, provided there be no school in their own district, and such scholar or scholars so sent to school out of their district, shall be entitled to their equal proportion of the public school fund belonging to their district, the same as if they had gone to school in their own district; and provided still further, that the sending of such scholar or scholars out of their own district does not operate to prevent the said district from having a school kept therein. Should the directors refuse to grant the permit, the person or persons so applying may appeal to the county superintendent, who shall forthwith notify the directors of said district in writing, giving them at least six days notice, to appear before him and show cause, if any, why the application should be refused.

SEC. 14. The county superintendent, upon the day set, shall hear the parties and such testimony as may be required, or if either of the parties fail to appear, having been duly notified, he may proceed as if they were all present, and shall decide according to the equity of the case; and if in his judgment no injury is done to the district thereby, he may grant the requisite permit in his own name as county superintendent, which action shall be binding on the district as if granted by the directors thereof. In either case his decision shall be final.

SEC. 15. It shall be the duty of every teacher of a district school, in addition to what is required by Sec. 16, Chapter III, to make out at the end of every term a certificate in reference to the attendance of each and every scholar not belonging to the district, showing the time they began and continued, as well as the number of days in attendance; which certificate shall be given to the parents or guardian of said scholar or scholars.

SEC. 16. Upon the presentation of such certificate to the clerk of the district in which such scholar or scholars reside, the clerk shall pay to said parents or guardian the apportionment due them, out of the fund belonging to said district, taking their receipt for the same, which receipt shall be endorsed on said certificate, showing the amount actually received, and signed by the party receiving the money; and said certificate so endorsed shall be a sufficient voucher to the credit of the clerk in making his settlement with the directors, or in paying over to his successor the funds belonging to said district.

SEC. 17. When the clerk of any such school district shall have failed to draw from the county treasury the apportionment for said district, either by reason of not complying with the requirements of Sec. 7 of this chapter, or otherwise, then the certificate shall be presented to the county superintendent, who shall issue an order on the county treasurer in favor of the person or persons entitled to receive the same, and receipt in due form shall be given to the treasurer for the amount paid, the duplicate of which shall be endorsed on the certificate in the hands of the superintendent, who shall credit the treasury of the county therewith and charge the same to the proper district, in the same manner as when paid to the clerk, according to Section 10, Chapter II.

SEC. 18. Any scholar having thus received his or her portion of school money cannot be entitled to any further benefit out of the fund of said district in case of a school being taught therein, until after the next annual apportionment is made.

SEC. 19. It shall be competent for the directors in any district, where it may be required, to assess upon the parents or guardians of the children attending the school, their portion of the necessary expenses of sustaining the school, in the way of tuition, fuel, &c., in proportion to the number of scholars sent by each; but in all cases they shall first endeavor to raise the amount required by voluntary subscription.

SEC. 20. No tax shall be levied by any district for the hiring of a teacher; but any district may levy a tax for any of the following purposes: to purchase a suitable site for the erection of a school house, the building or repairing of the same, the purchase or increase of a district library, or maps, globes or other apparatus, for the use of said district or school; but no district shall levy any tax for any of these purposes until the directors or some other person shall have sought to obtain the amount required by voluntary subscriptions, and no money shall be expended by the directors or clerk for any other purpose than that for which it was raised.

SEC. 21. In all cases when a tax is to be levied, it shall be stated in th e notices given of the meeting, for what purpose or purposes a tax is to be levied.

SEC. 22. The directors may assess for any of the objects named in Section 21, [20,] the property of non-resident holders in any amount they may deem necessary without calling a meeting of the district for that purpose, where the inhabitants thereof agree by voluntary subscription to raise the amount required—said assessment not to exceed the average per centum of the subscriptions made by the inhabitants of the district; but if a district meeting be held to levy a tax on all the taxable property in the district, the property of non-residents shall be assessed in equal proportion

with the rest, and in neither case shall any tax exceed twenty-five cents on the one hundred dollars valuation on taxable property, according to the valuation made for the assessment of county taxes.

SEC. 23. The director may add such a per centum, not exceeding five, as they may deem requisite to remunerate the clerk for his services as collector, but the amount shall be specified and added as a separate item in the schedule or account of taxes so levied or assessed—and where any person shall pay the same within ten days after the notice of such tax is made public by the clerk, in accordance with the 4th clause of section 10 of Chapter III, the per centage shall be deducted—but in all other cases it shall be collected.

SEC. 24. The directors of any district may permit scholars living out of the district to attend school with or without charge, as they may deem proper.

SEC. 25. There shall be an annual school meeting held in each district upon the first Friday in November; and notices of all annual or special meetings shall be in writing, signed by the directors or the clerk of the district, and shall state the object for which the meeting is called; and shall be posted up in three public places in the district at least six days previous to the holding of such meeting.

SEC. 26. Every white male inhabitant over the age of twenty-one years, who shall have resided in any school district for three months immediately preceding any district meeting, or who shall have paid, or be liable to pay any tax except road tax in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote.

SEC. 27. Any school meeting shall have power to adjourn from time to time as occasion may require.

SEC. 28. A school meeting legally called shall have power by the vote of a majority present, to levy a tax on all the taxable property in the district.

SEC. 29. That tax payers may, with the consent of the directors of their district, perform by labor their portion of taxation for the erection of school houses, and shall be so returned by the clerk of said district.

SEC. 30. No person shall be disqualified to hold the office of county superintendent, district director or clerk, on account of holding any other office within the territory at the same time.

SEC. 31. It shall be the duty of the directors to appoint a suitable person for librarian, when the district shall have procured a library.

SEC. 32. School superintendents, directors and clerks, shall be competent to administer oaths or affirmations in any case occurring under the provisions of this act.

SEC. 33. All former acts or parts of acts in regard to schools are hereby repealed.

Passed January 24th, 1860.

AN ACT

TO REGULATE SUITS FOR DIVORCE AND ALIMONY.

SEC. 1. Causes for which district court may grant divorce.
2. Decree of nullity of marriage may be obtained by either party, when.
3. A resident for one year may file compaint.
What proceedings to be had.
4. When court to require proof before granting.
5. Cross complaint may be filed, and divorce in favor of either party.
6. When both parties to be considered as applying.
7. Disposition of property, &c., pending petition.
Husband may be required to pay expenses of wife in prosecution, &c.
8. Upon granting a divorce, duty of the court as to disposition of property and provison for minor children.
9. An order of divorce dissolves the marriage.
Court may change name of female.
10. Prosecuting attorney to resist petition, when.
11. When cause may be heard and divorce granted, without notice to defendant.
This act not to apply in certain cases.
12. Divorces shall be for causes distinctly stated, proved, &c.
Court to state facts.
Either party may appeal from orders, &c.
Supreme court not to reverse final order of divorce.
13. Civil practice, except as to jury trial, to govern proceedings in such trials.
14. Causes to be removed to supreme court by writ of error.
Errors of fact and law may be corrected.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That divorces may be granted by the district court, on application of the party injured, for the following causes:

1st—When the consent to the marriage of the party applying for the divorce was obtained by force or fraud, and there has been no subsequent voluntary co-habitation;

2d—For adultery on the part of the wife, or of the husband, when unforgiven, and application is made within one year after it shall come to his or her knowledge;

3d—Impotency;

4th—Abandonment for one year;

5th—Cruel treatment of either party by the other;

6th—Habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provisions for his family;

7th—The imprisonment of either party in the penitentiary, if complaint is filed during the term of such imprisonment. And divorce may be granted on application of either party for any other cause deemed by the court sufficient, or where the court shall be satisfied that the parties can no longer live together.

SEC. 2. When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof, obtain a decree of nullity of marriage.

SEC. 3. Any person who has been a resident of the territory for one year may file his or her complaint for a divorce or decree of nullity of marriage under oath in the district court of the county where he or she may reside, and like proceedings shall be had thereon as in civil cases.

SEC. 4. When the defendant does not answer, or answering, admits the allegations in the complaint, the court shall require proof before granting a divorce or a decree of nullity.

SEC. 5. The defendant may, in addition to his or her answer, file a cross complaint for divorce, and the court may in such case grant a divorce, if any, in favor of either party or as an application of both.

SEC. 6. Both parties shall be considered as applying for a divorce, when the complaints of both are filed at the same term of the district court, and when the defendant by his or her cross complaint also [applies] for a divorce.

SEC. 7. Pending a petition for divorce, the court or the judge thereof, in vacation, may make and, by attachment, enforce such orders for the disposition of the persons, property and children of the parties as may be deemed right and proper, and such orders relative to the expenses of such suit as will ensure to the wife an efficient preparation of her case, and a fair and impartial trial thereof; and on decreeing or refusing to decree a divorce, the court may, in its discretion, require the husband to pay all reasonable expenses of the wife in the prosecution or defense of the petition, when such divorce has been so granted or refused, and give judgment therefor.

SEC. 8. In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship,

custody, and support and education of the minor children of such marriage.

SEC. 9. Whenever an order of divorce from the bonds of matrimony is granted in this territory by a court of competent authority, such order shall fully and completely dissolve the marriage as to both parties. And in all suits for a divorce, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court shall in its order or decree appoint.

SEC. 10. Whenever a petition for divorce remains undefended, it shall be the duty of the prosecuting attorney to resist such petition.

SEC. 11. That in all applications to the district courts of this territory for a divorce, where the complaint alleges the continued absence of the defendant for a period of five years or more, the court shall hear the cause without requiring notice to be given to the absent party by publication or otherwise. And if, upon the hearing of the cause, it shall be proven to the satisfaction of the court that the continued absence set forth in the complaint amounts to wilful abandonment of the complainant, the court shall thereupon grant an order of divorce as in other cases: *Provided*, that none of the provisions of this act shall apply to cases where both parties are known to be residents of this territory, or where the complainant shall not have resided two years in the territory.

SEC. 12. In all instances where a district court shall grant a divorce, it shall be for causes distinctly stated in the complaint, and proved and found by the court, and the court shall state the facts found, upon which the decree is rendered; and when either party shall signify a desire to appeal from any of the orders of the court, in the disposition of the property, or of the children, the court shall certify the evidence adduced on the trial, and the supreme court shall be possessed of the whole case as fully as the district court was, and may reverse, modify, or affirm said judgment according to the real merits of the case: *Provided*, the supreme court shall not reverse any final order divorcing any parties divorced by the district court having jurisdiction of the cause.

SEC. 13. The practice in civil actions shall govern all proceedings in the trial of divorces except the trial by jury is dispensed with, and as may be otherwise modified by this act.

Writs of error shall be the proper mode of removing causes mentioned in this act from the district to the supreme court, but errors of fact as well as errors of law may be corrected.

Passed January 23d, 1860.

AN ACT

RELATING TO GAMING AND GAMING CONTRACTS.

SEC. 1. All games and gambling devices prohibited.
2. Penalty for violation of this act.
3. Penalty for betting.
4. Penalty for permitting gambling on the premises.
5. Persons betting shall give testimony; such testimony not to be used against the witness.
6. Prosecution for, and penalty of violating this act.
7. District attorney to prosecute suits under the provision of this act.
8. Prosecuting attorney to sue for and recover money won and lost, for the use of common schools.
9. Gaming contracts declared void.
10. Acts conflicting with this, null and void.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all E. O. or roulette tables, faro or faro banks, and all gaming with cards, gaming tables, or gambling devices whatever, are hereby prohibited from being set up or used for gaming or gambling purposes in this territory.

SEC. 2. Every person who shall deal cards at the game called faro, or forty-eight, whether the same shall be dealt with fifty-two or any other number of cards: and every person who shall keep, to be used in gaming, any gambling device whatever, designed to be used in gaming, shall forfeit the same on conviction, and be punished by fine, not more than one hundred dollars nor less than fifty dollars.

SEC. 3. Every person who shall bet any money, or other property, thing or things to represent value, at, or on any gaming table, bank, or gambling device, prohibited by this act, or in any other way, shall, on conviction, be punished by fine not exceeding fifty dollars nor less than ten dollars.

SEC. 4. Every person who shall suffer any gaming table, bank, cards, or gambling device, prohibited by this act, to be set up or used for the purpose of gambling, in any house, building, steamboat, raft, keel boat, or boom, lot, yard, or any other place to him belonging, or by him occupied, or of which he has the control, shall be liable to punishment by fine, not exceeding one hundred dollars nor less than fifty dollars.

SEC. 5. No person shall be incapacitated or excused from testifying touching any offense committed by another against any of the provisions of this act, relating to gaming, by reason of his having bet or played at the prohibited games or gambling devices; but the testimony which may be given by such person shall in no case be used against such witness.

SEC. 6. Any person offending against the provisions of this act, may be punished by indictment and trial in the district court, the probate court at their criminal terms, or by a prosecution before a justice of the peace in the name and for the use of the county where the offense shall have been committed. In all prosecutions before a justice of the peace where a fine shall be imposed, judgment shall be entered against the defendant for the amount of the fine and costs, including a fee of ten dollars for the prosecuting attorney.

SEC. 7. It shall be the duty of the district attorney, upon notice of the commencement of a suit under any of the provisions of this act, to immediately prosecute the same in the name and for the use of the county in which the offense is committed.

SEC. 8. If any person shall, by playing at cards, dice, or other game, or by betting on the hands or sides of such as are gaming, lose to any person so playing or betting, any sum of money, or any goods whatever, and shall pay or deliver the same, or any part thereof, to the winner, it shall be the duty of the prosecuting attorney to sue for and recover the same in the name of the county in which such game was played or money lost, to go for the use of common schools.

SEC. 9. All notes, bills, bonds, mortgages, or other securities or conveyances whatever, in which the whole or any part of the consideration shall be for any money or goods won by playing or gaming at cards, dice, or any other game whatever, or by betting on the sides or hands of any persons gambling, or for re-imbursing or re-paying any money knowingly lent or advanced for any gaming or betting, to any person so gaming or betting, shall be void and of no effect, as between the parties to the same, and to all persons, except such as shall hold or claim under them, in good faith, and without notice of the illegality of the consideration of such contracts or conveyances.

SEC. 11. All acts or parts of acts heretofore passed not in conformity with the provisions of this act, are hereby declared null and void after the first day of March, 1855.

Passed January 24th, 1860.

AN ACT

TO PREVENT THE SALE OF INTOXICATING LIQUORS TO KANACKAS.

SEC. 1. Violation of this act, how punished.
2. Certain sections of act of January 25th, 1855, to be considered part of this act.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That if any tavern keeper, grocery keeper, or other person or persons shall sell, barter, give, or in any manner dispose of or furnish any spirituous liquor, or any liquor of intoxicating quality, to any Kanaka or Kanakas within this territory, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, in any court having competent jurisdiction to try the same, shall forfeit and pay to the use of the county in which the offense may have been committed, a fine of not less than twenty-five dollars and not more than five hundred dollars.

SEC. 2. Sections two, (2) three, (3) four, (4) and five (5) of the act entitled, "An act to prevent the sale of intoxicating liquors to Indians," passed January 25th, 1855, shall apply to and be considered a part of this act.

Passed January 24th, 1860.

AN ACT

RELATING TO ARBITRATIONS.

SEC. 1. Suits, &c., not respecting title to real estate, may be submitted to arbitration.
2. Agreement to arbitrate; requisites of.
3. Arbitrators to be sworn.
To whom and how award to be delivered.
Court to enter judgment thereon; when.
4. Compensation of referees, costs, &c.
Forfeiture by arbitrator.
5. Exception to award, for what cause may be taken.
6. Court may refer cause back to referees, and on their failure to correct, shall be possessed of the case.
7. Powers of arbitrators.
8. Laws relative to evidence and witnesses to govern in arbitrations.
9. Proceedings for contempt.

SEC. 10. Taxation of costs against losing party, and execution therefor.
11. Effect of such award, and of a transcript of judgment thereon.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall be lawful for all persons desirous to end, by arbitration, any controversy, suit or quarrel, except such as respect the title to real estate, to submit their matters of difference to the award or umpirage of any person or persons mutually selected.

SEC. 2. Said agreement to arbitrate shall be in writing, signed by the parties, and may be by bond, in any sum, conditioned that the parties entering into said submission shall abide the award.

SEC. 3. The said arbitrators shall be duly sworn to try and determine the cause referred to them, and a just award make out, under the hands and seals of a majority of them, agreeably to the terms of the submission. Said award, together with the written agreement to submit, shall be sealed up by the referees and delivered to the party in whose favor it shall be made, who shall deliver the same, without breaking the seal, to the clerk of the district court of the district, including the county wherein said arbitration is held, who shall enter the same on record in his office. A copy of the award, signed by said arbitrators, or a majority of them, shall also be delivered to the party in whose favor it is so rendered, who shall, if the matter be not settled, serve a copy of the same on the adverse party, at least twenty days before the commencement of the next term of the said district court, and if no exceptions be filed against the same by or before the second day of said term, the judgment of the court shall be entered upon said award, with like effect as though said award were the verdict of a jury, and execution may issue therefor, and the same proceedings had as in civil actions.

SEC. 4. The referees chosen under the provisions of this act, shall each be allowed three dollars per day, to be taxed with other costs of suit; but if either party fail to appear on the day agreed upon for the referees to meet, said party shall be liable for all costs accruing that day, unless his absence was unavoidable, and shall be so decided to the satisfaction of said referees. And any arbitrator failing to attend on the day appointed, unless delayed by sickness or unavoidable accident, shall forfeit and pay the sum of five dollars to the school fund of the county, to be recovered by action before a justice of the peace in the name of the county commissioners of the county, as other fines are recoverable.

SEC. 5. The party against whom an award may be made, may except thereto for either of the following causes:

1st. That the arbitrators or umpire misbehaved themselves in the case.

2d. That they committed an error in fact or law.

3d. That the award was procured by corruption or other undue means.

SEC. 6. If, upon exceptions filed, it shall appear to the said district court, that the referees have made a mistake, in fact or law, the court may refer the cause back to said referees, directing the amendment of said award forthwith, returnable to the current term of said court, and on the failure so to correct said proceedings, the court shall be possessed of the case, and proceed to its determination.

SEC. 7. Arbitrators, or a majority of them, shall have power—

1st. To compel the attendance of witnesses duly notified by either party, and to enforce from either party the production of all such books, papers and documents, as they shall deem material to the cause.

2d. To administer oaths or affirmations to witnesses.

3d. To adjourn their meetings from day to day, or for a longer time, and also from place to place, if they think proper.

4th. To decide both the law and the fact that may be involved in the cause submitted to them.

SEC. 8. The laws in force in this Territory, relating to evidence, and the manner of procuring the attendance of witnesses, shall govern in arbitrations.

SEC. 9. The law governing proceedings for contempt in the trial of cases before justices of the peace, so far as the same may be applicable, shall apply to proceedings before arbitrations.

SEC. 10. The costs of witnesses, and other fees in the case, shall be taxed against the losing party; said fees shall be endorsed upon the award, and when said award is affirmed as the judgment of the district court, execution shall issue therefor, as for costs in civil actions.

SEC. 11. Such award, when so affirmed, shall be in all respects like any other judgment of the district court; and a transcript of such judgment, or an execution issued thereon, recorded in the county auditor's office, in the same manner as other judgments, shall be a lien upon real estate in said county.

Passed January 25th, 1860.

AN ACT

TO LEGALIZE THE ACTS OF COUNTY COMMISSIONERS OF SUCH COUNTIES AS HELD A TERM OF COURT ON THE SIXTH DAY OF JUNE, A. D. 1859.

SEC. 1. All acts at terms commenced and held on 6th June, 1859, declared legal and valid.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all the acts of the several boards of county commissmissioners of this territory, at terms of court commenced and held on the sixth day of June, A. D., 1859, be and the same are hereby declared legal and valid.

Passed January 26th, 1860.

AN ACT

TO AMEND AN ACT, ENTITLED AN ACT, TO AUTHORIZE AND REGULATE THE ERECTION OF WHARVES.

SEC. 1. 3d section, act of 1st session, amended. [See page 357, statutes 1853-4.] Liability of owners, &c., of wharves for damages sustained in consequence of insufficient, unfinished, &c., condition, &c., of wharves. Established rates of wharfage, &c., to be posted on wharf.

2. What shall be deemed an insufficient, unfinished, &c., wharf.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the third section of the act to which this is an amendment, be, and the same is amended so as to read as follows: "Every person building, owning, or occupying a wharf in this territory, upon which wharfage is charged and received, shall be held accountable to the owner or owners, consignees or agents, for any and all damage done to property stored upon, or passing over said wharf, in consequence of the unfinished, incomplete, or insufficient condition of said wharf; and every such person shall post or cause to be posted in a conspicious place on said wharf, the established rates of wharfage, noting passengers and their baggage free."

SEC. 2. All wharves now standing, or hereafter to be built, in this territory, shall be deemed insufficient, incomplete, and unfinished, unless they have good and substantial banisters or railing on the sides thereof, or

a strip of hewn timber at least eight by ten inches square, well secured all around said wharves within ten inches of the outside edge thereof, except at the ends.

Passed January 28th, 1860.

AN ACT

TO AMEND AN ACT, ENTITLED AN ACT, RELATIVE TO WEIGHTS AND MEASURES.

SEC. 1. Section 4, act of first session amended. [See page 399, statutes 1853–4.] Weight of bushel of oats.
2. *Ib.* Peas.
Ib. Beans.
Ib. Timothy seed.
Ib. Apples or pears.
3. Act of January 21st, 1858, and conflicting acts, repealed.
4. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That in section four of the act to which this is amendatory, where it reads, "thirty-six pounds for a bushel of oats," be so amended as to read, "thirty-five pounds for a bushel of oats."

SEC. 2. Sixty pounds for a bushel of peas;
Sixty pounds for a bushel of beans;
Forty pounds for a bushel of timothy seed;
Forty-five pounds for a bushel of apples or pears.

SEC. 3. An act passed January 21st, 1858, in regard to weights and measures, and all acts conflicting with this act, are hereby repealed.

SEC. 4. This act to take effect and be in force from and after its passage.

Passed January 28th, 1860.

AN ACT

TO AMEND AN ACT, ENTITLED AN ACT, TO PROVIDE FOR A STAY OF EXECUTION UPON JUDGMENTS IN THE SUPREME AND DISTRICT COURTS.

SEC. 1. Sec. 1, act of 1st Session, amended [see page 377, statutes 1853-4].
Length of stay in supreme court.
Ib., in district court.
2. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section first of the act of which this is amendatory, be so amended as to read: That stay of execution shall be allowed on judgments rendered in the supreme court and district courts as follows:

In the supreme court,

1st—On all sums under five hundred dollars, thirty days.

2d—On all sums over five, and under fifteen hundred dollars, sixty days.

3d—On all sums over fifteen hundred dollars, ninety days.

On judgments rendered in the district court,

1st—On all sums under three hundred dollars, two months.

2d—On all sums over three hundred, and under one thousand dollars, five months.

3d—On all sums over one thousand dollars, six months.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed January 30th, 1860.

AN ACT

TO AMEND AN ACT, ENTITLED AN ACT, TO ENCOURAGE THE BUILDING OF BRIDGES, PLANK OR TURNPIKE ROADS.

SEC. 1. Sec. 4, act of 1st Session, amended [see pp. 361-2, statutes, 1853-4].
Liability of owner, &c., of bridge for damage sustained in consequence of insufficiency of bridge.
Damages to be recovered before any court of competent jurisdiction.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the fourth section of the act to which this is an amend-

ment, shall be amended by adding the following to said section: And all persons who build or own any bridge, built pursuant to the provisions of this act, shall be held liable for any and all damages done to passengers or property passing over such bridge, in consequence of the insufficiency of such bridge, such damages to be recovered before any court having competent jurisdiction.

Passed January 30th, 1860.

AN ACT

TO AMEND AN ACT, ENTITLED AN ACT, IN RELATION TO THE CONSTRUCTION OF ROADS AND HIGHWAYS, AND DEFINING THE DUTIES OF SUPERVISORS OF HIGHWAYS.

SEC. 1. Sec. 38, act 15th January, 1859, amended; [see p. 17, stats. of 1858-9.]
County auditor to add ten per cent. to unpaid road tax.
County treasurer, auditor and sheriff allowed same fees as in other cases.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section thirty-eight of an act entitled an act in relation to the construction of roads and highways, and defining the duties of supervisors of highways, be, and the same is so amended as to read, "the county auditor, when he receives any tax roll from the county treasurer, shall add ten per cent. to the unpaid road tax; and the county treasurer, auditor, and sheriff, shall be allowed the same fees as in other cases."

Passed January 31st, 1860.

AN ACT

TO PUNISH SAILORS FOR DESERTING SHIPS IN THE WATERS OF PUGET SOUND.

SEC. 1. Deserting ship deemed a misdemeanor.
Penalty for.
2. Improper usage by master, &c., entitling to discharge.
May be set up as defense to indictment.
3. Act only to apply where shipping articles signed.
4. Mariner may be discharged from arrest on voluntary return to vessel, when.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That if any mariner shall desert from any ship or vessel in the waters of Puget Sound, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned in the county jail not more than six months.

SEC. 2. Any and all improper usage on the boat, by the master or other officer of the vessel, that by law would entitle a mariner to his discharge, may be set up as a defence to any indictment under this act.

SEC. 3. This act shall apply to no mariner except those that have signed shipping articles for a voyage clearly defined in said articles.

SEC. 4. If any mariner shall be arrested for the crime of desertion, while the vessel from which he deserted is still in port, or within the waters of Puget Sound, he may be discharged on his voluntarily returning to duty on said vessel.

Passed January 31st, 1860.

AN ACT

TO AUTHORIZE THE SECRETARY OF THE TERRITORY TO RECEIVE COMPENSATION FOR CERTIFICATE AND SEAL OF OFFICE.

SEC. 1. Fee for attaching certificate and seal, in certain cases.
2. *Ib.*, for appointment of commissioner of deeds.
3. Secretary to furnish, at his own expense, all blank forms required under this act.
4. Act when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall be lawful for the secretary of the territory to demand and receive the sum of one dollar for attaching a certificate and the seal of his office to any instrument not pertaining to the government of said territory.

SEC. 2. That the said secretary shall also be entitled to demand and receive the sum of two and a half dollars for each and every appointment of commissioners of deeds that may be issued.

SEC. 3. That the said secretary shall, at his own expense, furnish all blank forms that may be required by sections one and two of this act.

SEC. 4. This act to take effect and be in force from and after its passage.

Passed January 31st, 1860.

AN ACT

TO AMEND AN ACT, ENTITLED "AN ACT TO CHANGE THE TIME FOR HOLDING THE SESSIONS OF COUNTY COMMISSIONERS COURT."

SEC. 1. Sec. 2, act 17th Jan., 1858, amended; [see p. 21, Stats. 1858-9.]
County treasurers to make out and return delinquent tax lists to county auditors fifteen days before first Monday in November.
2. Conflicting acts repealed.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section two (2) of an act entitled "an act to change the time for holding the sessions of the county commissioners court," be and the same is hereby so amended as to read: All the business heretofore required to be transacted at the March and June sessions of said commissioners, shall be done and transacted at their May term; and all business heretofore required to be transacted at the September and December sessions of said commissioners, shall be done and transacted at their November term; and the county treasurers of the several counties shall, fifteen days before the first Monday in November, make out and return delinquent tax lists to the county auditors.

SEC. 2. All acts and parts of acts conflicting with this act are hereby repealed.

Passed January 31st, 1860.

AN ACT

TO PROTECT AND PRESERVE BRIDGES, BOTH PUBLIC AND PRIVATE.

SEC. 1. County commissioners authorized to pass rules, &c., for protection and preservation of bridges.
Proviso—Act not to extend to bridges within incorporated towns.
2. What a sufficient notice for purposes of this act.
3. Fines under this act may be collected by any citizen on complaint to justice. Fines appropriated to school fund of county.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the county commissioners of the several counties in this territory be authorized and required to pass such rules and regulations as will protect the bridges within their several counties, and preserve them from destruction or injury by fast riding, driving, and neglect: *Provided*, that this act shall not be so construed, as to effect or extend to any bridge located within the limits of any incorporated town in said territory.

SEC. 2. It shall be sufficient notice for the purposes of this act, to have a written or printed notice posted upon or near any bridge prohibiting fast riding or driving, and giving the amount of fine for the violation of such rule.

SEC. 3. All fines assessed pursuant to the provisions of this act, may be collected by any citizen upon complaint made to any justice of the peace in the county in which the bridge is located, and said fine shall go into the school fund of the county.

Passed January 31st, 1860.

AN ACT

TO PREVENT THE SALE OF ADULTERATED LIQUORS.

SEC. 1. County commissioners to appoint inspectors of liquors, when.
Duty of inspectors.
2. Inspectors to be sworn.
Penalty for passing and approving liquors obviously adulterated, &c.
3. Qualifications and bond of inspectors.
4. Penalty for selling liquors in quantities less than one gallon, without having them inspected, &c.
5. Compensation of inspectors to be paid by owners.
6. Wines, champagnes and cider comprehended within the term liquors.
7. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall be the duty of the county commissioners of each county to appoint at least one suitable person for each village or neighborhood, where spiritous liquors are sold in less quantities than a gallon, whose duty it shall be to inspect all liquors to be sold in less quantities than a gallon. Said inspector shall mark and approve all such liquors submitted to him, if he shall find them pure and free from adulteration; but if he shall believe that any liquors so submitted to him have been adulterated in any manner, he shall retain possession of them, and may, at the request of the owner, submit it to chemical proof, and if found impure or adulterated, said liquor shall be destroyed by said inspector.

SEC. 2. All inspectors under this act shall be duly sworn to a true and faithful performance of their duty, and should any inspector pass and approve any liquors that are obviously impure and adulterated, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined

in any sum not exceeding fifty dollars, for each offense, and shall forfeit his appointment as inspector.

SEC. 3. No person shall be appointed inspector unless he shall be possessed of sufficient property over and above such as is exempt from execution, to pay all fines under this act, or shall give bond to the commissioners in the sum of five hundred dollars, for the faithful performance of all the requirements of this act.

SEC. 4. If any person in this territory shall sell, in quantities less than one gallon, any spirituous liquors, without first having them inspected and approved by the inspector referred to in the first section of this act, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned in the county jail not more than six months, and may be fined not more than five hundred dollars, according to the verdict of the jury.

SEC. 5. The inspector shall be entitled to fifty cents per barrel for all liquors inspected in barrels, and twelve and a half cents per dozen for all liquors bottled, to be paid by the owners of the liquors.

SEC. 6. All wines, champagnes and cider, shall be comprehended within the term liquors for the purposes of this act.

SEC. 7. This act shall take effect on the first day of June, A. D., 1860.

Passed February 1st, 1860.

AN ACT

IN RELATION TO PROSECUTING ATTORNEYS.

SEC. 1. Prosecuting attorney to be elected in each judicial district.
His qualifications, and term of office.
2. Clerks of county commissioners to transmit to secretary of territory abstract of votes for prosecuting attorney.
Votes to be canvassed.
Certificate to issue.
Governor to commission.
3. Oath and bond of prosecuting attorney.
Duty of prosecuting attorneys.
Attorney for second district to appear in supreme court, on behalf of territory and districts, in all appeals, &c.
4. To report annually to secretary of territory.

SEC. 5. In case attorney fails, from sickness, &c., or is unable to attend at term, district court to appoint.
Fees of person appointed to act.
6. Vacancy to be filled by Governor, until ensuing election.
Qualification and emoluments of person so appointed.
7. Not to receive fee or reward, or practice as attorney in certain cases.
8. To receive a salary.
Salary by whom and how paid.
9. Fees of prosecuting attorney.
10. Fees of attorney for second district, for attending to appeals, &c., on behalf of other districts.
Ib., how paid.
11. Fees to be paid by county for which service rendered.
Prosecuting attorney to tax his fees.
Bill of fees to be submitted to judge.
Auditor to draw warrant for amount.
12. Fees to be taxed by clerk in criminal cases, when.
To be applied to court fund.
13. Justices of the peace who commit or hold to bail in criminal cases, to forward transcript, &c., to prosecuting attorney.
14. To be but three districts.
Where court held under special act, county where held to compose part of district.
15. Conflicting acts repealed.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That at the next annual election, and every two years thereafter, there shall be elected by the qualified voters of the several counties in each judicial district of this territory, one prosecuting attorney, who shall be a practicing attorney at law, and have the qualifications of an elector, and shall reside in and be an inhabitant of the district for which he is elected, who shall continue in office for the term of two years, and until his successor is elected and qualified.

SEC. 2. The clerks of the boards of county commissioners of the several counties shall make out an abstract of the votes given in their respective counties for prosecuting attorney, and transmit the same to the secretary of the territory, and said votes shall be canvassed, and a certificate issue to the person receiving the highest number of votes in such judicial district, and the person receiving the highest number of votes shall be duly elected and commissioned by the governor.

SEC. 3. Every prosecuting attorney, before entering upon the duties of his office, shall take and subscribe an oath, faithfully to discharge the duties of his office as prosecuting attorney for the district for which he was elected; such oath shall be indorsed on the back of the certificate, and a copy thereof, certified to by the officer before whom the oath shall have been taken, and shall by him be forwarded to the secretary of the territory; and moreover, shall give to the Territory of Washington a bond in the sum of one thousand dollars, with good and sufficient surety, condi-

tioned that he will faithfully discharge the duties of his office, according to law, which bond shall be approved by the judge of the district for which he was elected, and filed with the clerk of the district court of such district.

SEC. 3 Each prosecuting attorney shall prosecute all criminal and civil actions in which the territory or any county within their respective districts may be a party; defend all suits brought against the territory, or any county composing their respective districts, and prosecute all forfeited recognizances, and actions for the recovery of debts, fines, penalties and forfeitures accruing to the territory or any county within the district; and it is hereby made the duty of the prosecuting attorney of the second judicial district to appear on behalf of the territory and the several districts, in the supreme court in all appeals, or writs of error, taken from any district in the territory.

SEC. 4. Every prosecuting attorney shall, in the month of January in each year, make to the Secretary of the Territory a report, setting forth the amount and the nature of business transacted by them in the preceding year, with other statements and suggestions he may deem useful.

SEC. 5. When the prosecuting attorney fails, from sickness or other cause, to attend at a term of the district court of the district for which he was elected, or is unable to attend or to perform his duties at such term, the court may appoint some qualified person to discharge the duties for such term, and the person so appointed shall receive the same fees as the regular prosecuting attorney would be entitled to for the same and similar services.

SEC. 6. When a vacancy occurs in the office of prosecuting attorney, in any district in the territory, it shall be the duty of the Governor to appoint some qualified person to discharge the duties of the office until the next annual election: *Provided*, such person so appointed shall be an inhabitant and a resident of the district for which he was appointed, and shall qualify in all respects the same as one duly elected by the people, and the person so appointed shall receive the salary and fees of the office for such time as he may serve.

SEC. 7. The prosecuting attorney shall receive no fee or reward from or on behalf of any prosecution for any of his official services, nor shall he be engaged as counsel for either party in any civil action depending upon the same facts as a criminal prosecution.

SEC. 8. Each prosecuting attorney shall receive a salary in semi-annual payments, at the rate of two hundred dollars per annum, which salary shall be paid by the territorial treasurer, upon the presentation of proper vouchers therefor.

SEC. 9. The fees of prosecuting attorney shall be as follows: In all prosecutions, when the punishment is death or imprisonment for life, when the prisoner is so convicted, fifty dollars. In all criminal prosecutions, when the punishment is imprisonment in the penitentiary for any less time than for life, when the prisoner is convicted, thirty dollars. In all other criminal prosecutions, when the prisoner is convicted, twenty-five dollars. For prosecuting all forfeited recognizances, debts, fines and forfeitures accruing to the territory, or any county therein, upon the amount recovered, twenty per centum on all sums under one hundred dollars. For each day's attendance upon the district court, during the session of the grand jury, five dollars.

SEC. 10. In case of failure to attend to by the attorney of the first and second districts, the prosecuting attorney of the second judicial district shall receive the following fees for services rendered in the supreme court on behalf of the several districts in the territory: For the prosecuting each case upon appeal or writ of errors, fifteen dollars, to be taxed to the district in which the case arises, to be paid out of the court fund of such district upon the certificate of the judge of such district.

SEC. 11. The fees of prosecuting attorney provided for in section nine (9) of this act, shall be paid by the county for which such services are rendered, and it shall be the duty of the prosecuting attorney to tax his fees at the close of each term of the district court, specifying how much, and for what the service is chargeable to each county, which account of fees must be approved by the judge of the district court, which account shall be submitted to the judge of the district, [*] and upon the presentation of such account or bill of fees to the county auditor, it shall be the duty of such auditor to draw a warrant upon the county treasurer for the amount of said bill in favor of the prosecuting attorney.

SEC. 12. It shall be the duty of the clerks of the several district courts in this territory, in all criminal prosecutions, when the prisoner is convicted, to tax and collect as costs against such prisoner, an amount in each case equal to the fees allowed the prosecuting attorney by the ninth section of this act, which cost, when so collected, shall be applied to the court fund.

SEC. 13. It shall be the duty of every justice of the peace, before whom a criminal examination is held, when the defendant is committed or held to bail, to make out and forward to the prosecuting attorney a transcript of the proceedings had before such justice, together with a copy of all such pleadings and testimony in the case.

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[*] Evidently intended to read: "which account shall be submitted to and approved by the judge of the district court," &c.—PUB. PRINTER.

SEC. 14. For the purposes of this act, there shall be but three districts, and in all cases where a district court is held under special acts in counties within a district, said counties shall compose a part of the district to which it belongs for judicial purposes.

SEC. 15. All acts and parts of acts in conflict with this act, be and the same are hereby repealed.

Passed February 1st, 1860.

AN ACT

TO AMEND AN ACT, ENTITLED AN ACT, RELATIVE TO ESTRAYS AND OTHER UNCLAIMED PROPERTY.

SEC. 1. Person taking up stray animal, to notify owner.
2. When estray may be taken up.
3. If owner unknown, notice, how given.
4. Appraisal of estray, when and how made.
Ib. to be returned to county auditor.
County auditor to record, &c.
5. Owner may have stray restored within one year, on paying charges.
6. If owner and taker up cannot agree upon amount of charges, a justice shall settle same.
Appeal from justice.
7. Sale of estray.
Notice of sale.
Taker-up may bid thereat.
Fees of constable selling.
One-half of remaining proceeds to go to school fund;
The other to taker-up.
8. Penalty for taking stray without consent of, or paying, taker-up.
9. Penalty for removing stray out of county where taken up, and for neglect to perform duties required by this act.
10. Conflicting acts repealed.
11. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That any person taking up any stray animal, shall, within ten days thereafter, notify the owner thereof, if to him known, and request such owner to pay all reasonable charges and take such stray away.

SEC. 2. Any person finding an animal, known to be an estray, upon the lands owned or occupied by such person, may, after three months, take up such animal as an estray, or any animal in such a condition as to require feed to preserve its life, may be taken up at any time.

SEC. 3. If the owner of any stray be unknown, the taker-up shall, within ten days after the taking up of the same, post up written notices, (giving a descripton of the same, describing the marks and brands, natural or artificial, as near as practicable, the name and residence of the taker-up, and the time at which the same was taken up,) in three of the most public places in the county, one of which shall be posted at the door of the court house or auditor's office in said county.

SEC. 4. Every taker-up of a stray or strays, shall, within one month after taking up the same, procure an appraisal thereof, by having two disinterested persons, householders and residents in the county where such stray or strays are taken up, to value and appraise the same, and make return of such valuation, together with the kind and description, marks and brands, natural or artificial, of such stray or strays, to the auditor of the county in which the same may be, which return must be sworn to by at least one of said appraisers, before some person legally authorized to administer an oath, and subscribed to by both, and a certificate of such oath be attached to said return and filed with the same; and the auditor of said county shall enter in a book for that purpose, the name of the taker-up of such stray or strays, together with the description given of the same, the appraisers' value, and the time when taken up, which shall be kept for the inspection of the public.

SEC. 5. If the owner or any person entitled to the possession of any stray, shall appear at any time within one year after the notice is filed with the clerk as aforesaid, and make out his right thereto, he shall be entitled to the possession and ownership of such stray, upon paying all lawful charges which have been incurred in relation to the same.

SEC. 6. If the owner and the taker-up of any stray cannot agree upon the amount of such charges, or for the use of any such stray, either party may make application to any justice of the peace of the county where such stray was taken up, to settle the same, and the party making such application shall give notice thereof to the other party, and if any amount be found due to the taker-up by the said justice, over the value of the use of such stray, the same shall be a lien on said stray until paid by the owner, together with the cost of such adjudication, which if not paid, said justice may enter up judgment and issue execution for, commanding the sale of such stray to meet such debt and cost, as in any other judgments for debt; *provided*, that only such stray can be made liable for such debt and costs. *Provided*, that either party shall have the same right to appeal to the district court as in other cases.

SEC. 7. If the owner or any person entitled to the possession of any stray, shall not appear and make out his title thereto, and pay the charges

thereon, within one year from the time when the notice is filed with the county auditor, as provided for in the fourth section of this act, such stray shall be sold at the request of the taker-up, by any constable of the county, at public auction, upon first giving public notice thereof in writing, by posting up the same in three of the most public places in the precinct where such stray may have been taken up, at least ten days before such sale; and the taker-up may bid therefor at such sale, and after deducting all the lawful charges of the taker-up, as aforesaid, and the fees of the constable, which shall be the same as a sale on an execution, one-half of the remaining proceeds of such sale shall be deposited in the treasury of the county, to be applied to the common school fund of said county, the other half shall belong to the taker-up.

SEC. 8. If any person shall, without the consent of the taker-up, take away any stray taken up pursuant to the provisions of this act, without first paying all the lawful charges incurred in relation to the same, he shall be liable to the taker-up for the value of such stray.

SEC. 9. If any taker-up of a stray shall neglect to cause the same to be advertised, or a notice thereof to be posted up, or if he shall neglect to procure the appraisal of any stray which shall be of the value of five dollars or more, or if he shall move or cause the same to be moved beyond the bounds of the county were taken up, or if he shall neglect to perform any of the duties required of him by this act, he shall be precluded from acquiring any right of property in such stray by the provisions of this act, or receiving any damages or charges for keeping the same, and shall forfeit and pay into the county treasurery a sum equal to the value of the stray, to be sued for and recovered by the county treasurer in the name of the county.

SEC. 10. All acts and parts of acts conflicting with this act, be, and the same are hereby repealed.

SEC. 11. This act to take effect and be in force from and after its passsage.

Passed February 1st, 1860.

AN ACT

TO EXTEND THE PROVISIONS OF THE MECHANICS' LIEN LAW TO LOGS, SPARS, SAWED LUMBER, AND OTHER TIMBER.

SEC. 1. Labor performed on saw logs, spars, &c., a lien thereon.
Provisions of mechanics' lien law extended to saw logs, &c., and other timber.
2. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That any person who shall cut saw logs, make spars, saw lumber, or perform labor on the same, shall be entitled to a lien on them, and shall be entitled to the same remedies as mechanics now are entitled to under the laws of this territory, and the provisions of law now in force in relation to mechanics' lien, are hereby extended to saw logs, spars, sawed lumber and other timber, as far as the same may be applicable.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed February 1st, 1860.

AN ACT

TO AUTHORIZE THE TERRITORIAL TREASURER TO CREDIT THE SEVERAL COUNTIES WITH DELINQUENT TAX LISTS.

SEC. 1. Territorial treasurer in yearly settlements to credit counties with delinquent territorial tax.
2. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall be the duty of the territorial treasurer, each year when settling with the treasurers of the several counties, to credit said counties with the amount of delinquent territorial tax, duly certified to by the county auditor.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed February 1st, 1860.

AN ACT

RELATING TO COUNTY ASSESSORS.

SEC. 1. County assessors to transmit yearly to county auditor, a complete statistical report.
Blank form therefor to be furnished by territorial auditur.
2. County assessors to take the census of the legal voters and transmit same to secretary of territory before first Monday of May in each year.
Compensation of assessors.
3. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the county assessors of each county to make a full and complete statistical report, and transmit the same to the territorial auditor by the first Monday of October in each year; and it shall be the duty of the territorial auditor to transmit to each of the county auditors a sufficient number of blank forms for the use of the county assessors.

SEC. 2. It shall be the duty of the county assessors to take the census of the legal voters in their respective counties, and transmit a copy of the same, before the first Monday in May in each year, to the secretary of the territory; and they shall be allowed a reasonable compensation therefor by the board of commissioners of their respective counties.

SEC. 3. This act to take effect and be in force from and after its passage.

Passed February 1st, 1860.

AN ACT

CONFERRING JURISDICTION UPON THE DISTRICT COURT OF THE COUNTY OF WALLA-WALLA.

[*See Amendatory Act of January* 31, 1860.]

SEC. 1. District court established at county seat.
2. Jurisdiction.
3. To be held by judge of first district.
Terms.

SEC. 4. Clerk of, to be appointed,—office and records to be kept at county seat.
To be a court of record.
Expenses of holding payable by county of Walla-walla.
5. Civil and criminal laws to govern practice in.
6. Grand and petit jury, how selected.
7. Number of jurors to be summoned.
Act of 27th Jan., 1857, relative to jurors, how far to apply.
8. Construction of this act as to summoning jurors for court of first district.
County not chargeable for mileage, &c., of jurors thus summoned.
Such summons to be on order of court.
Conflicting acts, repealed.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That a court is hereby established at the county seat of Walla-walla county, to be called the district court of Walla-walla county.

SEC. 2. Said court shall have exclusive jurisdiction within the counties of Walla-walla and Spokane of all matters and causes, except those in which the United States is a party, in the same manner, and to the same extent, as is now had and exercised by the district court of the first judicial district, with the same right as to appeals, certiorari, and writs of error, from inferior courts; and to the supreme court as is now or hereafter may be provided by law.

SEC. 3. Said court shall be held by the judge of the first judicial district at the county seat of Walla-walla county, at such time, or times, as shall be prescribed by the judges of the supreme court.

SEC. 4. The said district judge of the first judicial district shall appoint a clerk of the court, who shall give bonds and security as shall be ordered by said court or the judge thereof, and shall keep his office and records of said court at the county seat of said county; and said district court shall be a court of record, and the expense of holding the same shall be payable by the said county of Walla-walla.

SEC. 5. The various laws now in force, and which may hereafter be enacted, regulating the practice and proceedings in civil actions, and in criminal prosecutions, shall govern the practice and proceedings in said district court of the county of Walla-walla.

SEC. 6. The said court, or the judge thereof, shall direct the number of grand and petit jurors to be summoned from each of said counties to attend at the several terms of said court, and shall direct the clerk to certify to the auditor of each of the counties the number of grand and petit jurors apportioned to each county, whereupon said jurors shall be selected and summoned in said counties, as is now or hereafter may be provided by law for the selection and summoning of jurors to attend upon the district courts: *Provided*, that when, from any cause, there shall not be in attendance a sufficient number of grand or petit jurors, or when those sum-

moned shall have been discharged, it shall be competent for the court to order a sufficient number of qualified and competent juors from the by-standers, or from the bodies of both or either of the counties, andthe court, after discharging a grand jury, may order one or more grand juries to be empanelled at the same time, provided the same shall, in the opinion of the court, be necessary.

SEC. 7. The number summoned as grand jurors shall not exceed sixteen, and the number of petit jurors summoned shall not exceed twenty-four; and the provisions of the act to provide for the manner of selecting and procuring the attendance of jurors at the term of the district court, passed January twenty-seventh, one thousand eight hundred and fifty-seven, consistent with the foregoing and not modified thereby, shall fully apply to the said district court of the county of Walla Walla.

SEC. 8. The foregoing sections, which relate to the summoning grand and petit jurors for the terms of said district court of the county of Walla Walla, shall not be construed to alter, amend or repeal the law now in force in regard to the quota of jurors to be summoned from said county of Walla Walla to attend the district court of the first judicial district. But the said county of Walla Walla shall not be chargeable in any event for the mileage and attendance of any grand or petit jurors who may be summoned from said county of Walla Walla, to attend any term of the district court of the first judical district, but no jurors shall be summoned to attend at the district court of said district, except upon the order of the judge of the district.

SEC. 9. All acts and parts of acts inconsistent with the foregoing, be, and the same are hereby repealed.

Passed January 27th, 1860.

AN ACT

TO AMEND AN ACT, ENTITLED AN ACT, TO CONFER JURISDICTION UPON THE DISTRICT COURT OF THE COUNTY OF WALLA WALLA.

[*See Act of 27th January*, 1860.]

SEC. 1. Expenses of district court of Walla Walla county, including per diem, &c., of jurors, to be paid by Spokane county in certain cases.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of*

Washington, That the county of Spokane shall pay all of the expenses of the district court of the county of Walla Walla arising out of cases coming from said county of Spokane, including the mileage and *per diem* of the jurors from said county; which expenses shall be paid by the treasurer of said county upon the certificate of the clerk of said court, approved by the judge thereof, anything in the act to which this is amendatory notwithstanding.

Passed January 31, 1860.

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TO THE

FOREGOING PUBLIC LAWS.

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PRIVATE LAWS.

PRIVATE LAWS

OF THE

TERRITORY OF WASHINGTON.

AN ACT

TO AUTHORIZE JOSEPH EATON TO ESTABLISH A FERRY ACROSS THE CATHLAPOODLE RIVER, IN CLARKE COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Joseph Eaton, his heirs or assigns, be and they are hereby authorized to establish and keep a ferry across the Cathlapoodle river, in Clarke county, at the point where the road from the base of the Green Mountain to John Springer's, on the Columbia river, crosses or may cross said river, commencing at a point in the centre of said river, where it strikes said river; and to land and deposit from each shore of said river, and extending from said point up and down said river, on each side thereof, one mile each way; and that the said Joseph Eaton, his heirs and assigns, have the exclusive privilege of ferrying in Clarke county, within the above limits, for the term of five years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations and under the same restrictions as other ferries are or may hereafter be, by laws of this territory prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said Joseph Eaton, his heirs or assigns, to receive and collect the following rates of toll for ferriage upon said ferry:

For crossing a footman,.....12½ cents.
For crossing a man and horse,.....25 "
For crossing horse and carriage,.....37½ "
For crossing two horses, or oxen and wagon,.....50 "
For crossing each additional span of horses, or oxen,.....25 "
For crossing loose stock, other than sheep or hogs, each,.....12½ "
For crossing sheep and hogs, each,..... 5 "

SEC. 3. That no courts, or board of county commissioners, shall authorize any person, except as hereafter provided in this act, to keep a ferry within the limits set out in this act: *Provided*, That the said Joseph Eaton, his heirs or assigns, shall, within three months after the pas sage of this act, procure for said ferry a good and sufficient flat-boat, or boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river without delay; and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said Joseph Eaton, his heirs, or assigns; or if no good and sufficient flat-boat, or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Clarke county, then this act shall be void.

SEC. 4. This act to take effect and be in force from and after its passage.

Passed December 12th, 1859.

AN ACT

TO INCOROPATE PORT TOWNSEND LODGE, NO. 6, OF FREE AND ACCEPTED MASONS.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That G. O. Haller, F. A. Wilson, John Gibbs, E. S. Fowler, E. Webber, J. M. Van Valzah, H. L. Tibbals, John Thornton, Simon Ebbrecht, J. F. Blumburg, J. J. Bragdon, F. A. Chenoweth, and E. Evans, worshipful masters, wardens, and members of the Masonic frater-

nity, their associates and successors, be, and they are hereby, constituted and declared to be a body corporate and politic, in deed, fact and name, by the name and style of "Port Townsend Lodge, No. 6, of Free and Accepted Masons;" and by that name, they and their successors shall be able and capable, in law, to sue and be sued, plead and be impleaded, defend and be defended against, in all the courts of law and equity in this territory; to take, receive and hold all moneys, and other property, by voluntary contributions, donations, or otherwise; also, all legacies and devises of personal estate; and to have, hold, possess, and acquire lands and tenements, furniture, chattels, regalia, and property of any description incident to such bodies, to an amount not exceeding forty thousand dollars; and the estate aforesaid to lease, grant, convey, and dispose of, in such manner as they may judge expedient, at their will and pleasure; and, at any of their meetings for business, to enact and pass such rules, regulations and by-laws, for the government of said Lodge and management of the affairs thereof, as they may deem proper and necessary: *Provided*, The same be not repugnant to the laws of this territory, and of the United States.

SEC. 2. That said Lodge may hold its meetings at such times and places, and may elect such officers as they may think proper, for the management and government of its affairs.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed Dec. 15th, 1859.

AN ACT

AUTHORIZING STEPHEN W. BABCOX TO ESTABLISH A FERRY ON SNAKE RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Stephen W. Babcox, his heirs or assigns, be, and they are hereby, authorized to establish and keep a ferry across Snake River, at a point within one mile of its junction with the Columbia river; and that the said Stephen W. Babcox, his heirs and assigns, have the exclusive privilege of ferrying upon Snake river within the following limits, to-wit: A distance up and down said river of one mile from said ferry, for the term of six years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations and

under the same restrictions as other ferries are, or may hereafter be, by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said Stephen W. Babcox, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said ferry:

For each wagon, with two animals attached,	$4 00
" pleasure wagon, with two animals,	3 00
" hack or sulky, with one horse,	2 00
" man and horse,	1 50
" head of loose horses or mules,	75
" animal packed,	1 50
" footman,	50
" loose cattle, each head,	50
" sheep, goats or hogs, each head,	10

But the county commissioners of Walla Walla county, at any regular term of said court, shall have power to alter the above rates of toll, and when so altered, it shall be lawful for said Stephen W. Babcox, his heirs and assigns, to collect and receive ferriage only according to the rates fixed by said commissioners.

SEC. 3. The said Stephen W. Babcox, his heirs and assigns, shall, within one year from and after the passage of this act, procure and keep on said ferry, a sufficient ferry-boat, with a sufficient number of hands to work the same, for the transportation of all persons and their property without unnecessary delay; and upon proof being made to the county commissioners of Walla Walla county that the said Stephen W. Babcox, his heirs and assigns, have failed or refused to keep at said ferry a sufficient ferry-boat, with the requisite number of hands to work the same, as required above, then this act shall be void.

SEC. 4. The said Stephen W. Babcox, his heirs or assigns, shall, before collecting any money for ferriage, as provided in this act, pay into the county treasury, as an annual tax, a sum not to exceed twenty-five dollars per annum, for the use and benefit of Walla Walla county.

SEC. 5. This act to take effect and be in force from and after its passage.

Passed Dec. 16th, 1859.

AN ACT

GRANTING TO RICHARD H. REIGART THE RIGHT TO ESTABLISH A FERRY ON THE COLUMBIA RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Richard H. Reigart, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Columbia, in this territory, at a point to be by him or them selected within six months after the passage of this act, and within five miles of the mouth of the Okanagan river. And that the said Reigart, his heirs and assigns, have the exclusive right of ferrying upon the Columbia river, up and down one mile each way from the point selected for said ferry, for the term of ten years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations as other ferries are, or may hereafter be, by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said Reigart, his heirs and assigns, to receive and collect the following rates of toll for ferriage on said ferry:

For crossing a footman,		$1 00
"	man and horse,	2 00
"	horse and carriage,	3 00
"	two horses and wagon,	4 00
"	two oxen and wagon,	4 00
"	each additional span of horses, or pair of cattle,	1 50
"	loose animals, other than sheep, goats or hogs, each,	75
"	sheep, goats, or hogs, each,	25
"	animals with packs, each,	1 50

But the county commissioners of the county within which said ferry may be located, at any regular term of court, shall have power to change the above rates of toll, and when so changed, it shall be lawful for said Reigart, his heirs and assigns, to collect and receive ferriage only according to the rates of toll fixed by said commissioners.

SEC. 3. The said Reigart, his heirs and assigns shall, before receiving any money for ferriage, and annually thereafter, pay into the county treasury of the county in which said ferry may be located, twenty-five dollars for the use of said county; and shall at all times after six months from the passage of this act, keep at said ferry a good and sufficient flat boat, or boats, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river without delay.

SEC. 4. The failure of the said Reigart, his heirs and assigns, to

comply with all and singular the conditions hereinbefore specified and enumerated, will render void the provisions of this act.

SEC. 5. This act to take effect, and be in force from and after its passage.

Passed December 19th, 1860.

AN ACT

ENTITLED AN ACT, TO INCORPORATE THE DALLES PORTAGE COMPANY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Alfred Allen, James D. Ferguson, George W. Johnson, Robert Tartar, W. P. Murphy, and their associates, their heirs and assigns, be and they are hereby constituted and declared a body corporate and politic, by the name and style of the Dalles Portage Company. The said portage or road to be used for the transportation of freights, passengers and mails, and to be constructed between the navigable waters above and below the Dalles, of the Columbia river, in Washington Territory. The said Alfred Allen, James L. Ferguson and George W. Johnson, to be, and the same are hereby appointed, a board of commissioners in behalf of the company, to select for said purpose the most convenient, economical and practicable site for said road, of forty feet in width, together with one acre of land at each end of the road, with the privilege and power to construct, and for the purpose, good ware-houses, wharves, depots, or other buildings, as the exigencies of the case may require. That said commissioners, Alfred Allen, James L. Ferguson and George W. Johnson, shall, on the 1st day of June, 1860, after due notice of 60 days, in one paper printed in the Territory of Washington, and notice posted at the Dalles, W. T., in some conspicuous place, shall open the books for subscription of stock.

SEC. 2. The road shall be surveyed by the said Alfred Allen, James L. Ferguson and George W. Johnson, or at their instance, and recorded in the office of the Secretary of this Territory.

SEC. 3. The Dalles Portage Company is hereby authorized and impowered to have and to receive, purchase and possess, enjoy and retain, lands, lots, tenements, goods, chattels, and rents, and effects, of any and every kind, and to any amount necessary to carry into effect the objects of said company, and the same to use, alien, sell, and dispose of at pleas-

ure; to sue and be sued in any court having competent jurisdiction, to have and to use a common seal; to ordain and establish such rules, regulations and by-laws as may be necessary for the well being of said corporation, subject to the Constitution of the United States, and the laws of this Territory.

SEC. 4. Each share of stock shall be entitled to one vote. There shall be 600 shares at the rate of ($250) two hundred and fifty dollars a share, and the capital stock shall be one hundred and fifty thousand dollars. The company shall at no time after the expiration of one year from the completion of said road, keep on hand the receipts of said road, when they shall exceed twenty-five thousand dollars, for more than thirty days, without it be by consent of the majority of the stock-holders, and never over fifty thousand dollars, over sixty days; but a dividend shall be declared and the money paid the stock-holders every three months.

SEC. 5. Said company shall consist of a President, Vice President and Secretary, who shall keep the books of said company; all of whom shall be elected by a majority of the stock-holders once a year, and shall hold office one year from the date of their election. The stock of the company shall be transferred only on the books of the company.

SEC. 6. The company shall have power to assess the capital stock of said company, and if after due notice in some newspaper in this Territory, for thirty days, any of the stock-holders shall fail [to] pay the assessment, the company shall proceed to sell the same at public auction, after ten day's notice, after the following manner: The person or purchaser taking the least number of shares and paying the assessment on the entire number of the delinquent shares, shall be entitled to have issued to him by the company such number of shares.

SEC. 7. It is obligatory on the said company to construct, within eighteen months, a good practicable wagon road, as per survey, and in ten years, a good and sufficient rail road with iron track. The company shall, at such latter period, have at least one good ware-house at each end of the road, and good commodious passenger and freight cars, or the company shall forfeit all the privileges of this charter.

SEC. 8. *And be it further enacted*, That a majority of the whole body of commissioners shall constitute a quorum for the transaction of any and all business appertaining to the interests of the company.

SEC. 9. In the event of the survey of the said road embracing the land of settlers and owners, parties failing to agree, the district court shall have power to appoint three citizens of Washington Territory, (free holders,) who shall assess the damages, and the amount of money to be paid to the owner by the company, it being obligatory on the persons so

appointed, to furnish to the owner of said property so taken or damaged, a copy of their proceedings relating to the owners particular property. If the owner of the property thinks his property has been assessed below its value, he shall have the privilege of providing testimony before the district court, and the judgment shall be final, except the parties shall appeal the case to the supreme court of the United States; but in the judgment of the district court, the company shall be placed in possession of the land and property, having full power to proceed with the construction of the road and the necessary buildings as per charter.

SEC. 10. *Provided, however,* That the aforesaid charter shall in no event, obstruct the military and territorial roads at that place.

SEC. 11. *And be it further enacted,* That all persons taking stock in said company, shall be liable for the full amount of stock thus taken in said company.

Passed December 19th, 1859.

AN ACT

TO CREATE AND ORGANIZE THE COUNTY OF CLICATAT.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all that portion of Washington Territory embraced within the following boundaries, to-wit: Commencing in the middle of the Columbia river, five miles below the mouth of the Clicatat river; thence north, to the summit of the mountains, the divide between the waters of the Clicatat and Yakima rivers; thence east, along said divide, to a point north of the mouth of Rock Creek; thence south, to the middle of the Columbia river; thence along the channel of said river to the place of beginning. The same is hereby constituted into a separate county, to be known and called Clicatat county.

SEC. 2. The said territory shall compose a county for civil and military purposes, and shall be under the same laws, rules, regulations and restrictions, as all other counties in the territory of Washington, and entitled to elect the same officers as other counties are entitled to elect.

SEC. 3. That the county seat of said county, be, and the same is hereby, temporarily located on the land claim of Alfred Allen.

SEC. 4. That Alfred Allen, Robert Tartar and Jacob Halstead, be, and the same are hereby, appointed a board of county commissioners; and that Willis Jenkins, be, and he is hereby, appointed probate judge; that James Clark, be, and he is hereby, appointed sheriff; that Nelson Whitney, be, and he is hereby, appointed county auditor; that Edwin Grant, be, and he is hereby, appointed assessor; that William Murphy, be, and he is hereby, appointed treasurer; that John Nelson be, and he is hereby appointed a justice of the peace.

SEC. 5. That the persons hereby constituted officers by the fourth section of this act, shall, before entering upon the duties of their respective offices, qualify in the same manner, and with like restrictions, as those elected at an annual or general election.

Passed Dec. 20th, 1859.

AN ACT

TO AMEND AN ACT, ENTITLED "AN ACT, TO INCORPORATE THE CASCADE RAILROAD COMPANY."

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the act to which this is an amendment, be, and the same is hereby, amended by striking out the name of William H. Fountleroy wherever it occurs, and inserting in lieu thereof the name of Daniel F. Bradford.

SEC. 2. That a majority of the whole body of commissioners shall constitute a quorum for the transaction of any and all business appertaining to the interests of the company.

Passed Dec. 20th, 1859.

AN ACT

TO ESTABLISH AN INSTITUTION OF LEARNING IN WALLA WALLA COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be established in Walla Walla county an institution of learning, for the instruction of persons of both sexes, in science and literature, to be called the "Whitman Seminary;" and that Elkanah Walker, George H. Atkinson, Elisha S. Tanner, Erastus S. Joslyn, W. A. Tenncy, H. H. Spalding, John C. Smith, James Craigie, and Cushing Ells, and their successors, are hereby declared to be a body politic and corporate, in law, by the name and style of the President and Trustees of Whitman Seminary.

SEC. 2. That the corporation before named shall have perpetual succession, and power to acquire, possess and hold property, real, personal and mixed, and the same to sell, grant, convey, rent, or otherwise dispose of at pleasure; and they shall have power to contract, and be contracted with, sue and be sued, plead and be impleaded, in all courts of justice, both at law and equity; they shall have and use a common seal, with power to alter it at pleasure; and they may exercise all the powers and enjoy all the privileges of other institutions of learning in this territory.

SEC. 3. That the corporate concerns of said Whitman Seminary shall be managed by themselves as a board, consisting of the nine members, and that a majority of the members of the board shall constitute a quorum for the transaction of business; said trustees shall elect one of their number to be president of their board, and they shall have power to fill all vacancies in their body, as these may from time to time occur, by resignation, expulsion, death, or otherwise, and shall have power to make and put in force such by-laws and regulations as shall from time to time be deemed necessary for the government of said corporation.

SEC. 4. That the board of trustees shall have power to appoint subordinate officers and agents, and to make, ordain and establish, such ordinances, rules and regulations, as they may deem necessary for the good government of said institution, its officers, teachers and pupils, and for the management of the affairs of said corporation to the best advantage. *Provided,* that they shall not contravene the constitution or laws of the United States, or the laws of this Territory.

SEC. 5. That all deeds and other instruments of conveyance shall be made by order of the board of trustees, sealed with the seal of the corporation, signed by the president, and by him acknowledged in his official capacity in order to insure their validity.

SEC. 6. That the capital stock of said institution shall never exceed

one hundred and fifty thousand dollars, nor the income or proceeds of the same be appropriated to any other use than for the benefit of said institution as contemplated by this act.

SEC. 7. That this act to take effect and be in force from and after its passage.

Passed December 20th, 1859.

AN ACT

TO LOCATE A TERRITORIAL ROAD FROM MONTICELLO TO THE UPPER CASCADES.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washinton,* That H. J. G. Maxon, Joseph L. Durgin, Peter Crawford, Wm. H. Martin and Solomon Strong, be, and they are hereby, constituted a board of commissioners to view and locate a territorial road, commencing at or near Monticello, so as to connect with the military road; thence, on the most practicable route, via Vancouver, to Daniel Baughfman's land claim, at the upper cascades; and that H. J. G. Maxon shall receive no compensation for his services.

SEC. 2. Said commissioners shall meet at the house of Solomon Strong, on the first Monday in April, 1860, or as soon thereafter as circumstances will permit, after being duly sworn faithfully to perform the duties assigned them, shall proceed to view and locate said road.

SEC. 3. Said commissioners shall cause a true report of the proceedings, and a certified copy thereof to be deposited with the county auditors of Cowlitz, Clarke and Skamania, within sixty days from the meeting of said commissioners.

SEC. 4. Said commissioners shall receive, as compensation for their services, the sum of three dollars each, per day, for each and every day necessarily and actually spent in the discharge of said duties, to be paid out of the county treasuries of the different counties through which the road may pass, in proportion to the number of days spent by said commissioners in viewing and locating said road within the limits of the different counties.

SEC. 5. Said commissioners shall have power, if, in their opinion, the public interest require it, to take to their assistance a practical surveyor,

whose duty it shall be to accurately survey said route, and make a correct return of such survey to the county auditor of the counties through which said road shall pass, within sixty days after the meeting of said commissioners.

SEC. 6. Said surveyor shall receive as compensation for his services a sum not exceeding five dollars per day, for each and every day actually and necessarily employed in such service, to be paid in the same manner as is provided in section four, of this act, for the payment of the commissioners herein appointed.

SEC. 7. This act to take effect and be in force from and after its passage.

Passed December 21st, 1859.

AN ACT

TO AMEND AN ACT, ENTITLED, "AN ACT TO INCORPORATE STEILACOOM LODGE, NO. 8, OF FREE AND ACCEPTED MASONS."

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That [the act] of which this is amendatory be so amended as to read "Steilacoom Lodge, No. 2, of Free and Accepted Masons"

SEC. 2. This act to take effect and be in force from and after its passage.

Passed December 21st, 1859.

AN ACT

TO AMEND AN ACT, ENTITLED, "AN ACT TO INCORPORATE OLYMPIA LODGE, NO. 5, OF FREE AND ACCEPTED MASONS."

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the act of which this is amendatory, be so amended as to read: "Olympia Lodge, No. 1, of Free and Accepted Masons."

SEC. 2. This act to take effect and be in force from and after its passage.

Passed December 21st, 1859.

AN ACT

TO LEGALIZE THE ASSESSMENT OF WAHKIACUM COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the assesment made by Ralph C. A. Elliot, in Wahkiacum county, for the year eighteen hundred and fifty-nine, though not made at the time required by law, be, and same is hereby declared valid, to all intents and pursoses, as if made at the proper time.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed January 7th, 1860.

AN ACT

TO LEGALISE THE ASSESSMENT OF PACIFIC COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the assessment made by E. Ward Pell, in Pacific county, for the year eighteen hundreed and fifty-nine, though not made at the time required by an act to provide for the assessing and collecting of county and territorial revenue, be, and the same is hereby, declared valid to all intents and purposes, as if made at the proper time.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed January 9th, 1860.

AN ACT

AN ACT AUTHORIZING JOHN W. PARK TO ESTABLISH A FERRY ACROSS THE ST. JOSEPH RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That John W. Park, his heirs or assigns, be, and they are hereby, authorized to establish and keep a ferry across the St. Joseph river, in what is commonly know as Spokane county, in said territory, at the point where the territorial or military road leading from post or Fort Walla Walla, in Walla Walla county, to Fort Benton, &c., within the following limits, to-wit: Commencing at a point in the centre of said road, where it strikes said river, and to land and deposit from each shore of said river, and extending from said point up and down said river, on each side thereof, from said ferry, two and one-half miles each way; and that the said John W. Park, his heirs and assigns, have the exclusive privilege of ferrying across said river, within the above limits for the term of ten years from the passage of this act: *Provided*, that said ferry, when so established, shall be subject to the same regulations and under the same restrictions as other ferries are or may be, by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said John W. Park, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said ferry:

For each wagon, with two animals attached,	$5 00
For each pleasure wagon, with two animals,	3 00
For each hack or sulky, with one horse,	2 00
For each man and horse	1 50
For each animal, (packed,)	1 50
For each head of horses or mules (loose,)	75
For each footman,	50
For loose cattle, each,	50
For sheep, goats or hogs, each,	10

SEC. 3. The county commissioners of the county in which said ferry is or may hereafter be situated, may, at any regular term of said commissioners' court, regulate and fix the rate of toll to be received by the said John W. Park, his heirs or assigns, after which he or they shall only be authorized to receive the rate of toll so fixed by the said commissioners' court.

Passed January 9th, 1860.

AN ACT

TO INCORPORATE THE SEATTLE LIBRARY ASSOCIATION.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That E. A. Clark, L. V. Wyckoff, David Graham, L. J. Holgate, Dexter Horton, John Pike, D. Parmelee, Thos. Mercer, W. H. Gilliam, H. L. Yesler, Ira Woodin, J. W. Johnson, H. L. Pike, Geo. Holt, Walter Graham, John F. Carr, J. C. Holgate, H. Van Asselt, E. Richardson, Musgrave D. H. Hill, J. C. Card, J. Foster, H. A. Atkins, J. A. Gardner, S. C. Harmon, R. M. Bacon, H. A. Smith, J. H. Nagel, and their associates and successors be, and they are hereby constituted and are declared, a body corporate and body politic, to be known by the name and style of The Seattle Library Association.

SEC. 2. Said association may by its corporate name sue and be sued, plead and be impleaded, defend and be defended against, in all the courts of law and equity in this Territory, and may receive and hold all monies and other property coming into the hands of said association by voluntary subscriptions, contributions or otherwise. Also, all legacies and devises of real or personal estate, and to have and to hold, possess or acquire, lands and tenements, chattels, and property of any description incident to such association, to any amount not exceeding one hundred thousand dollars, and the estate aforesaid to lease, grant, convey, and dispose of, in such manner as they may deem proper.

SEC. 3. Said association may hold its meetings at such times and places, and elect such officers for the management of its affairs, as they may deem proper.

SEC. 4. Said association may at any of its regular or special meetings for business, enact and pass such regulations and by-laws for the government of the same and the management of the property of said association as may be deemed necessary. *Provided*, That the same be not inconsistent with the laws of the United States or of this Territory.

SEC. 5. This act to take effect and be in force from and after its passage.

Passed January 10th, 1860.

AN ACT

TO AUTHORIZE WILLIAM FORMAN TO ESTABLISH A FERRY ACROSS THE CŒUR D'ALENE RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That William Forman, his heirs or assigns, be, and they are hereby authorized to establish and keep a ferry across the Cœur d'Alene river, in what is commonly known as Spokane county, in said Territory, at the point where the territorial or military road leading from the post or Fort Walla Walla, in Walla Walla county, to Fort Benton, &c., within the following limits, to-wit: Commencing at a point in the centre of the said road where it strikes said river, and to land and deposit from each shore of said river, and extending from said point up and down said river, on each side thereof, from said ferry, two and one half miles each way; and that the said William Forman, his heirs and assigns, have the exclusive privilege of ferrying across said river, within the above limits, for the term of ten years from the passage of this act. *Provided*, That said ferry, when established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may be by the laws of this Territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said William Forman, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said ferry:—

For each wagon, with two animals attached,	$5 00
" pleasure wagon, with two animals,	3 00
" hack or sulky, with one horse,	2 00
" man and horse,	1 50
" animal packed,	1 50
" head of horses or mules, loose,	75
" footman,	50
" loose cattle, each head,	50
" sheep, goats or hogs, each head,	10

SEC. 3. The county commissioners of the county in which said ferry is or may be situated, may at any regular term of said commissioner's court, regulate and fix the rate of toll to be received by said William Forman, his heirs and assigns, after which, he or they shall only be authorized to receive the rate of toll so fixed by said commissioner's court.

Passed January 11th, 1860.

AN ACT

TO AUTHORIZE MARTHA MARTIN, A MINOR, TO CONVEY PROPERTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Martha Martin, a minor, is hereby authorized to sell and convey any and all property she may possess, without the appointment of a guardian.

Passed January 12th, 1860.

AN ACT

DEFINING THE BOUNDARY LINES OF PACIFIC COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the boundary lines of Pacific county are defined as follows:

Beginning at a point in the channel of the Columbia river due south of Cape Hancock, thence north to Cape Hancock, thence northerly, according to the meanderings of the Pacific coast, to the corner of fractional sections 19 and 30, in township 15 north, of range 11 west of Willamette meridian, thence east to a point due north of the summit of Jim Crow mountain, thence south to the channel of the Columbia river, thence down the channel of said river to the place of beginning.

SEC. 2. All acts conflicting with this act, are hernby repealed.

SEC. 3. This act to take effect on the first day of April, 1860.

Passed January 13th, 1860.

AN ACT

AUTHORIZING GEORGE KNAGGS TO ESTABLISH A FERRY ACROSS THE COLUMBIA RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That George Knaggs, his heirs or assigns, be, and they are hereby, authorized to establish and keep a ferry across the Columbia river, in said territory, at a point where it is commonly known on said river as "Priest's Rapids," within the following limits, to-wit:

Commencing at a point in the centre of the said rapids, where it strikes said river, and to land and deposit from each shore of said river, and extending from said point up and down said river, on each side thereof, from said ferry, one and one-half miles each way; and that the said George Knaggs, his heirs and assigns, have the exclusive privilege of ferrying across said river, within the above limits for the term of seven years from the passage of this act; *Provided*, that said ferry, when so established, shall be subject to the same regulations, and under the same restrictions as other ferries are, or may be, by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said George Knaggs, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said ferry:

For each wagon with two animals attached,	$2 50
For each pleasure wagon, with two animals,	1 50
For each hack or sulky, with one horse,	1 00
For each man and horse,	75
For each animal, (packed)	75
For each head of horses or mules, (loose)	37½
For each footman,	25
For each loose cattle,	25
For each sheep, goats, or hogs,	5

SEC. 3. That the county commissioners of the county in which said ferry is or may be hereafter situated, may, at any regular term of their court, alter the rates of toll herein stated, and when so altered, the said George Knaggs, his heirs and assigns, shall collect and receive only the rates of toll so fixed.

Passed January 13th, 1860.

AN ACT

TO AUTHORIZE MESSRS. FOWLER & CO. TO EXTEND THEIR WHARF INTO THE BAY OF PORT TOWNSEND.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Enoch S. Fowler, George O. Wilson, and Frederick A. Wilson, of Port Townsend, Jefferson county, be, and are hereby authorized to extend their wharf three hundred feet farther, from its outer end, into the Bay of Port Townsend.

Passed January 13th, 1860.

AN ACT

TO LOCATE THE COUNTY SEAT OF SAWAMISH COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be a special election held in Sawamish county on the second Saturday in February, 1860, for the purpose of locating the county seat of said county. Said election shall be held in each precinct, in the same manner and form that is established by law for holding elections.

SEC. 2. The county seat shall be located by a majority vote of the legal voters of said county.

SEC. 3. The legal voters of each precinct shall elect three judges and two clerks, who, after being duly sworn, shall proceed to hold the election and make returns in the same way that is laid down by law for holding elections; said judges and clerks shall serve free of charge.

SEC. 4. Should no one place receive a majority of all the votes cast, then, at the next annual election, the legal voters shall vote for the two highest places voted for on the second Saturday in February, 1860, and the place having the highest number of votes shall be the county seat of Sawamish county.

Passed January 14th, 1860.

AN ACT

TO INCORPORATE THE FIRST PRESBYTERIAN CHURCH OF OLYMPIA.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That T. M. Reed, W. G. Dunlap, R. L. Doyle, J. K. Hall, and B. P. Anderson, as trustees, and their successors in office, are hereby declared and constituted a body corporate and politic in law, by the name and style of "The Trustees of the First Presbyterian Church of Olympia," said church being under the control, direction and care of the Old School General Assembly of the Presbyterian Church in the United States.

SEC. 2. Said corporation shall have continual and perpetual succession, shall have and use a common seal, and shall have power to acquire, receive and hold by voluntary contribution, purchase or otherwise, and to retain and possess any property, real, personal or mixed, and the same to sell, convey, rent or otherwise dispose of at pleasure; *Provided*, that no part of the resources thereof shall ever be used for any other purposes than for the interests of said church. *Provided further*, that said corporation shall not hold land to exceed four town lots, by virtue of this act.

SEC. 3. Said trustees shall have power to adopt a constitution and by-laws for their government, and may appoint such officers and agents, and establish such rules and regulations as may be necessary for the management of their affairs.

SEC. 4. A majority of said trustees shall constitute a quorum for the transaction of business. They shall elect one of their number as president, and one as treasurer and secretary of the board, and may fill temporarily any vacancy occurring in their board; but their successors, from year to year, shall be elected annually by the members of the First Presbyterian church in Olympia, at such times and places as said members may designate.

SEC. 5. All deeds and other instruments of writing shall be made by the order of the board of trustees, sealed with the seal of the corporation, signed by the president and acknowledged by him in his official capacity; *Provided*, that until a seal is adopted by said board, the ordinary scroll shall be sufficient.

SEC. 6. This act to take effect and be in force from and after its passage.

Passed January 16th, 1860.

AN ACT

TO INCORPORATE THE CITY OF PORT TOWNSEND, JEFFERSON COUNTY, WASHINGTON TERRITORY.

ARTICLE FIRST.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the city of Port Townsend shall be bounded as follows, to wit: Commencing at half-tide mark at Point Hudson, at the southeast corner of A. A. Plummer's donation claim; thence along the meanderings of Port Townsend Bay south, 59 west, one and three-eights of a mile to southwest corner of L. B. Hastings' donation claim; thence north, 31 west, three-eights of a mile; thence north, 59 east, one and three-eights of a mile, to half-tide mark on Admiralty Inlet; thence south, 31 east, three-eights of a mile to the place of beginning.

SEC. 2. The inhabitants of said city of Port Townsend shall be, and are hereby, constituted a body politic and corporate, by the name and style of the city of Port Townsend, and by that name they and their successors shall be known in law, and have perpetual succession, sue and be sued, plead and be impleaded, in all courts whatsoever; and receive property, personal and real, within said city, for public buildings, public works, and city improvements, and may dispose of the same in any way for the benefit of the city; may purchase property beyond the limits of the city to be used for burial purposes, and for the establishment of a hospital for the reception of persons infected with contageous diseases.

ARTICLE SECOND.

SEC. 1. For the government of the said city of Port Townsend, there shall be annually elected in the manner hereinafter provided, the following officers: A Board of trustees, (consisting of five members,) who shall hold their offices for one year, or until their successors shall be duly elected and qualified; and there shall be appointed annually by the Board of Trustees, one City Clerk, and one City Marshal.

ARTICLE THIRD.

SEC. 1. That a general election for all city officers of the corporation required under this act shall be held on the first Monday in April of each year.

SEC. 2. No person shall be entitled to vote at any city election who shall not be an elector for Territorial officers, and who shall have resided

in this city ten days next preceding the day of election, and no person shall be eligible to any office under this charter who is not a qualified voter of said city.

SEC. 3. At all elections for city officers, the vote shall be by ballot, at the time and place designated by the Board of Trustees.

SEC. 4. That all vacancies happening before the annual election, shall be filled by the Board of Trustees.

SEC. 5. That all elections for city officers shall continue for one day, during which time the polls shall be kept open from 10 o'clock A. M., to 4 o'clock P. M.

SEC. 6. The person who shall receive a plurality of votes for any office, shall be declared duly elected, and the clerk shall issue to him a certificate of election, and on the presentation of the same to the Board of Trustees he shall be sworn into office.

ARTICLE FOURTH.

SEC. 1. The members of the Board of Trustees shall annually elect one of their number President of the Board of Trustees, who shall hold his office for one year, or until his successor shall be elected and qualified.

SEC. 2. The members of the Board of Trustees shall fix the time and place for holding their stated meetings, and may be convened by the President of the Board of Trustees at any time. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 3. Any ordinance which shall have been passed by the Board of Trustees, shall, before it becomes a law, be signed by the President of the Board.

SEC. 4. Said Board of Trustees shall have full power and authority:

1st—To make all needful by-laws, ordinances, and town regulations, not repugnant to the Constitution or the laws of the United States, and the laws of this Territory.

2d—To levy taxes for municipal purposes, not to exceed one-half of one per centum per annum upon all taxable property, as is shown by the assessment made for the territorial and county purposes.

3d—To prohibit and prevent the introduction of contageous diseases into said town limits ; and to make such regulations as shall promote the security of health, peace, cleanliness, and good order within said town.

4th—To prevent and restrain any disturbances or disorderly conduct, riot, drunkenness, or any indecent and immoral practice, within the limits of said town.

5th—To appoint one of the justices of the peace residing within said

town as committing magistrate, whose duty it shall be to hear all complaints of violation of said ordinances, and to examine all parties arrested by the Town Marshal.

6th—The roads, streets and alleys within said city limits shall be under the exclusive control of said Board of Trustees, who shall make all needful rules in regard to the improvements, repair, grading, cleaning, &c., &c., thereof.

And for the purposes of this act, said city shall not be included in any road district, but the road tax now due by law within said town shall be collected by the City Marshal and laid out and expended by him as directed by ordinance.

And for the purposes of this act, the members of the Board of Trustees may, by vote, apportion any part of said road tax (as they may see fit) to be expended on any road entering said town without the limits of said town.

ARTICLE FIFTH.

SEC. 1. The Trustees shall receive no compensation.

SEC. 2. The town clerk shall receive such compensation for his services as may be allowed him by ordinance.

SEC. 3. The Marshal shall receive the same fees for his services as Constables are entitled to for services of a similar nature, and for other services such compensation as may be provided for by ordinance.

ARTICLE SIXTH.

SEC. 1. It shall be the duty of the Board of Trustees at their first meeting annually, to elect one of their number to perform the duties of Town Treasurer, who shall hold his office one year, or until his successor is elected and qualified.

SEC. 2. It shall be the duty of the City Marshal, in addition to the duties prescribed by the Board of Trustees, to execute and return all processes issued by any Justice of the Peace residing within the city limits, to collect all moneys and taxes, and pay the same over to the Treasurer, monthly.

SEC. 3. It shall be the duty of the City Treasurer to receive all moneys which shall come to said town by taxation or otherwise, and pay out the same as may be provided by ordinance.

SEC. 4. The Board of Trustees shall define the duties of all officers, by ordinance, which are not herein prescribed.

ARTICLE SEVENTH.

SEC. 1. All officers required to be elected under this act, shall, before entering upon the duties of their office, take an oath or affirmation of office, before any person competent to administer oaths.

SEC. 2. All resolutions and ordinances calling for an appropriation for any sum exceeding one hundred dollars, shall lie over two meetings.

ARTICLE EIGHTH.

SEC. 1. This charter shall go into operation as soon as the law receives the signature of the presiding officers of the Legislative Assembly, and until the first election held under the psovisions of this law, shall have been held, the following persons shall be Trustees, viz: F. A. Wilson, J. G. Clinger, Geo. Gerrish, Wm. Newton and H. B. Wheeler; and J. J. H. Van Bokkelen shall be City Clerk; and Franklin Tucker shall be City Marshal, and said Board of Trustees shall have power to fill vacancies.

This "act" is amended by striking out "town" wherever it may occur, and insert in lieu thereof, "city." Also by striking out the word "Olympia" wherever it may occur and insert in lieu thereof, "Port Townsend."

Passed January 16th, 1860.

AN ACT

TO CREATE AND ORGANIZE THE COUNTY OF SPOKANE.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all that portion of Walla Walla county embraced within the following boundaries, to-wit: Commencing at the mouth of Snake river, following up said river, mid channel, to (46th) forty-sixth parallel of north latitude, thence east along said parallel to the summit of the Rocky Mountains; thence north, following said summit, to the forty-ninth parallel of north latitude; thence west, along said parallel, to the Columbia river; thence down, mid channel of said river, to the place of beginning. The same is hereby constituted and organized into a separate county, to be known and called Spokane county.

SEC. 2. That said territory shall compose a county for civil and military purposes, and shall be under the same laws, rules, regulations and restrictions as all other counties in the Territory of Washington, and entitled to elect the same officers as other counties are entitled to elect.

SEC. 3. That the county seat of said county, be, and the same is hereby temporarily located on the land claim of Dr. Bates.

SEC. 4. The following named persons are hereby appointed officers for said county, namely: —— Leaman, James Hays and Faques Dumas, county commissioners; John Winn, Sheriff; R. K. Rogers, Treasurer; —— Douglas, Auditor; J. R. Bates, Justice of the Peace, and F. Wolf, Coroner, who shall hold their respective offices until the next annual election, and until their successors are elected or appointed and qualified. Before entering upon the discharge of the duties of their offices, they shall comply with all existing laws relating to qualifying, by giving bond and taking an official oath; said bonds may be approved by the persons named as county commissioners or a majority of them, and the several persons, named herein as officers, may administer the oath of office to each other.

SEC. 5. Said county of Spokane shall constitute a part of the first judicial district; but for the purpose of hearing and determining all matters and causes in the district court, except those in which the United States is a party, it shall be and remain attached to the county of Walla Walla.

SEC. 6. All vacancies which may occur by the non-acceptance, death, renewal or resignation of any of the persons above named, may be filled by the board of county commissioners, and they may also appoint such other officers as may be required for said county, to hold their office until the next general election, and until their successors are elected, or appointed and qualified.

SEC. 7. At the next general election, the qualified voters of said county shall elect their county commissioners, and all other county officers, in the same manner as is by law provided for other counties.

SEC. 8. Said county commissioners, when elected as is in the preceding section provided, shall hold their respectice offices: one for one year, one for two years, and one for three years, as shall, at their first meeting after the election, be determined by lot.

SEC. 9. The persons appointed county commissioners may at any time after the passage of this act, and before the day appointed for the next general election, upon posting up suitable notices, signed by a majority of them, ten days prior to the time appointed, hold a meeting of the board of county commissioners, at which they may transact any business which could be done at a regular meeting of the board.

SEC. 10. All acts and parts of acts inconsistent herewith, are hereby repealed.

Passed January 17th, 1860.

AN ACT

TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM JOHN M. SHOTWELL'S, ON BLACK RIVER, TO DAVID BILES', ON THE CHEHALIS RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That John M. Shotwell, G. W. Rutledge and James R. Roundtree, be, and they are hereby constituted a board of commissioners, with full powers to view and establish a territorial road, commencing at a point near John M. Shotwell's, on Black river, in Thurston county; thence to the southeast corner of John Law's land claim, on Miami prairie; thence to the land claims of E. E. Baker, James Camby, James R. Roundtree, terminating at the land claim of David Biles, on the Chehalis river.

SEC. 2. Said commissioners, or a majority of them, shall meet at the residence of John M Shotwell on the second Monday in April, 1860, or as soon thereafter as circumstances will permit, and after being duly sworn faithfully to view, locate, and mark the same, on the nearest and most practicable route from point to point, as above described in section one.

SEC. 3. Said commissioners shall have authority to adjourn from time to time, and from place to place; to fill any vacancies which may happen in their board. And after their first meeting, as provided in section two, the said commissioners shall have authority to administer any oath, necessary and proper to carry into effect the provisions of this act.

SEC. 4. And the commissioners aforesaid shall cause a true report of their proceedings to be made, and a true copy of the same to be deposited with the county auditors of Thurston and Chehalis counties, who shall file and preserve the same; after which said road shall be in every respect a territorial road, and shall be opened and kept in repair as other territorial roads.

SEC. 5. Said commissioners shall make their report immediately

after they shall have completed their commission, and the said commissioners shall receive no compensation for their services except by voluntary subscription.

Passed January 17th, 1860.

AN ACT

TO AUTHORIZE JOHN WALKER TO ESTABLISH A FERRY ACROSS THE PUYALLUP RIVER, IN PIERCE COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That John Walker, his heirs or assigns, be, and they are hereby authorized to establish and keep a ferry across the Puyallup river, in Pierce county, near the point where the military road from Fort Steilacoom to Fort Bellingham crosses said river to the opposite side of said river, commencing at said point, and near the land claim of John P. Stewart, and to land and deposit from each shore of said river, and extending one mile each way from said point up and down said river, on each side thereof; and that said John Walker have the exclusive privilege of ferrying in Pierce county, within the said limits, for the term of seven years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may hereafter be, by laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said John Walker, his heirs or assigns, to receive and collect the following rates of toll for ferriage upon said ferry:

For crossing a footman,	$0 25
For crossing man and horse	37½
For crossing horse and buggy or other vehicle,	50
For crossing two horses and carriage or other vehicle,	75
For crossing each extra horse attached to such carriage,	12½
For crossing one yoke of oxen and wagon,	75
For crossing each extra yoke of oxen attached to wagon,	25
For crossing loose stock, other than sheep and hogs, each,	12½
For crossing sheep and hogs,	5

Provided, That the county commissioners of Pierce county, at any regular term of said commissioners court, shall have power to change the above rates of toll, and when so changed it shall be lawful for said John Walker, his heirs and assigns, to collect and receive ferriage only according to the rates fixed by said commissioners.

SEC. 3. That no courts or board of county commissioners shall authorize any person, except as hereafter provided in this act, to keep a ferry within the limits set out in this act: *Provided*, That the said John Walker, his heirs or assigns, shall, within three months after the passage of this act, procure for said ferry a good and sufficient flat-boat, or boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said John Walker, his heirs or assigns, or if no good and sufficient flat-boat, or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Pierce county, then this act shall be void.

SEC. 4. This act to take effect and be in force from and after its passage.

Passed January 18th, 1860.

AN ACT

TO AUTHORIZE JOHN CARSON TO CONSTRUCT A BRIDGE ACROSS THE PUYALLUP RIVER, IN PIERCE COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That John Carson, his heirs or assigns, be, and they are hereby, authorized to construct, maintain and keep a bridge across the Puyallup river, at a point at or near the house of the said John Carson, where the military road from Fort Steilacoom to Fort Bellingham crosses said river, and the said John Carson shall have the exclusive privilege of constructing and maintaining a bridge at the aforesaid point, and for one mile each way up and down said river, from the said point, for the term of ten years from the passage of this act: *Provided*, that said bridge, when so constructed, shall be subject to the same regulations, and under the same restrictions as other bridges are, or may be, by the laws of this

territory, prescribing the manner in which bridges shall be kept and regulated.

SEC. 2. That it shall be lawful for the said John Carson, his heirs or assigns, to receive and collect the following rates of toll for crossing upon said bridge:

For crossing a footman,	$0 25
For crossing man and horse,	50
For crossing horse and vehicle,	75
For crossing two horses and wagon,	1 00
For crossing one yoke of oxen and wagon,	1 00
For crossing each additional span of horses or yoke of oxen,	50
For crossing loose stock, other than sheep and hogs, each,	25
For crossing sheep and hogs,	5

Provided, That the county commissioners of Pierce county, at any regular term of said commissioners' court, shall have power to alter the above rates of toll, and when so altered, it shall be lawful for the said John Carson, his heirs and assigns, to collect and receive toll only according to the rates fixed by said commissioners.

SEC. 3. That no court or board of county commissioners shall authorize any person, except as hereinafter provided in this act, to construct a bridge within the limits set out in this act: *Provided*, That the said John Carson, his heirs or assigns, shall, within six months after the passage of this act, have constructed and completed a good, strong, substantial and safe bridge; and should the laws regulating the construction of bridges and establishing ferries now, or such as may hereafter be in force, be violated by the said John Carson, his heirs or assigns, or if no good and sufficient bridge be constructed and completed within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Pierce county, then this act shall be void.

SEC. 5. This act to take effect and be in force from and after its passage.

Passed January 18th, 1860.

AN ACT

TO GRANT TO THOMAS COUPE THE RIGHT TO ESTABLISH A FERRY BETWEEN PORT TOWNSEND AND WHIDBY'S ISLAND.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Thomas Coupe shall have and hereby is granted the exclusive right of carrying passengers, freight and live stock between Port Townsend and Whidby's Island, between the points hereafter named, and according to terms and regulations hereafter to be mentioned in this act.

SEC. 2. This grant shall include, on Whidby's Island, the following points inclusive, to wit: Commencing at the north-west corner of what is known as the Col. I. N. Ebey's land claim, thence along the west side of Whidby's Island, in a southerly direction, embracing all the shore to the southermost portion of the land claim of Dr. Kellogg, or one mile in a south-easterly direction from what is called "Kellogg's Point;" and on the side of Port Townsend, in Jefferson county, from what is known as Point William, to the point where the south-west corner of Pettygrove's land claim intersects the waters of Port Townsend Bay, about one mile westerly from Port Townsend, following the shore from said Point William to Port Townsend, a distance of about three miles below Port Townsend, and following the shore from Port Townsend to the said corner of Pettigrove's claim, a distance of about one mile.

SEC. 3. The said Thomas Coupe shall place upon the Straits lying between Port Townsend and Whidby's Island, a good and substantial ferry boat of not less than twenty tons burthen, to be propelled by steam, either in whole or in part, and shall make at least one trip, both ways, every day, giving due notice of the time, as near as may be, of departure from each landing, and shall be bound to receive and carefully handle and transport all passengers, freight and animals that may be offered at either landing, to the opposite landing.

SEC. 4. The rates of charges shall be established by the county commissioners of the counties of Jefferson and Island, each county establishing the rates from their own shores, which rate shall be put up in some conspicuous part of the boat, in plain and legible characters, and may be changed at any regular term of said board of commissioners.

SEC. 5. The transportation of freight and passengers shall be free as it now is, until the said Thomas Coupe shall put his *steam ferry* in full operation, and this charter shall be forfeited unless it shall go into operation on or before the first day of July next.

SEC. 6. Should the machinery of said steam ferry boat at any time break, or if from any accident said boat should become disabled, the said

Coupe may, and it shall be his duty to place upon the route the very best other boat or boats that can be obtained, as a substitute, until the necessary repairs can be made; but should the said Coupe fail to make his regular daily trips, as above provided for, on unreasonable time, this charter shall become forfeited.

SEC. 7. Any person violating the provisions of this charter, by transporting either passengers, freight, or live stock, from the above named Port Townsend and Whidby's Island, within the points named in this act, shall be liable to a fine of twenty dollars for each offence, to be recovered before any justice of the peace, or court having competent jurisdiction, and the boats employed in said transportation shall be liable for such fine, and shall not be released until the fine is paid; and for this purpose the court may, upon complaint being made against any person for violating this act, order any constable or sheriff to seize and retain any boats that may have been so employed, until all fines and costs are paid; but said boats may be released by bond, similar to cases in attachment.

SEC. 8. This charter shall remain in force for the period of ten years, unless sooner forfeited.

SEC. 9. This act shall not be so construed as to prevent persons, in their own boats, from carrying their own freight to and from the points mentioned in this act, nor shall this act have any application to vessels running from Port Townsend to any port more than thirty miles distant from said starting point, touching at Whidby's Island, or vessels starting from Whidby's Island to points more than thirty miles distant from said starting point, touching at Port Townsend.

Passed January 24th, 1860.

AN ACT

TO PROTECT THE SALMON FISHERIES ON CHENOOK BEACH, PACIFIC COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all salmon caught between point Ellis, on the north side of the Columbia river, and Cape Hancock, at the mouth of said river, be considered Chenook Salmon, subject to be branded as such.

SEC. 2. All salmon put up for shipping, or other purposes, taken in the above limits, shall be subject to the following brand: "Cheenook

Salmon, Pacific County, Washington Territory," or the initials thereof, with the name or initials of the inspector.

SEC. 3. Any person or persons who shall forge the above brand, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in any court or courts of justice in this Territory, for each and every package upon which he, she or they shall forge said brand, shall be fined in a sum not less than twenty nor more than fifty dollars; one-half to go to the common school fund of Pacific county, and the other half to the informer.

Passed January 24th, 1860.

AN ACT

DEFINING THE BOUNDARIES OF CHEHALIS COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the boundaries of Chehalis county be, and the same are hereby, defined as follows: Beginning at the ocean beach at the corner for sections nineteen and thirty, township fifteen north, range eleven west of the Willamette meridian, thence east on said section line to the north-east corner of Pacific county, thence south on the east boundary line of Pacific county twelve miles to the sectson line between nineteen and thirty, township thirteen north, range seven west, then east on said section line to corner for sections twenty-two, twenty-three, twenty-six and twenty-seven, township thirteen north, range four west, then north on section line between sections twenty-two and twenty-three to corner to sections thirty-four, thirty-five, two and three, on township line between townships eighteen and nineteen north, then west on township line between townships eighteen and nineteen to the corner to townships eighteen and nineteen north, ranges six and seven west, then north on range line between ranges six and seven to the fifth standard parallel, then west on said parallel to the ocean, then southerly with the ocean beach to the place of beginning.

SEC. 2. That the present board of county commissioners and treasurer of Chehalis county, are hereby ordered that, in consequence of a division of Chehalis county, by the establishment of the above named boundaries, they shall hold a meeting on the 20th day of March, 1860, at the town of Bruceport, Chehalis county, for the apportionment of all

moneys, rights, credits, personal property, and real estate of which Chehalis county shall have been legally possessed.

SEC. 3. This act to take effect on the first day of April, 1860.

Passed January 25th, 1860.

AN ACT

TO AUTHORIZE A. JACOBS TO ESTABLISH A BRIDGE ACROSS THE TUCHET RIVER, IN WALLA WALLA COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That A. Jacobs, his heirs and assigns be, and they are hereby, authorized to establish a bridge across the Tuchet river, in said Territory, at or near the point where the territorial road, leading from old Fort Walla Walla to new Fort Walla Walla, crosses said stream; and the said A. Jacobs, his heirs and assigns, shall have the exclusive right for a bridge on said stream, on each side of the aforesaid road, to the extent or limit of his own land, for the period of seven years: *Provided*, that the said bridge, when so established, shall be subject to the same regulations and under the same restrictions as other bridges are, or may be, by the laws of this Territory, prescribing the manner in which licensed bridges shall be kept and regulated.

SEC. 2. The following shall be the rates of toll which the said Jacobs is hereby authorized to collect, viz:—

For each wagon with two animals attached,	$1 00
For each pleasure wagon, with two animals,	75
For each hack or sulky, with one horse,	50
For each man and horse,	37½
For each animal, (packed)	37½
For each head of horses or mules, (loose)	12½
For each footman,	12½
For each loose cattle,	10
For each sheep, goats, or hogs,	5

SEC. 3. The county commersioners' court, for the county in which said bridge is situated, shall have full power, at any regular session, to regulate and fix the rates of toll for crossing the same.

Passed January 25th, 1860.

AN ACT

REGULATING THE MEASUREMENT OF OYSTERS IN SHOALWATER BAY, PACIFIC COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That twenty-four (24) quarts, dry measure, (oysters in the shell,) be considered, and is one basket of oysters, and it shall be lawful for any person or persons, buying or selling oysters, to be governed by the above measurement.

SEC. 2. The county commissioners of Pacific county shall appoint an inspector, at their first regular term of meeting, and annually thereafter, whose duty it shall be to inspect all baskets in which oysters are bought or sold.

Passed January 25th, 1860.

AN ACT

TO INCORPORATE THE PUGET SOUND UNIVERSITY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That D. R. Bigelow, B. C. Lippincott, G. A. Barnes, James Biles, A. Hall, W. Rutledge, W. N. Ayers, S. McCaw, J. B. Webber, Charles Prosch, J. R. Meeker, W. W. Miller, G. K. Willard, B. L. Henness, A. R. Burbank, A. A. Denny, A. S. Abernethy, D. Phillips, N. Doane, W. Wright, C. H. Hale, F. W. Pettygrove, J. L. Scammon, J. F. Devore, R. H. Lansdale, L. Shaffer, T. F. Berry, A. H. Simmons, C. M. Carter, Jno. D. Biles, their associates and successors in office, shall become a body corporate and politic, with perpetual succession, under the name of the Puget Sound University; by which they may sue and be sued, plead and be impleaded, in all the courts of law and equity, may have a corporate seal, and the same alter or breach at pleasure; may hold all kinds of estate, real, personal or mixed, which they may acquire by purchase, donation, devise, or otherwise, necessary to accomplish the objects of the corporation, and the same to dispose of and convey at pleasure.

SEC. 2. The trustees of said University shall have full power to locate the same at such place as a majority of the board shall deem proper.

SEC. 3. The trustees of said University shall hold their offices for such terms, and shall receive their appointments in such manner as shall be prescribed by the rules and by-laws of said corporation.

SEC. 4. The number of trustees may be increased to any number not exceeding thirty-five.

SEC. 5. The trustees shall have power to appoint a president, professors, tutors, and teachers, any other necessary agents and officers, and fix the compensation of each, and may make such by-laws for the government of the institution and for conducting the affairs of the corporation as they may deem necessary, and shall have power to confer, on the recommendation of the faculty, all such degrees and honors as are conferred by colleges and universities of the United States, and such others, (having referrence to the course of study and the accomplishment of the student,) as they may deem proper.

SEC. 6. The president and professors shall constitute the faculty of said University, and have power to enforce the rules and regulations enacted by the trustees for the government and dicipline of the students, and to suspend and expel offenders as may be deemed necessary.

SEC. 7. The said corporation may have a capital not exceeding five hundred thousand dollars, and it shall be used for the purposes of education.

SEC. 8. The first meeting of said corporation shall be the first Friday in February, 1860; seven shall constitute a quorum to do business, but a less number may adjourn from time to time.

Passed January 25th, 1860.

AN ACT

AN ACT TO AUTHORIZE WILLIAM D. VAUGHN TO ESTABLISH A FERRY OR FERRIES ACROSS WHITE RIVER, IN PIERCE COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That William D. Vaughn, his heirs or assigns be, and they are hereby, authorized to establish and keep a ferry or ferries across White river, in Pierce county, at the point where the military road from Fort Steilacoom to Walla Walla crosses said river, to the opposite side of said river, commencing at said point, and to land and deposit from each shore of said river, and extend one mile each way from said point, up and down said river, on each side thereof; and that said William D. Vaughn, his heirs and assigns, have the exclusive privilege of ferrying within said limits the term of ten years from the passage of this act: *Provided*,

That said ferries, when so established, shall be subject to the same regulations, and under the same restrictions as other ferries are, or may hereafter be, by laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said William D. Vaughn, his heirs or assigns, to receive and collect the following rates of toll for ferriage upon said ferry or ferries:

For crossing a footman,	$1 00
For crossing a man and horse,	1 50
For crossing horse and buggy or other vehicle,	2 00
For crossing two horses and buggy, or other vehicle,	3 00
For crossing each extra horse attached thereto,	50
For crossing one yoke of oxen and wagon,	3 00
For crossing each yoke of oxen attached thereto,	1 00
For crossing loose stock, other than sheep or hogs, each,	50
For crossing sheep and hogs, each,	25

SEC. 3. That no courts, or board of county commissioners, shall authorize any person, except as hereafter provided in this act, to keep a ferry within the limits set out in this act: *Provided*, That the said Wm. D. Vaughn, his heirs or assigns, shall, within twelve months after the passage of this act, procure for said ferry or ferries, good and sufficient flat-boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river without delay; and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said Wm. D. Vaughn, his heirs, or assigns; or if no good and sufficient flat-boat, or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Pierce county, then this act shall be void.

SEC. 4. That where the word "river" occurs in the preceding sections, it shall be so construed as to include all the crossings of said river at said point.

SEC. 5. Nothing in this act shall be so construed as to prevent the county commissioners of the county in which the said ferry is located, from regulating and fixing the rates of ferriage, and when the rates are thus fixed, it shall be lawful for the said William D. Vaughn to receive pay for crossing on said ferries according to those rates only.

Passed January 26th, 1860.

AN ACT

AUTHORIZING H. D. HUNTINGTON TO ESTABLISH A FERRY ACROSS THE COWLITZ RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That H. D. Huntington, his heirs and assigns be, and they are hereby authorized, to establish a ferry across the Cowlitz river, at Monticello, Cowlitz county; and where the military or territorial road from Steilacoom and Monticello to Fort Vancouver crosses, or shall cross, said river, from the lands of said Huntington; and that the said H. D. Huntington, his heirs and assigns, have the exclusive privilege of ferrying upon the Cowlitz river, within the following limits, to-wit: Commencing at the point in said road where it strikes the Cowlitz river on the lands of said Huntington, and extending from said point up and down the river, on each side thereof, one mile each way; and that the said H. D. Huntington, his heirs and assigns, have the exclusive privilege of ferrying across said river, within the above limits, for the term of ten years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations and under the same restrictions as other ferries are or may hereafter be, by laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said H. D. Huntington, his heirs and assigns, to receive and collect the following rates of toll for ferrying upon said ferry:

For each wagon with two animals attached	75 cents.
For each additional two animals, span or pair,	37½ "
For each horse and carriage,	50 "
For each man and horse,	50 "
For each animal, (packed,)	25 "
For each footman,	25 "
For each head of loose horses, mules or cattle,	15 "
For each head of sheep, goats, or hogs,	5 "

But the county commissioners of Cowlitz county, at any regular term of said court, shall have power to alter the above, and the aforesaid rates of toll, and when so altered, it shall be lawful for said H. H. Huntington, his heirs and assigns, to collect and receive ferriage only according to the rates fixed by said commissioners.

SEC. 3. The said H. D. Huntington, his heirs and assigns, shall at all times keep at said ferry a good and sufficient flat boat and small boat, with a sufficient hand or hands to work the same, for the transportation

of all persons and their property across said river, without unnecessary delay; and upon proof being made to the county commissioners of Cowlitz county, that the said H. D. Huntington, his heirs and assigns, have failed or refused to keep at said ferry good and sufficient boats, with sufficient hand or hands to work the same, as required in the foregoing, then this act shall be void.

SEC. 4. This act to take effect and be in force from and after its passage.

Passed January 27th, 1860.

AN ACT

TO ESTABLISH THE COUNTY SEAT OF PACIFIC COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That there shall be two places selected by the voters of Pacific county, as the site for the county seat of said county, and the site receiving the largest number of votes at the next annual election, shall be declared the county seat of Pacific county.

SEC. 2. All acts conflicting with this act are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

Passed January 27th, 1860.

AN ACT

TO INCORPORATE THE OLYMPIA WHARF COMPANY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Joseph Cushman, Ed. Marsh, T. F. McElroy, Geo. A. Barnes, William Rutledge, A. B. Gove, B. F. Kendall and John H. Scranton, and their associates, successors and assigns, are hereby made and consolidated a body corporate and politic, by the name and style of the "Olympia Wharf Company," and shall have power to sue and be sued,

to contract and be contracted with, complain and defend in any court of law or equity; to make and use a common seal, and alter the same at pleasure; to make by-laws, rules and regulations for the management of its property, the regulation of its affairs, the appointment and number of its officers and agents, the negotiation and execution of its contracts, and the transfer of its stock, not inconsistent with the laws of this Territory, or of the United States; and to take and hold sufficient real estate for the enjoyment of all the privileges herein granted, and to grant and convey the same at pleasure: *Provided*, Said wharf shall be commenced within two years, and completed within six years from the passage of this act.

SEC. 2. The capital stock of said company shall be fifty thousand dollars, which shall be considered as personal property, except for revenue purposes, when it shall be considered and taxed as real estate. It shall be divided into shares of one hundred dollars each, and shall be transferable according to the by-laws of the company.

SEC. 3. Said corporation shall have power to construct and maintain a wharf of such length and width as may by the directors of said company be deemed advisable, from the northern side of First street, at its junction with Main street, in the town of Olympia, northward into the bay, such a distance as will insure at the termination of said wharf at least fifteen feet depth of water at the lowest tides.

SEC. 4. The persons named in the first section of this act, or a majority of them, shall be commissioners for receiving subscriptions to the stock of said company, when and where they or a majority of them shall agree upon, and may require payment at such times thereafter as by them may be deemed advisable, and each of them are hereby authorized to receive subscriptions to the capitol stock of said company at any time or place deemed convenient, each acting separate and distinct from each other, should occasion require, or they so elect, at any meeting when a majority of the corporators shall be present.

SEC. 5. The affairs of said company shall be managed by five directors, a majority of whom shall form a quorum for the transaction of business, and who shall be chosen as soon as the sum of five thousand dollars shall be subscribed of the stock of said company; after which, said corporation may commence the construction of said wharf. Said directors shall be chosen at such time and place as shall be decided upon by said corporation, due notice thereof having been given to the stockholders. Afterwards, elections for directors shall take place annually, at such time and place as the by-laws shall prescribe, due notice thereof being given. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he shall own shares of stock, and the persons

having the greatest number of votes shall be the directors, and shall continue in office until their successors are elected and qualified.

SEC. 6. Said directors shall have power to erect and maintain such buildings as they may deem necessary for the accommodation of such wharf, and may charge such rates for storage and wharfage as is customary at other storehouses and wharfs on Puget Sound, or as may be a sufficient and liberal interest on the amount of money invested in the construction of said building and wharf; and they may demand, collect and receive of, and from any and every person using said wharf, or any part thereof, or so much thereof as may be completed, toll to be regulated by the directors.

SEC. 7. It shall be lawful for the said corporation, at any time during the continuance of its charter, to construct a railroad over the entire length of their wharf, for transporting or conveying any kind of goods, produce, merchandise, freight or passengers, and to demand and receive for the transportation of the same such rates of fare and toll as may be regulated by the directors.

SEC. 8. That if any person or persons shall wilfully or maliciously injure the said wharf, or any buildings, cars or works of said corporation, such person or persons shall forfeit and pay therefor to the corporation, three times the amount of damages sustained by means of such injury, to be recovered in the name of the corporation, with costs of suit, in any court having cognizance of the same.

SEC. 9. The directors shall have a place of business, to be known as the "Office of the Olympia Wharf Company," where they shall cause to be kept proper books of accounts, in which shall be regularly entered all the business transactions of the said corporation, which books shall at all business hours be subject to the inspection of the stockholders of the said company.

SEC. 10. In case it should at any time happen that an election of directors should not be made on the day designated by this act, the said corporation shall not for that cause be deemed to be dissolved, but it shall be lawful to hold such election on some other future day.

SEC. 11. This act shall go into effect immediately, and shall continue in force for twenty years, and shall be taken and deemed to be a public act.

Passed January 27th, 1860.

AN ACT

TO INCORPORATE THE PUGET SOUND WOOLEN MANUFACTURING COMPANY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washinton,* That James Biles, Ira Ward, Jr., B. L. Henness, C. C. Phillips, H. J. G. Maxon, George A. Barnes, Andrew J. Chambers, James Longmire, and W. W. Miller, with all others who are or shall hereafter be associated with them, their successors and assigns, are hereby constituted and created a body corporate and politic, by the name of the "Puget Sound Woolen Manufacturing Company," for manufacturing purposes, and by that name shall have perpetual succession, and are made able and capable in law, to have, possess, purchase, receive, hold, enjoy and retain unto them, their successors and assigns, estates of every kind, real, personal or mixed, and the same to manage, let, lease, assign, grant, bargain, sell, alien, convey, and dispose of at pleasure; to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended against, in all courts of law and equity, and before all tribunals whatever; to make, have, and use a common seal, and the same to break, alter and renew at pleasure; and shall also have power to make, establish, and put in execution such by-laws and regulations, not contrary to law, as they may deem necessary and convenient for the government of said corporation, and the management of their property and concerns, and the duties, services and employments of their officers and agents, and the same to change, alter, or amend, and generally to do and execute all acts, matters and things which may be necessary to carry into effect the powers and privileges herein granted.

SEC. 2. The capital stock of said corporation shall consist of forty thousand dollars, with liberty to increase the same from time to time, to an amount not exceeding in the whole, the sum of ————, and no additional stock shall be created except by a vote of the stock-holders of said corporation at a meeting thereof, specially called for that purpose. The shares of said capitol stock shall be five hundred dollars each, and are hereby declared to be personal estate, and shall be transferred by bill of sale, which shall be recorded in the office of the treasurer of the corporation, in such books as he shall provide for that purpose; *Provided, however*, that no stock-holder who may wish to dispose of his stock, shall transfer in manner aforesaid, any share or shares of the capital stock, without first giving the refusal of the same to the corporation, at the price for which he is willing to sell; and provided, also, that the shares in said capital stock shall not be liable to assessment, after the capital stock so fixed in amount, has been paid in, except in equal proportions, and by the

consent of the stock-holders owning at least three-fourths of the shares of the capital stock of the corporation.

SEC. 3. The property and concerns of the said corporation shall be managed and conducted by five directors, being stock-holders, (one of whom shall be president,) who shall hold their office for one year, and until others are chosen, and the said directors shall be chosen on the first Monday of May, in each year, (after the first election,) at such time and place as shall be directed by the by-laws of the said company, and public notice thereof shall be given in a newspaper, circulating in the county of Thurston; and each stock-holder shall be entitled, in person or by proxy, to one vote on each share of stock held by him or her; and the ——— persons receiving the greatest number of votes, and being stockholders, shall be directors; and all vacancies occuring by death, resignation, or otherwise, among the directors chosen as above, shall be filled by such person or persons as a majority of the remainder of the directors shall appoint; and a majority of the directors shall be a quorum for transacting the business of said corporation.

SEC. 4. It shall be lawful for the directors, or a majority of them, from time to time, to call for and demand from the stockholders, respectively, all such sums of money by them subscribed, at such time, and in such proportions or installments, as they shall deem proper; *Provided*, that no single installment shall be more than ——— dollars on each share, nor any installment be called for oftener than once a month, under the penalty of forfeiture of their respective shares, and all previous payments made thereon, to the said corporation, always giving at least thirty days notice of such call and demand, in the newspaper before mentioned.

SEC. 5. The stock or shares of each and every stockholder shall be pledged and liable to the corporation for all debts and demands due and owing from such stockholder to said corporation, whether over due or due at a day future, whether the same shall arise from assessments or installments, or in any other manner; and in case any stockholder shall refuse or neglect to pay such debt or demand, within sixty days after the same shall become due and payable, then it shall be lawful for the treasurer to sell, at public auction, the share or shares of such delinquent stockholder, or so many thereof as may be necessary to satisfy the debt or demand, with all incidental expenses; first giving notice of the time and place of sale, with the sum due from such stockholder, for which his stock shall be pledged or liable, once a week for thirty days prior to the day of sale, in a newspaper circulating in Thurston county; and the treasurer may transfer the share or shares so sold to the purchaser, and shall apply the proceeds to the payment of said demands and incidental expenses, and

shall pay the surplus, if any, to the delinquent stockholder, or his assigns; and if the proceeds of such sale be not sufficient to discharge such debt or demand, the corporation may have their action against the debtor for the balance due.

SEC. 6. The stockholders of said corporation shall be personally and individually liable for all debts due from said corporation, to the amount of stock or shares he or she may hold in said corporation, and any person holding shares in said corporation shall be personally and individually liable for all debts contracted by said corporation while he or she held the same to the amount thereof, although sold and assigned to a third person or persons, as herein before provided.

SEC. 7. If the property of any stockholder shall be taken for the payment of a debt due from the corporation, or if any stockholder shall be by law compelled to pay any greater part of any debt due from the corporation than his or her proportion of such debt, according to the number of shares held by him or her, then such stockholder shall have his action against the corporation, and also against the stockholders thereof, for the amount so paid over and above his or her proportion.

SEC. 8. Said corporation shall have a place of business in the village of Tumwater, and in all proceedings, in law or equity, in which said corporation shall be a party, the leaving an attested copy of the writ, summons, or other process, with the treasurer, or agent of said corporation, or at such place of business, shall be a sufficient service thereof.

SEC. 9. The directors shall at all times keep, or cause to be kept at their place of business, proper books of accounts, in which shall be regularly entered all the dealings and transactions of the said corporation, which books shall, at all business hours, be subject to the inspection of the stockholders of the said company.

SEC. 10. On the first Monday of May in each year, the directors shall submit to the stockholders a written statement of the capital stock paid in, and the amount of all existing debts against the company; and the debts of said corporation shall at no time be suffered to exceed the amount of the capital stock actually paid in.

SEC. 11. The validity of this act shall not be impaired by the failure of said corporation to hold their annual meetings aforesaid, or either of them, but the business of such meeting may be transacted at any legal meeting of the corporation held thereafter.

SEC. 12. B. L. Henness and Ira Ward, or either of them, are hereby authorized to call the first meeting of stockholders, for the election of officers, and for organization, and any other business of the corporation hereby formed, by forwarding by mail or otherwise, a written notice of the

time and place of said meeting, at least one week previous thereto, directed to each of the persons named in the first section of this act.

SEC. 13. This act shall continue in force for twenty years, and shall be taken and deemed to be a public act, and shall take effect immediately on the passage thereof.

Passed January 27th, 1860.

AN ACT

FOR THE TEMPORARY ESTABLISHMENT OF THE COUNTY SEAT OF CHEHALIS COUNTY, AND TO PROVIDE FOR THE LOCATION OF THE SAME BY THE POPULAR VOTE AT THE NEXT ANNUAL ELECTION.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the county seat of Chehalis county be, and the same is hereby, temporarily established at the place of J. L. Scammons, in said county.

SEC. 2. That it shall be lawful for the citizens of the county of Chehalis to vote, at the next annual election, for a site on which to locate the county seat of said county.

SEC. 3. It is hereby made the duty of the county commissioners of said county, at the holding of their May term of court, to designate two or more sites to be voted for at the election aforesaid. The site having the highest number of votes shall be adopted as the site on which the county seat of said county shall be located.

SEC. 4. This act to take effect on the first day of April, 1860.

Passed January 28th, 1860.

AN ACT

LEGALIZING THE ACTS OF THE BOARD OF COMMISSIONERS OF PIERCE COUNTY.

WHEREAS, the records of the court of the board of commissioners of Pierce county were destroyed by fire in April, 1858; and *whereas*, the board of commissioners of said county soon thereafter convened at the county seat of said county for the purpose of re-establishing the several county roads within said county, and transacting other important business, therefore,

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the action of the board of commissioners of Pierce county, at their special terms between the months of March and November, 1858, be, and the same is hereby, declared valid to all intents and purposes, as if made at the regular term for the transaction of said business.

Passed January 28th, 1860.

AN ACT

TO REGULATE THE COUNTY TAX OF KITSAP COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the county commissioners of the county of Kitsap be, and are hereby, authorized at their May session, to assess a tax of not less than three dollars on each and every individual liable to do labor on the public roads, and to assess a tax of twenty cents on every one hundred dollars of all real estate.

SEC. 2. All acts or parts of acts in conflict with the above is hereby repealed.

SEC. 3. This act to take effect from and after its passage.

Passed January 28th, 1860.

AN ACT

TO DEFINE THE BOUNDARY LINE BETWEEN SAWAMISH AND THURSTON COUNTIES.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the boundary line of the county of Sawamish shall be as follows: Commencing in the channel of Puget Sound, west of the southern portion of the Squaxen reservation, on the line between townships numbers 19 and 20 north, in range 2 west, and running thence on the township line west to the corner to sections 3, 4, 33 and 34; thence south one mile; thence west one mile; thence south one mile; thence west one mile; thence south one mile; thence west one mile, between sections 18 and 19, to the township line between ranges 2 and 3 west, in township 19 north; thence south two miles; thence west two miles; thence south to the line between townships 18 and 19 north, in range 3 west; thence west one mile to corner to sections 33, 34, 3 and 4; thence south three miles; thence west three miles, to the line between ranges 3 and 4 west, township 18 north; thence south three miles, to the corner to townships 17 and 18 north, range 3 and 4 west.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed January 30th, 1860.

AN ACT

AUTHORIZING WILLIAM PACKWOOD TO ERECT A BRIDGE ACROSS THE NISQUALLY RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That William Packwood is hereby permitted to bridge the Nisqually river, between the meander lines at or near the northern corner of the south-west quarter of the south-west quarter of section nine, township eighteen north, range number one east.

SEC. 5 This act to be in force from and after its passage.

Passed January 30th, 1860.

AN ACT

TO INCORPORATE CHEHALIS STEAMBOAT NAVIGATION COMPANY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Thomas Wright, together with all other persons who shall become associated with him, be, and he or they, their assigns and successors, are hereby constituted and declared a body corporate and politic, by the name and style of the "Chehalis Steamboat Navigation Company," for the purpose of improving the Chehalis river for navigation, so as to render it navigable for steamboats from the mouth of Chehalis river to Davis' landing, (and further up and down when said river will permit navigation,) and for keeping on said river a steamboat or steamboats suitable for, capable of, and to be used in the transportation of freight and passengers to and from "Chehalis point," on Gray's Harbor, to Davis' landing, as above mentioned, and all intermediate points or places on said river and harbor, as is necessary for the general accommodation of the public: *Provided*, however, that said Wright, with all other persons who shall become associated with him, shall be compelled to run two trips to and from Davis', per month, to Chehalis Point, at least five months during the navigable season, and when the stage of the water will permit, during other seasons; and provided further, that said incorporate company shall be compelled to run at least one trip per week, between Chehalis Point and the mouth of the Satsop river, when not making a trip to and from Davis' to said Chehalis Point.

SEC. 2. The legislature shall have the power, if deemed expedient, to annually establish and fix the rates of freight and passage on said river, between Chehalis Point and Davis', (and further up and down when said river will permit navigation): *Provided*, however, the rates by them established shall in no case exceed the following: Twelve dollars per ton for the entire distance to and from Davis' to said Chehalis Point, and pro ratio to intermediate landings; from said Chehalis Point, to and from Davis', each passage not to exceed nine dollars; and pro ratio to intermediate landings; and also pro ratio when running further up and down said river, when navigation will permit.

SEC. 3. Freight and passage to any immediate point or points between Chehalis Point and Davis', other than those specified above, shall be in the same proportion: *Provided*, however, that in any case where the convenience of the passenger or passengers may require the steamboat or steamboats to stop at any point or points, other than its usual place or places for taking in freight, passenger or passengers, then a bargain fare may be charged: *Provided*, however, that in no case said fare or fares

shall exceed the fare for the entire distance contemplated in this charter for steam navigation purposes.

SEC. 4. Said company shall, within six months after the passage of this act, have running on said Gray's Harbor and Chehalis river, a steamer suitable for navigation between the points aforesaid, and shall, within ten months after the date thereof, have all obstructions removed so far as to have the way clear for said boat or boats navigating said harbor and river between the points aforesaid; and failing so to do, all rights hereby obtained shall be null and void.

SEC. 5. The said company, complying with the provisions of this act, shall have and enjoy the exclusive right to navigate the said Gray's Harbor and Chehalis river, for the period of six years from the passage of this act, in vessels propelled in whole or in part by steam, to and from Chehalis Point, on Gray's Harbor, to Davis' landing, on Chehalis river, and higher up and down, when navigation will permit.

SEC. 6. This act shall not be so construed as to prohibit the transportation of goods and passengers, in any other mode than in steamboat or steamboats.

SEC. 7. Should said company at any time fail to have a steamboat or steamboats running for the period of three months at any one time, after the time hereinbefore limited for the commencement of said navigation, then, upon complaint being made to the county commissioners' court of Chehalis county, at any regular session held therein, and such fact being established to the satisfaction of said court, said company shall be adjudged to have forfeited all their rights under this act.

SEC. 8. This act to take effect and be in force from and after its passage.

Passed January 30th, 1860.

AN ACT

TO INCORPORATE THE WALLACUT PORTAGE RAILROAD COMPANY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Samuel Sweeny, John E. Pickernell, John Pickernell, jr., and all other persons who shall become associated with them by subscribing stock, their assigns and successors, be, and they are hereby constituted

and declared a body corporate and politic, by the name and style of the "Wallacut Portage Railroad Company," for the purpose of constructing a railroad, for the transportation of passengers, freight and mails, from some point on the Wallacut river, or slough, on the claim of the said John E. Pickernell, to some point at or near the head of navigation on Shoalwater Bay, in the county of Pacific.

SEC. 2. Said company may own and possess any amount of stock and property of any description whatever, real, personal or mixed, necessary to carry on its business, which they may purchase or possess, sell and dispose of at pleasure; may sue and be sued in any court of competent jurisdiction; may have and use a common seal, which they may alter, break and renew at pleasure; may appoint one or more agents for the transaction of their business, whom they may dismiss and change at pleasure; and may from time to time make such rules, regulations and by-laws as they may deem necessary or useful, and the same amend and change at pleasure, subject however to the constitution and laws of the United States and the laws of this territory.

SEC. 3. Said company shall have the right to secure, for the purpose of constructing a railroad, a tract of land, running from point to point between the points above specified, not exceeding seventy-five feet in width, except where a greater width of land shall be required for turnouts or depots. When said land is owned by private claimants, said company before using the same, shall procure a conveyance, if practicable, from the owner thereof: *Provided*, That in all cases where it is not practicable to procure an agreement with such owners, the said company may, upon giving to such owners such notice as is by law required in the case of the service of civil process in the district court, apply to the county commissioners of Pacific county to appoint suitable persons as appraisers, to appraise the damage to the owners of said land from the use of the same for the purposes aforesaid: *And provided further*, That in all cases where the right of way is not acquired by an agreement between the company and the parties interested, the land shall revert when it ceases to be used for the purposes aforesaid.

SEC. 4. It shall be the duty of the board of county commissioners of Pacific county, at any regular session, when a petition for that purpose may be presented to them by said company, setting forth that certain lands are necessary for them to use for the purposes aforesaid of said railroad, concerning which no satisfactory agreement can be made with the owners thereof, upon being satisfied that due notice has been given either personally or by publication, to appoint three suitable persons, residents of the county of Pacific, not interested in the matter in dispute, as appraisers, who shall proceed to determine whether the land is necessary

for the purposes set forth, and appraise the damages which the owner or owners thereof will suffer from the appropriation thereof, and report the same to the board of county commissioners, before whom either party may appear and except. The board of county commissioners may approve such report, or may reject the same and appoint other appraisers, whereupon like proceeding shall be had as in case of appraisers first appointed. Either party, if dissatisfied with the decision of the board of county commissioners, may, within twenty days thereafter, take an appeal to the district court, where the case shall be heard and determined like any other civil case; the said district court having the same power to approve or reject the report of the appraisers and appoint new appraisers, as is given to the board of county commissioners.

SEC. 5. Upon the approval of the report of the appraisers by the board of county commissioners, or in case of appeal to the district court, it shall be the duty of said company to pay the amount of damages awarded, or secure them, to be paid within sixty days after demand by the parties interested, to the satisfaction of the county commissioners; and when such payment is made or security given, the said company shall be fully authorized to appropriate the lands for the purposes aforesaid. The rights and privileges herein granted, shall continue for the space of fifteen years from the first day of January, 1860. *Provided, nevertheless,* That the said company shall, within five years from the period above specified, have constructed, between the above named points, a railroad, with cars capable and sufficient to transact all the freight and passenger's business, which may be required; which said road shall be of wood, or of wood with iron rails, and propelled by steam or other power, as said company shall deem best; and if they shall fail to have said road completed, or shall hereafter fail to keep the same in repair for the space of more than ninety days at one time, they shall forfeit all their rights under this charter.

SEC. 6. Said company shall furnish the county auditor of Pacific county with a list of the names of the members, who shall record the same in his county records, upon the payment of the usual fee for recording deeds; and no person shall be considered to have any interest in said company as member thereof until his name is so recorded. All members shall be in individually responsible upon the contracts made by said company during the time they shall continue members thereof; and every member shall continue to be a member until his membership is certified to have ceased, and such certificate is recorded.

SEC. 7. Nothing in this charter contained shall be construed as to prohibit any future legislature from granting charters to other persons, or

to authorize said company to obstruct any legally established road, or prohibit the laying out of other roads, when the same may be deemed necessary.

Passed January 30th, 1860.

AN ACT

AUTHORIZING J. L. SCAMMONS TO ESTABLISH A FERRY ACROSS THE CHEHALIS RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That J. L. Scammons, his heirs and assigns be, and they are hereby, authorized to establish a ferry across the Chehalis river, where the territorial road crosses the same; and the said J. L. Scammons, his heirs and assigns, [shall] have the exclusive privilege of ferrying upon the Chehalis river, within the following limits, to-wit: Extending from the point where the said territorial road crosses the Chehalis river, up and down the river, on each side thereof, one-half mile each way; *Provided*, that the said ferry, when so established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may hereafter be, by the laws of this Territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. The said J. L. Scammons, his heirs and assigns, shall at all times keep at said ferry a good and sufficient flatboat, or flatboats, with sufficient hands to work the same, for the transportation of all persons and their property across said river without delay; and upon proof being made to the county commissioners of Chehalis county, that the said Scammons, his heirs and assigns, have failed or refused to keep at said ferry a good and sufficient flat-boat, or flat-boats, with the requisite number of hands to work the same, as required above, then this act shall be void.

Passed January 30th, 1860.

AN ACT

TO AMEND AN ACT, AMENDATORY TO AN ACT, TO INCORPORATE THE CITY OF VANCOUVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the act to which this is amendatory be so amended as to read in said act as follows: The recorder, as to offenses committed within the city limits, shall have like jurisdiction as now is, or may hereafter be conferred, by the laws of this territory, on justices of the peace; to examine and commit persons brought before him charged with the commission of offenses within the limits of the said city; to take recognizance to appear at the district court, or to keep the peace; and to issue all such writs and processes as a justice of the peace may lawfully do, and shall be governed by the same rules and practice of pleadings governing justices of the peace. The recorder shall also have jurisdiction in all violations of city ordinances; and may, according to all ordinances passed by the council of said city, fine, commit to prison, with or without hard labor, or both, fine or imprison any person found guilty of any violation of such ordinances.

SEC. 2. It shall be the duty of the recorder to keep a true record of all business transacted before him, and it shall be his duty to issue all certificates of licenses, (which by law the city is authorized to grant,) on the presentation of a receipt, signed by the treasurer of said city, stating that the license tax imposed by ordinance on the business of the applicant has been paid to him, which amount the recorder shall charge the treasurer, in a book kept for that purpose; and all moneys paid to the city treasurer by any person or persons, the person or persons so paying shall take duplicated receipts, one of which shall be filed with the recorder and by him charged to said treasurer.

SEC. 3. It shall be the duty of the assessor of said city, within ten days after any assessment is made, to furnish the recorder with a copy of such assessment, and when such copy shall be received by the recorder, it shall be his duty, within six days thereafter, to make out a tax duplicate and present the same to the collector of said city, charging such collector with the full amount of tax to be collected. The collector shall have the same power and authority to collect such taxes as the collector has, or may hereafter have, by the laws of this territory, to collect county tax; all fines and taxes collected by any officer of said city, shall be paid to the city treasurer within ten days after collecting the same.

SEC. 4. All acts and parts of acts conflicting with any of the provisions of this act, be and the same are hereby repealed.

Passed January 30th, 1860.

AN ACT

TO LOCATE A TERRITORIAL ROAD FROM STEILACOOM, IN PIERCE COUNTY, TO YELM PRAIRIE, IN THURSTON COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That James Hughes and Charles Bittings, of Pierce county, and Abijah O'Neal, of Thurston county, be, and they are hereby, constituted a board of commissioners to view and locate a territorial road from Steilacoom, in Pierce county, to intersect the military road in or near Yelm Prairie, in Thurston county.

SEC. 2. Said commissioners shall meet at the house of Abijah O'Neal, in Yelm Prairie, on the first Monday in May, 1860, or as soon thereafter as circumstances will permit: after being duly sworn faithfully to perform their duties, shall proceed to view and locate said road.

SEC. 3. Said commissioners shall make out a true report of their proceedings, and a certified copy thereof to be deposited with the county auditors of Pierce and Thurston counties, who shall file and preserve the same; and when said report is so deposited, the said road shall be considered a territorial road, and shall be opened and kept in repair as other territorial roads are in this territory.

SEC. 4. If from any cause, any one or more of said commissioners shall fail to qualify and act, his or their associate or associates may appoint some suitable person or persons, who shall have all the power granted in this act.

Passed January 30th, 1860.

AN ACT

TO AUTHORIZE P. C. DUNLEVEY TO ESTABLISH A FERRY ACROSS THE OUTLET OF LAKE SHALAM, IN SPOKANE COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That P. C. Dunlevey, his heirs or assigns, be, and they are hereby, authorized to establish and keep a ferry across Shalam river, in Spokane county, commencing at Lake Shalam and extending five miles down Shalam river, on each side thereof; and that said P. C. Dunlevey, his heirs or assigns, have the exclusive privilege of ferrying within said limits for the term of ten years from the passage of this act: *Provided*,

That said ferry, when so established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may hereafter be, by laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said P. C. Dunlevey, his heirs or assigns, to receive and collect the following rates of toll for ferriage upon said ferry:

For crossing a footman,.....	$0 50
For crossing man and horse.....	1 00
For crossing packed animals, (packed,).....	1 00
For crossing horse and buggy or other vehicle,.....	1 50
For crossing two horses and buggy or other vehicle,.....	2 00
For crossing each extra horse attached thereto,.....	50
For crossing one yoke of oxen and wagon,.....	1 00
For crossing each extra yoke of oxen attached thereto,.....	50
For crossing loose stock, other than sheep and hogs, each,.....	25
For crossing sheep and hogs, each,.....	10

SEC. 3. That no courts or board of county commissioners shall authorize any person, except as hereafter provided in this act, to keep a ferry within the limits set out in this act: *Provided*, That the said P. C. Dunlevey, his heirs or assigns, shall, within twelve months after the passage of this act, procure for said ferry a good and sufficient flat-boat, which shall be kept at said ferry, with sufficient hands to work the same, for the transportation of all persons and their property across said river without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said P. C. Dunlevey, his heirs or assigns, or if no good and sufficient flat-boat, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of the county in which said ferry is located, then this act shall be void.

SEC. 4. This act to take effect and be in force from and after its passage.

Passed January 30th, 1860.

AN ACT

SUPPLEMENTARY TO, AND AMENDATORY OF AN ACT, PASSED JANUARY 21, 1859, ENTITLED, "AN ACT CONFERRING JURISDICTION UPON THE DISTRICT COURT OF THE COUNTY OF PIERCE."

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a court is hereby established within and for the county of Pierce, to be called the district court for the county of Pierce.

SEC. 2. The said court shall have exclusive jurisdiction within said county, of all matters and causes except those in which the United States is a party, in the same manner and to the same extent as is now had and exercised by the district court of the second judicial district, with the same rights as to appeals, certiorari, and writs of error from inferior courts, and to the supreme court, as is now provided and allowed by law.

SEC. 3. Said court shall be held by the judge of the second judicial district, at the county seat of Pierce county, upon the fourth Monday of March and the third Monday of September of each and every year, or at such time, or times, as shall be prescribed by the judges of the supreme court, or a majority of them.

SEC. 4. The said judge of the second judicial district shall appoint a clerk of the court, who shall give bonds and security as shall be ordered by said court or the judge thereof, and shall keep his office and records of said court at the county seat of said county; and said district court shall be a court of record, and the expense of holding the same, shall be payable by the said county of Pierce.

SEC. 5. The various laws now in force and which may hereafter be enacted, regulating the practice and proceedings in civil actions, and in criminal prosecutions, shall govern the practice and proceedings in said district court of the county of Pierce.

SEC. 6. The county commissioners, at their May session, shall select from the statement of persons qualified, a sufficient number to serve as grand and petit jurors, at each term of said district court, for the ensuing year. And the county auditor shall therefrom furnish a list of grand and petit jurors so selected, to the clerk of said district court of the county of Pierce; *Provided,* That when from any cause, there shall not be in attendance a sufficient number of qualified and competent grand or petit jurors, or the regular jurors shall not have been summoned, or shall have been discharged, it shall be competent for the court to order a sufficient number of qualified grand and petit jurors to be summoned from the bystanders, or from the body of the county.

SEC. 7. At least thirty days before the commencement of said terms of court, the clerk shall issue one venire, embracing the names of

the grand and petit jurors, specifying which are grand and which petit jurors, commanding the sheriff to summons the persons so named to attend on the first day of the term of said court.

SEC. 8. The number summoned as grand jurors shall not exceed sixteen, and the number of petit jurors summoned shall not exceed twenty-four; and the provisions of the act to provide for the manner of selecting and procuring the attendance of jurors, at the term of the district court, passed January twenty-seventh, one thousand eight hundred and fifty-seven, consistent with the foregoing, and not modified thereby, shall fully apply to the said district court of the county of Pierce.

SEC. 9. The foregoing sections, which relate to summoning grand and petit jurors for the terms of said district court of the county of Pierce, shall not be construed to alter, amend, or repeal the law now in force in regard to the quota of jurors to be summoned from said county of Pierce, to attend the district court of the second judicial district. But the said county of Pierce shall not be chargeable in any event for the mileage and attendance of any grand or petit jurors who may be summoned from said county of Pierce to attend any term of the district court of the second judicial district; but no jurors shall be summoned to attend at the district court of said district, except upon the order of the judge of the district

SEC. 10. All acts and parts of acts inconsistent with the foregoing be, and the same are hereby repealed.

Passed January 30th, 1860.

AN ACT

SUPPLEMENTAL TO AN ACT, ENTITLED AN ACT, TO INCORPORATE THE "NORTHERN PACIFIC RAILROAD COMPANY," APPROVED JANUARY 28, 1857.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the first section of the act to which this is a supplement, be, and the same is hereby, so amended, that the following named persons are constituted commissioners, viz: George A. Barnes, G. K. Willard, U. G. Warbass, Henry Winsor, A. Frankel, D. R. Bigelow, Wm. N. Ayres, Wm. Mitchell, Wm. G. Dunlap, Milas Galliher, Isaac Lightner, Andrew J. Chambers, John N. Low, Isaac Wood, David J. Chambers, Thornton F. McElroy, John L. Clark, A. W. Stewart, Joseph

White, B. F. Ruth, Nelson Barnes, Clanrick Crosby, Gabriel Jones, and Benjamin L. Henness;—and that the thirteenth section of the said act be so amended that the time for the commencement of said railroad be extended to the fourth of July, eighteen hundred and sixty-three, and the time for the completion of said railroad be extendeh to the fourth of July, eighteen hundred and seventy.

Passed January 31st, 1860.

AN ACT

TO REGULATE THE ROAD TAX OF COWLITZ COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the county commissioners of the county of Cowlitz be, and are hereby, authorized, at their May session, to assess a tax of not less than six dollars, or more than nine dollars, on each person liable to do labor on the public roads, and to assess a tax of twenty cents on every one hundred dollars of property valuation, as returned by the county assessor.

Passed January 31st, 1860.

AN ACT

TO APPOINT OFFICERS FOR CHEHALIS COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Thomas J. Carter is hereby appointed county auditor, and that William B. D. Newman is hereby appointed probate judge, and that Sidney S. Ford is hereby appointed sheriff, and that J. W. McKee is hereby appointed county superintendant of common schools, and that James H. Roundtree is hereby appointed treasurer, and that J. S. Payne is hereby appointed assessor, and that Austin E. Young and Joseph Macc are hereby appointed to fill a vacancy in the board of county commissioners; said officers shall enter upon a discharge of their duties on the first day of

April, 1860, and being qualified in the same manner and with like restrictions as those elected at an annual or general election, they shall continue to dischare the duties of said offices until their successors are elected and qualified.

Passed February 1st, 1860.

AN ACT

TO LOCATE THE COUNTY SEAT OF WALLA-WALLA COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall be lawful for the citizens of the county of Walla-walla, to vote at the next annual election for a site on which to locate the county seat of said county.

SEC. 2. It is hereby made the duty of the county commissioners of said county, at the holding of their first term of court, to designate two or more places or sites to be voted for at the election aforesaid. The site or place having the highest number of votes, shall be adopted as the site or place on which the county seat of said county shall be located; but this act shall not exclude the citizens of said county, when the interests or majority wishes of the people of said county may demand, by legislative enactment, another place or site for said county seat.

SEC. 3. The county commissioners of said county shall issue in their order, at the next annual election, with other orders, for an expression of the people of said county, upon the county seat by their votes.

SEC. 4. All acts and parts of acts conflicting with this act be, and the same are hereby repealed.

Passed February 1st, 1860.

AN ACT

AUTHORIZING THE COUNTY COMMISSIONERS OF THURSTON AND PIERCE COUNTIES TO HOLD FOUR TERMS OF COURT IN EACH YEAR.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the county commissioners of the counties of Thurston and Pierce shall hold four terms of court within each year, and that the time for holding the same shall be on the first Monday of February, May, August and November; *Provided*, that the February and August terms shall not exceed two days each, and the May and November terms four days each; and, *provided further*, that the county commissioners of said counties be, and they are hereby, authorized to transact road business at any regular term.

SEC. 2. All acts and parts of acts in conflict with this act be, and the same are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

Passed February 1st, 1860.

AN ACT

FOR THE RELIEF OF THE LATE TERRITORIAL LIBRARIAN AND AUDITOR.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the sum of two hundred dollars be appropriated out of the territorial treasury to A. J. Moses, for his services in making out a new classification, and alphabetically arranging all the books, and making a catalogue of the books contained in the library.

Passed February 1st, 1860.

AN ACT

TO PAY ELWOOD EVANS FOR CERTAIN SERVICES.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of sixty dollars is hereby appropriated out of the territorial treasury, to pay Elwood Evans for ten days services as clerk and compiler of law; said service was performed for the judiciary committee of the present house, and especially for codifying the laws relating to probate.

SEC. 2. The territorial auditor is hereby authorized to draw his warrant upon the territorial treasurer for the sum specified in the first section of this act, to the order of Elwood Evans, and the territorial treasurer is hereby authorized to pay the same.

Passed February 1st, 1860.

AN ACT

AUTHORIZING WILLIAM PACKWOOD, HIS HEIRS AND ASSIGNS, TO ESTABLISH A WAGON ROAD ON THE NISQUALLY RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That William Packwood, his heirs and assigns, be, and are hereby, authorized to construct a wagon road, commencing at the county road leading from Yelm Prairie to McAllister's Mill, near the northwest corner of the Nisqually Indian Reservation; thence in a northerly direction to the western boundaray line of J. W. McAllister's land claim; thence north to the section line, between eight and seventeen; thence in a northeasterly direction to the Nisqually river.

SEC. 2. Said William Packwood, his heirs and assigns, shall construct a good and practical wagon road, and keep it in good repair, at their own expense and cost, along the route herein designated; and when a road is made and constructed as aforesaid, any person or persons who will wilfully obstruct the same shall be liable to the same penalties and punishment as are prescribed in the laws now in force, relative to roads and highways.

SEC. 3. It shall be lawful for the said William Packwood, his heirs or assigns, to collect the following rates of toll from those who travel said road, to-wit:

For each footman, ...10 cents.
For each man and horse,.....15 "
For horses and cattle, per head,.....10 "
For each wagon,.....25 "
For carts, buggies and carriages,.....15 "
For sheep, hogs and goats,..... 3 "

SEC. 4. It shall be lawful however for the board of county commissioners, having jurisdiction, to locate a public road, crossing the Nisqually river at the above named point; to do so by paying said William Packwood a fair compensation for the improvements that he shall have made in the opening out said road, so far as they may be of public utility; and should said county commissioners establish a public road as provided in this section, then this charter shall be ineffective during the time that said public road shall exist; but in case, however, the said public road shall be re-located, then this charter shall continue and be in force.

SEC. 5. This act to be in force from and after its passage.

Passed February 1st, 1860.

AN ACT

AUTHORIZING WILLIAM PACKWOOD TO CONSTRUCT A BRIDGE ACROSS THE NISQUALLY RIVER, AT OR NEAR THE MOUTH OF THE SOUTH FORK OF SAID RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That William Packwood, his heirs or assigns, be, and they are hereby, authorized to erect a bridge across the Nisqually river, at or near the mouth of the south fork of said river; and that he is hereby granted the exclusive right to bridge said river within eighty (80) rods of said point; and no courts or boards of county commissioners shall be allowed to authorize any person, or persons, to bridge said river within the above named bounds for the term of twelve years from the passage of this act.

SEC. 2. It shall be lawful for the said William Packwood to receive and collect the following rates of toll for crossing on said bridge, to-wit: *Provided,* That the county commissioners shall have power to regulate the rates of toll after five years from the passage of this act:

For crossing a footman,.....50 cents.
For crossing horses and cattle, each,.....50 "
For crossing a wagon, carriage, or other vehicle,.....$2 00

SEC. 3. This act to take effect and be in force from and after its passage.

Passed February 1st, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN WILLIAM W. DAVIS AND ALICE DAVIS.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimory heretofore existing between William W. Davis and Alice Davis, be, and they are hereby, dissolved.

SEC. 6 This act to take effect and be in force from and after its passage.

Passed Dec. 13th, 1859.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN JACOB HANS AND CAROLINE HANS.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between Jacob Hans and Caroline Hans be, and the same are hereby, dissolved; and that the said Caroline have the custody of her son Henry.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed December 16th, 1859.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN WILLIAM DONNELLY AND BRIDGET DONNELLY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony existing between William Donnelly and Bridget Donnelly be, and the same is hereby dissolved.

SEC. 2. This act to take effect from and after its passage.

Passed December 20th, 1859.

AN ACT

TO DISSOLVE THE BONDS OF MAMRIMONY EXISTING BETWEEN SIDNEY S. FORD AND JOSIPHENE FORD.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between Sidney S. Ford and Josiphene Ford be, and the same are hereby, dissolved.

SEC. 8. This act to take effect and be in force from and after its passage.

Passed January 7th, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN CHARLES GREEN AND CATHARINE WAPARUSA GREEN.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between Charles Green and Catharine Waparusa Green be, and the same is hereby, dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed January 9th, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN L. O. MERILETT AND LUCINDA MERILETT.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between L. O. Merilett, and his wife Lucinda Merilett be, and the same are hereby, dissoved.

Passed January 13th, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN CROWELL H. SYLVESTER AND HARRIET P. SYLVESTER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between Crowell H. Sylvester and Harriet P. Sylvester be, and the same are hereby, dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed January 17th, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN ANDREW R. KELLER AND ELMINA KELLER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between Andrew R. Keller and Elmina Keller be, and the same are hereby, dissolved; and the said Elmina Keller shall have the custody of their three children, whose names are Isabel, Sarah Jane, Adalana.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed January 17th, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN L. M. COLLINS AND DINNA COLLINS.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between L. M. Collins and Dinna Collins be and the same is hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed January 17th 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN THOMAS TALLENTINE AND HIS WIFE AGNES M. TALLENTINE.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between Thomas Tallentine and his wife Agnes M. Tallentine be, and the same are hereby dissolved.

Passed January 26th, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN AMOS B. PIERCE AND ELIZABETH PIERCE.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between Amos B. Pierce and his wife, Elizabeth Pierce, be, and the same are hereby, dissolved.

Passed January 26th, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN ANGELINE LINDNER AND F. LINDNER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between Angeline Lindner and her husband, F. Lindner, be, and the same are hereby, dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed January 26th, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN FRANCIS McNATT AND MARY ANN McNATT.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the bonds of matrimony heretofore existing between Francis McNatt and his wife, Mary Ann McNatt, be, and the same are hereby dissolved.

Passed January 27th, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY HERETOFORE EXISTING BETWEEN JOHN TAYLOR AND JANE TAYLOR.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony heretofore existing between John Taylor and Jane Tayler, be, and the same are hereby dissolved.

Passed February 1st, 1860.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN MARTIN SCHMEIG AND ELIZABETH C. SCHMEIG.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony now existing between Martin Schmeig and Elizabeth C. Schmeig, of Pierce county, be and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed February 1st, 1860.

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MEMORIALS.

MEMORIALS

OF THE

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF WASHINGTON.

MEMORIAL

RELATIVE TO THE SURVEY OF PUBLIC LAND IN WASHINGTON TERRITORY.

To the Honorable, the Senate and House of
Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Assembly of Washington Territory, would respectfully call your attention to the fact, that the settlement of the Territory is greatly retarded in consequence of large tracts of arable land in the vicinity of White river, and Green river, and in other desirable portions of the Territory remaining unsurveyed—the surveys heretofore, having been confined principally to the lands bordering on the Sound, Columbia river, Coast, and those portions known to be free from impediments to the work, and where transportation is comparatively easy. The present Congress prices allowed by government, are found to be insufficient to enable the Surveyor General to let contracts covering those portions adjacent to the base of the mountains, and remote from settlements, where the work is more difficult and costly, from the density of

timber, swamps, high prices of labor and transportation. Your memorialists would therefore, most respectfully and earnestly solicit your honorable bodies to appropriate sums commensurate with the estimates made by the Surveyor General, in his report to the Secretary of the Interior, of September 1st, 1858, which sums will be entirely adequate to accomplish the work so long delayed for want of funds sufficient to push it forward.

Passed December 14th, 1859.

MEMORIAL.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialist, the Legislative Assembly of the Territory of Washington, would earnestly pray your honorable bodies to establish an overland mail route from Olympia *via* Vancouver and the Capital of Oregon, to the Capital of California. Your memorialists should represent that, as a matter of national policy, such route would be established.—The ease with which a foreign naval power could, in case of war, effectually destroy all communication by water between California, Oregon and Washington; the great natural advantages of this route, passing much of the way through a well settled portion of the country already connected by military roads, navigable rivers and stage routes, and the general welfare of the people of this coast should entitle this memorial to your serious consideration and speedy action. Your memorialists would therefore pray your honorable body to grant increased appropriations for mail service from Olympia, Washington Territory, by the route above mentioned, weekly, to the Capital of California.

Passed December 14th, 1859.

MEMORIAL

To the Hon. the Senate and House of
Representatives of the United States, in Congress assembled:

We, your petitioners, the Legislative Assembly of the Territory of Washington, would respectfully represent to your honorable bodies, that our coast is at this time entirely defenceless, and we are subject at any time to an inroad from the hordes of Northern Indians who frequent our waters in large and swift sailing canoes, and from their fierce and war-like habits, are a constant source of dread to the citizens of the Territory. And we would further represent, that the steamer *Massachusetts* is unsuitable, on account of her great draft of water and want of speed; is wholly unsuitable to the protection of the coast. And further, that the steamer *Shubrick* is most admirably adapted to the service. Therefore, we your petitioners, would respectfully ask your honorable bodies to pass an act authorizing the exchange of duties heretofore performed by these vessels; and we your petitioners, as in duty bound, would ever pray.

Passed December 14th, 1859.

MEMORIAL

RELATIVE TO THE ESTABLISHMENT OF A MILITARY ROAD FROM SEATTLE, ON PUGET SOUND, *VIA* SNOQUALMIE PASS, TO FORT COLVILLE.

To the Honorable, the Senate and House of
Representatives, in Congress assembled:

Your memorialists, the Legislative Assembly of Washington Territory, would respectfully represent, that there has been a good pass discovered through the Cascade mountains, known as the Snoqualmie pass, and said pass is of much less elevation than the Natchess pass; that the citizens of Seattle, and vicinity, have spent a large amount of money and labor in opening a road through said pass from Seattle to the open country east of the Cascade mountains; that said road is the shortest and most practicable route from Seattle to the open country east of the Cascade mountains; that the large and fertile scope of country east of the

mountains is being fast settled up, promising soon to become the most densely populated portion of our Territory; that at present, owing to the obstructions in the Columbia river, and said road not being thoroughly completed, the commerce and travel to and from said portion of the country labors under very many disadvantages. A good wagon road, on or near the present road, would be a great convenience to the citizens of this Territory, and saving to the military in transporting men and supplies. Therefore, your memorialists would respectfully pray your honorable bodies to pass an act, appropriating a sufficient sum of money to build a wagon road from Seattle, on Puget Sound, *via* Snoqualmie pass, to Fort Colville.

Passed December 14th, 1859.

MEMORIAL

RELATIVE TO THE FREE NAVIGATION AND IMPROVEMENT OF CHEHALIS RIVER.

To the Honorable, the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent: that the Chehalis river is navigable for small class steamers, at all seasons of the year, for one hundred and forty or fifty miles from Chehalis, on Gray's Harbor; and whereas, said river is now obstructed by drifts, etc., to the great detriment of the free navigation of said river, and the speedy settlement of the public lands lying adjacent thereto, and the transportation of goods and supplies upon the same; believing that fifteen thousand dollars would be amply sufficient to clean out all obstructions from said river, making said river open to the free navigation of steamers drawing from twenty to thirty inches, at all seasons of the year; therefore, your memorialists would respectfully pray your honorable bodies to pass an act appropriatiug fifteen thousand dollars for the improvement and free navigation of the Chehalis river.

Passed December 19th, 1859.

MEMORIAL

RELATIVE TO THE ERECTION OF A LIGHT HOUSE AT GRAY'S HARBOR, AND TO SURVEY AND BUOY OUT ITS BAR AND CHANNEL.

To the Honorable, the Senate and House of
Representatives of the United States in Congress assembled:

Your memoralists, the Legislative Assembly of the Territory of Washington would most earnestly and respectfully represent: that the increasing settlement in the valley of the Chehalis, and in the country surrounding Gray's Harbor, demands that a light-house should be erected at Gray's Harbor, and that the channel and bar thereof should be surveyed and buoyed out; therefore, your memorialists would respectfully pray your honorable bodies to pass an act appropriating a sufficient sum to construct a light-house thereat; and, also to survey and buoy out the bar and channel as aforesaid, thereby improving the commercial advantages of that place.

Passed December 19th, 1859.

MEMORIAL

PRAYING AN APPROPRIATION BY CONGRESS FOR A MILITARY ROAD FROM BAKER'S BAY, BY SHOALWATER BAY AND GRAY'S HARBOR, TO PORT TOWNSEND.

To the Honorable, the Senate and House of
Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory ot Washington, would respectfully represent: that there are no means of communication between Astoria, Oregon, and Port Townsend, on Puget Sound, except by sea; that in case of an attack by Indians or other enemy, communication between the military post on the Columbia river and Puget Sound with Shoalwater Bay and Gray's Harbor, would be liable to great danger and delay by storms on the sea and bad weather in winter, or by the great distance to be passed over, that a military road connecting these posts would very much contribute to the safety of the country, to say nothing of the development of the resources of that interesting belt of country stretching from the Straits of San Juan de Fuca and Puget

Sound to the Columbia river; that those citizens who have carried the arts of husbandry and the benefits of civilization into [the] recesses of the wilderness, have at all times a right to expect protection from the government, especially at this time, when the chances of Indian disturbances are greatly increased by the extensive accessions which the Northwest is receiving to its population; that the construction of that portion of the road lying between Baker's Bay, on the Columbia river, and Gray's Harbor, will be attended with but little expense, from the fact that the proposed route will pass through a prairie and open county, with the exception of a short distance; to avert such dangers, and to secure an easy, safe, reliable and rapid transportation of troops and munitions of war at all seasons of the year to the isolated and unprotected citizens inhabiting that portion of our western frontier, your memorialists pray your honorable bodies to pass an act granting a sufficient appropriation to construct a military road from Cape Disappointment, at a point on Baker's Bay, (to connect with the military post at Astoria, Oregon,) by way of Shoalwater Bay and Gray's Harbor, to Port Townsend, Washington Territory, for which we will ever pray.

Passed December 19th, 1859.

MEMORIAL

RELATIVE TO AN ADDITIONAL APPROPRIATION FOR COMPLETING THE MILITARY ROAD FROM FORT WALLA-WALLA TO FORT BENTON.

To the Honorable, the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the Legislative Assembly of Washington Territory, would respectfully represent and call the attention of Congress, that the appropriation for the opening and completion of the military road from Walla-walla to Fort Benton, is not sufficient to complete the same. Taking into consideration the many and increasing settlements along this route, (so far as completed) the advantages of this line of communication to our government, in every point of view; passing, as it does, through a great portion of good grazing and agricultural region. Therefore, your memorialists, in view of the facts above set forth, earnestly and respect-

fully request an additional appropriation of a sum sufficient to open and complete the said road the coming spring.

Passed December 22d, 1859.

MEMORIAL

PRAYING FOR THE EXTENSION OF THE PUBLIC SURVEYS EAST OF THE CASCADE MOUNTAINS.

To the Honorable, the Senate and House of Representatives of the United States of America, in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfullly represent: that in view of the rapid increase in the settlement of this Territory, east of the Cascade Mountains, in the valleys of Walla-walla, Clicatat, Simcoe, Fort Colville, and the great valley of the Columbia, which have now a very large quantity of bona fide farmers, settlers and persons of divers business interests, on the public lands; the rapid increase of immigration into said valleys; the many disputes arising from the occupancy of unsurveyed lands; the improvements and developments of the country being greatly retarded by not having the public surveys extended; and that the exteusion of the surveys will enable the occupiers, claimants and immigrants now settling and having settled in this interesting portion of our flourishing Territory, to settle disputes, and obtain a title to their lands with fixed and known boundaries; therefore, in view of these facts, we, your memorialists, do earnestly and respectfully solicit your honorable body to appropriate a sum sufficient to extend said public surveys through the valleys of the upper Columbia, east of the Cascade Mountains; and your memorialists, in duty bound, will ever pray.

Passed December 22d, 1859.

MEMORIAL

RELATIVE TO THE MILITARY ROAD FROM STEILACOOM TO VANCOUVER.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent: that the sum of money appropriated by Congress to open a military road from Fort Steilacoom, on Puget Souud, to Fort Vancouver, on the Columbia river, has been expended; and that said road is not yet completed as far as Monticello, on the Cowlitz river; and from Monticello to Vancouver has not yet been surveyed, nor put under contract; and that the early completion of said road is of great and general importance to the military and settlers of the whole country: therefore, your memorialists would respectfully and earnestly solicit your honorable bodies to appropriate a sum sufficient to complete said road, and your memorialists will ever pray.

Passed January 5th, 1860.

MEMORIAL

RELATIVE TO THE SUPERINTENDENCY OF INDIAN AFFAIRS.

To the Honorable, the Senate and House of Representatives of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent that it is highly necessary that the present superintendency of Indian affairs, embracing the Territory of Washington and the State of Oregon, should be divided, and a separate superintendency created, embracing the Territory of Washington. The extent of territory, the number of Indians, and the amount of business to be transacted, render it necessary that this office should be created. The number of Indians in this Territory approximate to twenty-five thousand, and they are allowed to roam over the lands now occupied by our rapidly increasing white population. This renders the duties of the officers of the Indian department in our Territory both intricate and laborious. The discovery of gold in the British Possessions, as well as in our own northern border, near the Similkameen and Okanogan rivers, immediately in Wash-

ington Territory, which causes many miners and seekers of gold to not only locate in our midst, but to pass through the interior of our Territory, in armed bands, adds still more to duties of the officers. Your petitioners would therefore, respectfully pray that Washington Territory be created into a separate superintendency, with a superintendent of Indian affairs to reside therein.

Passed January 16th, 1860.

MEMORIAL

RELATIVE TO APPROPRIATING MOMEY FOR THE TRASPORTATION AND SETTLING THE INDIAN TRIBES ON THEIR RESERVES EAST OF THE CASCADE MOUNTAINS.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent to your honorable bodies, the great necessity of removing the Indian tribes east of the Cascade Mountains, with whom treaties have been made since the year A. D. 1855, and ratified by the U. S. Senate at their last session of Congress, to their respective reserves; thereby preventing, probably, another outbreak, (caused by the government's non-compliance with her treaty stipulations,) the association and intermixing with the white settlers, &c., &c., in that interesting portion of said Territory with these savages: therefore, your memorialists would respectfully and earnestly ask, that a sufficient appropriation be made by your honorable bodies for the faithful carrying out this humane object to both the settler and Indian.

Passed January 16th, 1860.

MEMORIAL

To the Postmaster-General of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent: that there is a large and prosperous settlement in that section of Pierce county, Washington Territory lying between the Puyallup and White rivers; that the nearest post office to them is that at the town of Steilacoom, distant at least fourteen miles; that the military road running from Fort Steilacoom to Walla-walla passes through the settlement on the Puyallup, and is one of the most prosperous portions of our Territory, and is every day increasing in population, and in view of all these facts, we ask that a weekly mail route from Steilacoom to Fort Slaughter, at the lower crossing of the Puyallup river, in Pierce county, be established, and that John Carson be appointed postmaster.

Passed January 7th, 1860.

MEMORIAL

To the Honorable, the Secretary of War of the United States:

The Legislative Assembly of the Territory of Washington, would respectfully represent that George W. Johnson, a citizen of the United States, residing in Skamania county, Washington Territory, was, in May, A. D. 1856, deprived of the use, occupancy and control of his land claim, situated at the lower falls of the Cascades of the Columbia river, in said Washington Territory, by officers of the United States army, who took said land, and have since held, used and controlled the same for and as a military reservation.

Your memorialists respectfully represent that said land of Johnson's is of great value, being at the head of navigation on the Columbia river for sea going vessels; that it is the gateway for trade and travel between the countries to the east and west of the Cascade range of mountains; that it is most advantageously situated for the purposes of trade and commerce; that said Johnson has sustained heavy damages by reson of being deprived of the right to use and control his own land; and that the occupancy of the same by United States troops, has prevented the building up of a town at said Cascades; has retarded the trade and commerce of the place, and

diverted the same from its natural channel, thus proving disastrous to the prosperity and development of that section of this Territory, as well ruinous to the said Johnson.

Your memorialists respectfully ask that the United States troops may be removed from said land; that the same may be restored to said Johnson, and that he may be compensated for the use and occupation of his land by the United States army officers, and for the damages he has sustained.

Passed Jannary 9th, 1860.

MEMORIAL

RELATIVE TO THE ESTABLISHMENT OF A MILITARY ROAD FROM VANCOUVER TO FORT SIMCOE.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent: that there has been a good pass discovered through the Cascade Mountains, between the McClelland and the Columbia river passes, and that it is of less elevation than any yet discovered, except that of the Columbia river; that the citizens of Vancouver and vicinity have expended a large amount of money in opening a trail through said pass from Vancouver to the open country east of the mountains; that said trail is the shortest route from Vancouver to Fort Simcoe and the open country east of the Cascade Mountains; and that a good wagon road on or near said trail would be a great convenience to the citizens of this Territory, and a very great saving to the government in transporting military supplies and men.

And your memorialists would further represent, that a goood wagon road can be made on or near said trail, which will be free from troublesome water courses at all seasons of the year; therefore, your memorialists would respectfully ask your honorable bodies to pass an act appropriating a sufficient sum of money to construct a good wagon road on or near the trail leading from Vancouver to Fort Simcoe.

Passed January 9th, 1860.

MEMORIAL

PRAYING FOR AN APPROPRIATION TO SURVEY AND BUOY OUT THE CHANNEL OF THE COLUMBIA RIVER, FROM THE MOUTH OF THE WILLAMETTE RIVER TO THE CASCADE OF THE COLUMBIA RIVER.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that in the rapid increase of population and other settlements on the banks of the Columbia river, and to facilitate the great interests of the people thereon, open navigation for commerce on the great Columbia river, a speedy survey of the channel and buoying of the same, is absolutely necessary; and therefore, your memorialists would earnestly pray that your honorable body would appropriate a sufficient sum for such purposes.

Passed January 16th, 1860.

MEMORIAL

PRAYING THE ESTABLISHMENT OF A PORT OF DELIVERY AT CASCADE CITY.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that owing to an increase of population on the east side of the Cascade mountains, and the exorbitant rates of tariff, as freight, on all goods consumed by the settlers in that portion of Washington Territory alluded to: And whereas, the tariff on those goods could be greatly reduced, could vessels be allowed to take a full cargo as far up the Columbia river as it can well be navigated, and as the foot of the rapids of the Columbia river, at the town of Cascades, is such a point, we would respectfully represent to your honorable body

that the interests of the above mentioned territory, essentially need that the above named place should be made a port of delivery. Hoping that this memorial will receive the attention that it merits, your memorialists, as in duty bound, will ever pray.

Passed January 20th, 1860.

MEMORIAL

PRAYING FOR AN EXTENSION OF THE MAIL SERVICE ON PUGET SOUND AND ADJACENT WATERS.

To the Honorable, the Post Master General of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that the rapid increase of population on the borders of Puget Sound; our commercial and lumbering interests extending as they now do to Australia, China, South America, San Francisco and England; the opening of mines in our immediate vicinity; the various avenues of trade rapidly developing the resources of our Territory, all demand that the present weekly mail service on Puget Sound should be increased to a semi-weekly service. Since the establishment of the present service between Olympia and Semiahmoo, our population has nearly, if not quite doubled, and the business on the route has increased in a much greater ratio. The mail service between Oregon and Olympia is semi-weekly, and the rapidly increasing commercial interests of the northern portion of our Territory, require that the same should be extended from Olympia to Semiahmoo and the towns on the Sound.—Since the discovery and opening of gold mines in British Columbia, many thousand Americans have settled in the Colony and Vancouver's Island, and an extensive trade is carried on between this Territory and the same, and these interests daily increasing and aiding in the development of our resources, demand that the mail service on the Sound may be extended to Victoria, on Vancouver's Island.

That for the last five years, the only regular mail facilities between Vancouver's Island and the States, has been by way of Puget Sound, and the same has been extended by the contractor on the Sound, receiving no consideration therefor. The present mail contractor, John H. Scranton, has, with indefatigable exertion, succeeded in perfecting such arrange-

ments to carry the United States mail as would ensure punctuality and certainty, and believing that the interests of the Territory and its material prosperity, warrant us in so doing, we respectfully recommend and urge that the present service be increased to semi-weekly service, and that the contract be extended to Victoria, and that the present contractor, John H. Scranton, be instructed to carry the same into effect; and that remuneration be made the contractor for the time he may have carried the mail hitherto to Vancouver's Island.

Passed January 25th, 1860.

MEMORIAL

To the Hon. the Senate and House of
Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, respectfully ask that the tide flats lying in front of, and adjacent to the town of Olympia, in said Territory, included in and embraced within the bounds specified in the act of incorporation, passed and approved by the Legislative Assembly, January, 1859, be donated and the title confirmed to the said town of Olympia; and our delegate in Congress is hereby instructed to use his utmost exertions to accomplish the object of this memorial.

Passed January 27th, 1860.

MEMORIAL

RELATIVE TO THE WAR DEBT OF THE TERRITORY OF WASHINGTON AND STATE OF OREGON.

WHEREAS, Certain claims in favor of the citizens of this Territory and the State of Oregon, have been recognized as existing against the government of the United States, on account of the war with Indians during the years 1855 and '56; and,

Whereas, Congress, at its last session, referred said claims to the third auditor of the treasury department, to be reported to the House of Representatives by the first Monday of December, A. D., 1859, under certain rules or restrictions, the second of which is as follows:

" He (the auditor) shall allow to the volunteers engaged in said service no higher pay and allowances than were given to officers and soldiers, of equal grade at that period, in the army of the United States, including the extra pay of two dollars per month given to troops serving on the Pacific coast, by the act of 1852;" and

Whereas, The liquidation of said claim, based on any report made in accordance with such rule or instruction, would work manifest wrong and injustice towards the citizens of the Territory of Washington and the State of Oregon, who were forced to sacrifice property, time, and all the quiet and conveniences of civil life, and take up arms to maintain their existence.

Therefore, your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent: That during the existence of said Indian war in 1855-56, and previous thereto, the wages of the citizens who served as volunteers, when engaged in ordinary employment of civil life, amounted to from two to four dollars per day; that the amount of pay for volunteers, contemplated by the rule prescribed by Congress for the report of the said third auditor, would not meet the actual and necessary expenses incurred in their outfits, and extra clothing, during the extended period of their service.

That no deduction could be made from the pay of volunteers, as reported by the commissioners appointed to adjust the same, which would leave anything like a fair or reasonable remuneration for their time, to say nothing of an equivalent for the sacrifices they were compelled to make in order to enable them to render the service at all.

We would also represent that, to pay those who furnished supplies, the cash value of such at the time they were so furnished, and refuse to pay the volunteers the cash value of labor at the same period, is making an invidious distinction in favor of property venders, against which we earnestly protest. Again, if it be the purpose of Congress to pay the expense of our late Indian war, we hope that an appropriation will be at once made; otherwise, the scrip given for property furnished and services rendered will have passed from the hands of the original holders into the hands of bankers and speculators.

That inaccuracies may have occurred in the accounts of the purchasing and disbursing officers of our volunteer forces is possible, but that frauds, such as charged by the third auditor in his report about a year

ago, have been perpetrated is almost incredible, and if such frauds exists, we have no sympathy with the perpetrators thereof, and hope that the same may be exposed, to the end that an indignant people may know what it is and by whom perpetrated.

Your memorialists, believing that the report of the commissioners, composed of gentlemen long resident in the country, one of them for a long time a quartermaster in the army, and fully acquainted with the prices of the various kinds of labor in the country, and the absolute necessities of volunteers suddenly called into service, presents the fairest estimate and the most accurate adjustment of the claims of the volunteers against the government, earnestly protest against the reduction of their pay as contemplated by said rule, and respectfully ask that they be paid in accordance with the report of said commissioners.

The Secretary of the Territory is respectfully requested to foward a printed copy of this memorial to each member of the United States Senate, and a copy to each member and delegate in the House from the Pacific coast.

Passed January 27th, 1860.

MEMORIAL

RELATIVE TO COMPENSATION TO DR. SAMUEL McCURDY, FOR SERVICES RENDERED AS SURGEON OF THE U. S. MARINE HOSPITAL, AT PORT TOWNSEND, W. T.

To the Honorable the Secretary of the Treasury of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that on the 2d of April, 1855, Dr. Samuel McCurdy, Esq., entered into a contract with the late Isaac N. Ebey, Esq., then collector of customs for the district of Puget Sound, in the name of the United States, to receive into his hospital all sick and disabled seamen requiring medical aid sent to him by said collector, and to provide said patients with good and sufficient board, lodging, medicine, and medical attendence, for which he was to receive the sum of four dollarr per day for each and every patient so admitted and treated. Said contract was faithfully fulfilled by said McCurdy, to the entire satisfaction of said collector, up to the 6th day of November, 1855, when he joined the Washington Territory volunteers, and served as surgeon of the north-

ern battalion, up to the time said battalion was disbanded; and on his return to Port Townsend, he, the said McCurdy, again entered into a contract with Morris H. Frost, Esq., the present collector of customs, to receive and attend patients as above, for which he was to receive the sum of three dollars per day for each patient so received and treated. Said contract was also faithfully fulfilled on the part of said Dr. S. McCurdy up to the month of July, 1858, when the contract for the United States marine hospital passed into other hands. Yet, strange to say, although not one charge has ever been made against said McCurdy for the non-fulfillment of any of the parts of said contract, he has never received one cent up to the present time for said service and his expenditures.

Your memorialists would therefore pray that you would be pleased to pass such an order as would cause the immediate payment to Dr. S. McCurdy, of such sum as justice in his case may demand.

Passed January 30th, 1860.

MEMORIAL

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memoralists, the Legislative Assembly of the Territory of Washington, respectfully ask that you appropriate the sum of two hundred and forty dollars to George House, Jr., for his services as joint enrolling and engrossing clerk for this, the seventh session of the Legislative Assembly of this Territory.

Passed January 30th, 1860.

MEMORIAL

PRAYING FOR TREATIES TO BE FORMED WITH THE CHEHALIS AND OTHER TRIBES OF INDIANS.

To the President and Senate of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent to your honorable bodies, the great necessity of making treaties immediately with certain tribes of Indians in this Territory, where the country is rapidly settling up. These Indians are the Chehalis, Cowlitz, Chenooks, all living west of the Cascade Mountains. Your memorialists being anxious to avoid any collision between the tribes of Indians and the citizens of this Territory, and knowing that these Indians have long been told by the citizens of this Territory, and by the government officials, especially the Indian agent, that the United States Government would treat with them, and having so failed to do, some of these same Indians are now threatening death to the citizens of Chehalis county; and, therefore, we, your memorialists, would respectfully pray that treaties may be made at the earliest possible moment.

Passed January 31st, 1860.

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RESOLUTIONS.

RESOLUTIONS

OF THE

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF WASHINGTON.

RESOLUTION

RELATIVE TO AN APPROPRIATION BY CONGRESS FOR THE PURCHASE OF ADDITIONAL BOOKS FOR THE LIBRARY OF WASHINGTON TERRITORY.

Resolved by the Council, the House concurring, That our delegate in Congress be, and he is hereby, instructed to use his influence with the Congress of the United States to obtain an appropriation for the purpose of purchasing additional books, to complete setts incomplete now belonging to the library of Washington Territory.

Passed January 5th, 1860.

RESOLUTION

Resolved by the House of Representatives, the Council concurring, [That] both branches of the legislature shall meet in joint convention on the 25th day of January, 1860, for the purpose of electing territorial officers, as

prescribed by law, to wit: one public printer, one territorial auditor, one territorial treasurer, one librarian, three capitol commissioners and three penitentiary commissioners.

Passed January 7th, 1860.

RESOLUTION

RELATIVE TO THE MERGING OF THE MILITARY DEPARTMENT OF OREGON INTO THAT OF THE PACIFIC.

WAEREAS, It has come to our knowledge that attempts are making, or will be made, to merge the military department of Oregon into the department of the Pacifice, and, in case this is not effected, to cause Brigadier General Wm. S. Harney to be removed from command; and

Whereas, We believe that said department was established for good and sufficient reasons, which reasons still exist in as full force as when said department was established, the interior of our Territory being still occupied by numerous tribes of Indians only restrained from hostilities by the presence of large bodies of troops, and our frontier being still liable to murderous incursions of powerful and savage hordes of Indians living upon a foreign soil; and

Whereas, experience has shown that, in order that these troops may act promptly and efficiently for the protection of our Territory, it is necessary that the headquarters of the department should be of convenient access, which would not be the case were it removed to the State of California; and

Whereas, General Harney, in all his official acts while in command of this military department, by protecting us from Indians, domestic and foreign, securing and maintaining peace, by removing those unlawful military orders under which an attempt was made to exclude our citizens from portions of our Territory which under the laws were open to settlement, opening communications between different portions of the Territory, protecting immigration, by placing troops on the Island of San Juan—an island which is as unquestionably American soil as any other portion of our Territory—for the protection of American settlers against foreign Indians and against attempted acts of foreign jurisdiction, has deserved and secured the entire confidence of the people of this Territory: therefore, be it

Resolved, That we, the Legislative Assembly of the Territory of Washington, earnestly and respectfully protest against any change by which the military department of Oregon shall be merged into any other department, or its headquarters removed.

2*d*. *Resolved*, That we respectfully and earnestly solicit the President of the United States to continue the present able, experienced and prudent officer (Brig. Gen. Harney) in command of said military department.

3*d*. *Resolved*, That we firmly believe General Harney has acted in a prudent and proper manner in placing a military force on the Island of San Juan for the protection of American citizens from foreign savages and wanton aggressions of foreign officials. First, because the island is clearly ours under a fair construction of the treaty. Second, because said island is within the military department of Oregon, it having been by an act passed in 1854, at the first session of the Legislative Assembly of this Territory, made a part of the organized county of Whatcom, which act was duly submitted to the Congress of the United State as by the organic act is required, and has not to this day been disapproved, and is still the law of the land; and, third, because the circumstances of the case required that a military force should be placed there at the time it was done.

4*th*. *Resolved*, That General Harney having rightfully placed a military force upon said island, would have been recreant to his trust had he failed to support it with all the power, at his command when it was unlawfully threatened by an attack by a foreign nation.

5*th*. *Resolved*, That having the fullest confidence in our title to the island, our right should be maintained at all hazards.

6*th*. *Resolved*, That we most respectfully ask the proper authorities to revoke the odious military order placing San Juan, a portion of Whatcom county, under military rule.

7*th*. *Resolved*, That we have the fullest confidence that the President of the United States will act justly and fairly in the premises, and that American rights will be fully vindicated by him.

8*th*. *Resolved*, That copies of these resolutions, duly signed and certified, be sent to our delegate in Congress, to be by him submitted to the President of the United States, and also to General W. S. Harney.

Passed January 7th, 1860.

RESOLUTION

RELATIVE TO THE EMPLOYMENT OF AN ENROLLING CLERK.

Resolved by the House, the Council concurring, That George House be, and hereby is, employed joint enrolling clerk for both houses of this legislature during the present session thereof: *Provided*, said House shall look to the United States for whatever compensation he may demand for his services as such clerk.

Passed January 9th, 1860.

RESOLUTION

CONCERNING THE INDIANS IN CHEHALIS COUNTY AND VICINITY.

WHEREAS, It has come to the knowledge of the General Assembly of the Territory of Washington, that great danger exists of an outbreak of the Indians living at and near the mouth of Gray's Harbor. These Indians have always refused to treat with any of the Indian agents, and have invariably showed hostile feelings when messengers have been sent there by the Indian department, and have held themselves aloof from the citizens and settlers whenever they have approached them, and for the last few weeks have shown unmistakable signs of an attempt to exterminate the settlers at Gray's Harbor, Shoalwater Bay, and the country on the lower Chehalis. The attitude of these Indians is so menacing of late, that several of the settlers have abandoned their claims until they can be assured of the protection of the government. And we would further represent: that a flourishing settlement of at least two hundred souls, has suddenly sprung up in the immediate vicinity of these Indians, who are entirely at the mercy of these savages. And, further, that these Indians can bring at leat three hundred warriors at any time (and possessing at least fifteen hundred souls in their tribe,) upon these defenseless citizens, and before assistance could be obtained, this entire settlement would be subject to the most dangerous Indians existing in our Territory, west of the Cascade Mountains: therefore, be it

Resolved by the Legislative Assembly of the Territory of Washington, That General William S. Harney, U. S. A., be requested to station at

least one company of infantry, at some eligible point at Gray's Harbor, for the protection of this part of the citizens of this Territory.

Passed January 10th, 1860.

RESOLUTION

INSTRUCTING DELEGATE IN CONGRESS TO URGE THE CONGRESS OF THE UNITED STATES TO CREATE THE OFFICE OF ENROLLING AND ENGROSSING CLERK.

Be it Resolved by the Legislative Assembly of the Territory of Washington, That our delegate in Congress be, and he is hereby, instructed to exert his influence to procure the passage of an act to create the office of enrolling and engrossing clerk for each house of the Legislative Assembly, said office being absolutely necessary for the proper dispatch of business.

Passed January 10th, 1860.

RESOLUTION

CONCERNING THE TRANSPORTATION OF ARMS.

Resolved, by the Legislative Assembly of Washington Territory, That the Governor is authorized to draw out of the Territorial fund of the treasury, an amount of money sufficient to pay the expenses of transporting arms and ammunition to some convenient point at or near Gray's Harbor: *Provided*, the sum so drawn shall not exceed one hundred dollars: *provided, further*, that vouchers for such amount or amounts as shall be necessary to be drawn from the Terrritorial treasury for that purpose shall be approved by the Territorial Auditor and Quartermaster-General before being paid by the Territorial Treasurer.

Passed January 11th, 1860.

RESOLUTION

TENDERING THANKS TO CAPTAIN PICKETT, U. S. A.

Resolved, by the Legislative Assembly of the Territory of Washington, That the thanks of the people of this Territory are due Captain Pickett, U. S. A., for the gallant and firm discharge of his duties under the most trying circumstances while he was in command on the Island of San Juan.

Passed January 11th, 1860.

RESOLUTION

RELATIVE TO A GEOLOGICAL SURVEY OF THIS TERRITORY BY THE GENERAL GOVERNMENT.

WHEREAS, The whole Union is directly interested in the developoment of the mineral resources of the Territory of Washington; and

Whereas, a geological survey of the mineral and agricultural lands of this Territory would place important information in possession of the public, thereby directing attention to their value, and have a tendency to promote the development of the same: therefore,

Resolved by the House, the Council concurring, That our delegate in Congress be requested to use his influence to provide, at an early day, for a complete scientific geological survey of the mineral and agricultural districts of this Territory by the general government.

Resolved, That the usual number of copies be printed of these resolutions, &c., and that the same be forwarded to our delegate in Congress, as also the President of the United States and his cabinet.

Passed January 11th, 1860.

RESOLUTION

CONCERNING THE EQUALIZING POSTAGE ON LETTERS, PAPERS, ECT., THROUGHOUT THE UNION.

Resolved by the House, the Council concurring, That our delegate in Congress be requested to urge upon that body the passage of a general law equalizing postage on letters, papers, etc., throughout the Union.

Be it further Resolved, That in case it be found impracticable to obtainthe passage of such general law alluded to, then, in that case, our delegate be requested to insist upon and demand the immediate passage of a special law for the relief and benefit of the Pacific coast, who now pay three hundred and thirty-three and one-third per cent. more on postage, than is paid by any other citizens of the Federal Union.

Be it further Resolved, That the Governor of this Territory be requested to transmit to the President of the United States, the Postmaster General and our Delegate in Congress a copy of these resolutions.

Passed January 13th, 1860.

RESOLUTION

RELATIVE TO THE ELECTION OF GOVERNOR AND JUDGES OF THE SUPREME AND DISTRICT COURTS OF W. T., BY THE PEOPLE.

Resolved by the Legislature of Washington Territory, That our Delegate in Congress be instructed to procure the passage of a law authorizing the people of this Territory to elect their governor and judges of the district and supreme courts.

Passed January 14th, 1860.

RESOLUTION

RELATIVE TO THE CREATION OF AN ADDITIONAL LAND OFFICE FOR THE TERRITORY OF WASHINGTON, ACCORDING TO THE RECOMMENDATION OF HIS EXCELLENCY, THE GOVERNOR, IN HIS LATE ANNUAL MESSAGE TO THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF WASHINGTON.

WHEREAS, Numerous settlers east of the Cascade Mountains, from their summit to the lines dividing the Territory of Washington and the State of Oregon, who reside so remotely from the land office now located at Olympia, to which, by law, they must come in person and produce their witness, to prove up or enter their land claims, and travel to which, at all seasons, is attended with much inconvenience and expense, and during several months of the year extremely annoying and difficult, and many of those settlers unable without great sacrifice, to be subjected to such a burthen; and

Whereas, A near central location should be selected; and

Whereas, the town of Steptoeville, in the county of Walla-walla, in said Territory, is the most central location east of the Cascade Mountains: *Provided*, however, that the people or the proper authorities of said town will make a good and valid deed to the United States, for at least four acres of land in the said town, subject to the selection of the land officers appointed by the President of the United State; and if not suitable arrangements be so made for said purposes, then the said land officers shall select some other eligible site for the proper building and buildings to be erected as land office and offices, near by: therefore,

Be it Resolved, by the Legislative Assembly of the Territory of Washington, That our delegate in Congress be, and he is hereby, instructed to use his influence with the Congress of the United States to secure the passage of an act creating a new additional land district, to be called "East Cascade Land District," with the necessary appropriation therefor, and the location of the buildings, &c., as set forth in the above preamble, and also, that the Governor be requested to send a copy of this resolution to the President of the United States, the Secretary of the Interior, and the Honorable Isaac I. Stevens.

Passed January 16th, 1860.

RESOLUTION

ASKING CONGRESS TO DONATE TO THIS TERRITORY TEN MILLION ACRES OF ARABLE LAND, IN AID OF HER TERRITORIAL INTERAL IMPROVEMENT FUND.

WHEREAS, The Federal Government do now hold a vast amount of land within the limits of the Territory of Washington, adapted to all the wants and requirements for civil life, and which is now unoccupied and unproductive; and

WHEREAS, It doth appear that the General Government have acted upon a wise and true policy, in making liberal donations of the public land to other States, Territories, and corporations, in aid of and to facilitate the construction of railroads and other State and Territorial internal improvements; and

WHEREAS, The Territory of Washington embraces a wide extent of territory on the Pacific coast, isolated and far removed from the federal head and heart, unprotected by practicable lines of internal communication, unsupported, in the event of war, save by the loyalty of its citizens, and their trust in its federal covenants; and

WHEREAS, The construction of railways within this Territory, will greatly increase its commercial privileges, facilitate the development of our resources; vest in the Territory an element of progress, correspondent to its international importance and position; administer to the necessities of an energetic people; cement still stronger our federative attachments; add to our numerical force; form a sturdy structure of usefulness to the Territory and nation, and proudly fortify us against any foreign invasion or military usurpation of territory; and

WHEREAS, It is the desire of the Territory of Washington to render such aid as may be necessary, to induce the immediate construction of the Pacific railroad, from the cities of Seattle or Olympia, Steilacoom and Whatcom, to the eastern boundary line of the Territory, through the great valley of the Columbia, by way of Vauconver; and also to aid and encourage the construction of other railroads, such as its internal commerce shall demand, and such as shall be deemed to strengthen our position, and increase the power of the General Government on this coast; and

WHEREAS, Without the liberal aid of the General Government, by donation of a portion of the public lands to this Territory, the public improvements contemplated cannot be undertaken and carried forward to completion; and

WEREAS, It is reasonable to urge, fair to demand, and just to expect, a donation of land to this Territory, by the General Government, by which to aid the construction of railroads within our sovereign limits, and

that it is eminently the policy of the General Government to encourage the construction of works answering the ends of sovereign power and national defense: therefore,

Resolved by the House of Representatives and Council of Washington Territory, That our Delegate in Congress be, and he is hereby, requested to urge upon Congress the passage of a law, donating to this Territory ten million acres of arable land, by which donation the Pacific and Atlantic railroads, from either the cities of Seattle, Steilacoom, Whatcom or Olympia to the eastern boundary line of the Territory, and other public works of a like character within the Territory of Washington; and that the lands so donated be selected by the Territorial Surveyor General out of the public lands belonging to the General Government, within the Territory of Washington, as soon as practicable.

Resolved, That the Governor of the Territory be requested to forward to our Delegate a copy of this preamble and resolutions, to the President and each member of the Cabinet.

Passed January 20th, 1860.

RESOLUTION

RELATIVE TO TENDERING A VOTE OF THANKS TO CAPT. CHARLES DODD.

WHEREAS, Col. Isaac N. Ebey, one of our most esteemed fellow citizens, was ruthlessly murdered by a band of savages residing in Russian America, in the month of August, A. D., 1857; and

WHEREAS, Said Col. Isaac N. Ebey was brutally murdered at his residence on Whidby's Island, during the month aforesaid, and his head dissevered from his body and carried off as a bloody trophy by said band of savages, known by the name of "Kakes," and residing in Russian America; and

WHEREAS, Captain Charles Dodd, a brave and gallant mariner, and commander of the Hudson's Bay Company's steamer "Labouchere," did risk his life and that of his crew, as well as the loss of his steamer, in his attempt to recover from said tribe of savages, the bloody relic above mentioned, that he might thus be enabled to restore the same to the family of his murdered friend, Col. Ebey; and

WHEREAS, Capt. Dodd, after a long and tedious negotiation, did, in the fall of 1859, succeed in getting said savages to surrender to him the

sad relic of Indian trophy, which he placed in the hands of A. M. Poe, Esq., to be by him delivered to the family of said deceased Col. I. N. Ebey: therefore,

Be it Resolved by the Legislative Assembly of the Territory of Washington, That the thanks of this Legislative Assembly be, and the same are hereby tendered to Capt. Charles Dodd, for his bravery, gallantry, and acts of humanity, in having hazarded his own life and that of his crew, and the probable destruction of his vessel, in his untiring endeavors to procure the scalp of the lamented Col. Isaac N. Ebey.

Resolved, That his Excellency, the Governor of Washington Territory, be requested to forward to Capt. Charles Dodd, at Victoria, British Columbia, a copy of these resolutions.

Passed January 20th, 1860.

RESOLUTION

ASKING THE SECRETARY TO PAY BUTLER P. ANDERSON FOR COMPILING THE LAWS.

WHEREAS, During the session of 1857–8, this Legislative Assembly passed a resolution appointing a code of commissioners to compile and revise the laws of this Territory, of which B. P. Anderson was a member; and

WHEREAS, Pursuant to said resolution, the said Anderson compiled a portion of the laws, and reported progress to the succeding session of the Legislature; and

WHEREAS, By a resolution passed during the session of 1858–9, the Legislature requested the said B. P. Anderson to compile the compilation of said laws; and

WHEREAS, said B. P. Anderson did, pursuant to the request made by the last Legislature, go on and complete the compilation of the laws, which compilation was accepted by the last Legislature, and a lage portion of it has been used by this present body: therefore,

Be it Resolved by the Legislative Assembly of the Territory of Washington, That the Secretary of this Territory be, and he is hereby, requested to pay the said B. P. Anderson the sum of three hundred and seventy-

five dollars for seventy-five days' services in compiling the laws as aforesaid, out of any fund in his hands to defray the expenses of this body.

Passed January 30th, 1860.

RESOLUTION

CONCERNING EXTRA PAY OF THE MEMBERS AND ATTACHES, OR OFFICERS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF WASHINGTON.

Resolved by the Legislative Assembly of the Territory of Washington, That the pay of the present members and attaches of the Legislative Assembly of the Territory of Washington, is totally inadequate to pay the reasonable expenses incurred whilst attending to legislative or public business, and that we ask of Congress to pass a relief bill for extra services, for at least four dollars per diem, extra, during the Legislature, and thirty cents per mile be allowed as travelling expenses in going and returning to the Capital, by members, from their respective counties; and that as the attaches or officers of the Legislature receive no mileage, that the rates of at least six dollars per diem, be paid them by the same relief bill.

Resolved, That a copy of this resolution be forwarded to our Delegate in Congress, and that he be requested to urge on Congress the passage of such relief bill.

Passed January 30th, 1860.

RESOLUTION

RELATIVE TO AN AMENDMENT OF THE DONATION LAW.

WHEREAS, By an act of Congress of the United States, entitled an act creating the office of Surveyor General of the public lands in Oregon, and to provide for the survey, and to make donations of the said public lands; and the acts amendatory thereto, passed September 27th, 1850, it is required that settlers shall file in the office of the Surveyor General a notification, giving description of the tract of land claimed, after being notified so to do, and failing, they loose their right under said law; and

WHEREAS, Owing to the want of mail facilities, the great expense of travel and many other causes, many good citizens failed to receive the notice given by the Surveyor General; others forwarded their notification, some miscarried, others were lost or mislaid after reaching the land office; others for want of blank forms, or a knowledge of the notice required, failed to give the notice. Therefore, be it

Resolved by the Legislative Assembly of the Territory of Washington, That our Delegate in Congress be requested to use his utmost influence to obtain the passage of a law to allow such settlers as have failed to notify, the right of further time to give such notice.

Passed January 30th, 1860.

RESOLUTION

RELATIVE TO THE INDIAN AGENCY,

WHEREAS, It having come to the knowledge of the Legislative Assembly of this Territory, that efforts are now being made in the State of Oregon to so divide the Superintendency of Indian Affairs of Washington and Oregon as to make the Cascade mountains the dividing line thereof, giving to Oregon a portion of both Superintendencies, Therefore, be it

Resolved, That in the opinion of this Legislative Assembly, the people of the Territory of Washington are opposed to such division, and desire that the change should be made so as to erect Washington Territory into a separate Superintendency, and our Delegate in Congress is hereby instructed to use his influence to forward the object of this resolution.

Passed January 31st, 1860.

RESOLUTION

RELATIVE TO A RAILROAD CONVENTION AT VANCOUVER, W. T.

WHEREAS, The construction of a Northern Pacific Railroad is a subject in which the people of Oregon and Washington are directly interested; and whereas, the time has now come for action on this matter,

Therefore, be it Resolved by the Legislative Assembly of the Territory of Washington, That the State of Oregon be respectfully invited to unite in Convention with the Territory of Washington, in Vancouver, on the 20th of May next.

Resolved, further, That thirty delegates be appointed by this Assembly, to meet any number of delegates on the part of the State of Oregon, at the place and time aforesaid, to take into consideration the best means to be adopted for the furtherance of the object sought, and to make such recommendation as they in their wisdom shall see fit.

Resolved, That the delegates of this Territory be appointed from each county, according to the number of Representatives each county elects to the Legislative Assembly.

Resolved, That the gentlemen whose names are hereto annexed, be, and they are hereby, declared delegates on the part of the Territory of Washington:

Walla Walla—J. A. Simms.

Skamania—Daniel F. Bradford.

Cowlitz and Wahkiakum—Seth Catlin, Sen., William Strong.

Clarke—H. J. G. Maxon, P. Ahern, S. B. Curtis, A. H. Simmons, William Prœbstel.

Lewis—A. B. Dillenbaugh, T. R. Winston.

Pacific—H. K. Stevens.

Chehalis—T. J. Carter.

Thurston—Edward Furste, James Longmyre, William W. Miller, Oliver Shead, G. K. Willard, S. S. Ford, Sen.

Sawamish—David Shelton.

Pierce—J. S. Jaquith, Frank Clark, S. McCaw.

King—Franklin Matthias.

Island—J. T. Turner.

Kitsap—W. C. Talbot, G. A. Meigs.

Jefferson—J. M. Van Valzah.

Clalm—Elliot Cline.

Whatcom—J. G. Hyat.

Passed February 1st, 1860.

RESOLUTION

RELATIVE TO THE TRANSPORTATION OF FIRE ARMS TO THE COUNTIES EAST OF THE CASCADE MOUNTAINS.

Resolved by the Legislative Assembly of the Territory of Washington, That the Quartermaster General of the Territory is hereby authorized and directed to forward one-fourth of all the Territorial arms now in his possession, to some convenient point, or points, in the counties of Spokane and Walla Walla, or both of them.

2d. That said arms be placed in the charge of an assistant quartermaster, to be appointed by the Quartermaster General.

3d. That said Assistant Quartermaster is hereby authorized to issue the arms in his charge to the different counties east of the Cascade mountains, in this Territory, in accordance with law now in force for the distribution of the public arms.

4th. The Territorial Treasurer is hereby authorized and directed to pay such accounts, duly audited and certified to by the Quartermaster General, as the Quartermaster General may incur, in carrying out the object of this law.

Passed February 1st, 1860.

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ERRATA.

Act amendatory to act of January 21, 1859, "conferring jurisdiction upon the District Court of the county of Pierce"—See "Private Laws," page 467, [should have been inserted among the public acts.]