

LAWS
OF THE
TERRITORY OF WASHINGTON,
ENACTED BY THE
LEGISLATIVE ASSEMBLY
IN THE YEAR A. D. 1873,
TOGETHER WITH
Joint Resolutions and Memorials.

Published by Authority.



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TERRITORY OF WASHINGTON, }
OFFICE OF THE SECRETARY. } s s.

I, Henry G. Struve, Secretary of the said Territory, do hereby certify, that the Laws, Joint Resolutions and Memorials published in this volume, have been compared with the originals deposited and of record in this office and that they appear to be correctly printed.

In testimony whereof I have hereto set my hand and affixed the great seal of said Territory, at Olympia, this 19th day of February, A. D. 1874.

HENRY G. STRUVE,
Secretary of the Territory.

[SEAL.]

NOTE BY THE SECRETARY.—When a superfluous word has been found in the enrolled bill, it has been printed in the text but in italics and enclosed in parenthesis, (*thus*). When a word has been found necessary, to retain the sense of the context, or when one word has been obviously mistaken for another, the word supposed to be proper has been supplied, but in brackets, [thus]. Obvious errors in orthography and punctuation have been also corrected in this office, when discovered,

PUBLIC ACTS
OF THE
LEGISLATIVE ASSEMBLY
OF THE
TERRITORY OF WASHINGTON.

Enacted at the Nineteenth Session, which was begun and held at the City of Olympia, the capital of said Territory, on Monday, the sixth day of October, A. D. 1873, and was adjourned without day, on Friday, the 14th day of November, A. D. 1873.

ELISHA P. FERRY, Governor. WILLIAM McLANE, President of the Council. N. T. CATON, Speaker of the House of Representatives.

AN ACT

TO REGULATE THE PRACTICE AND PROCEEDINGS IN CIVIL ACTIONS.

CHAPTER I.

OF THE FORM OF CIVIL ACTIONS AND OF THE PARTIES THERETO.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That the common law of England, so far as it is not repugnant to, or inconsistent with the consti-*

tution and laws of the United States and the organic act and laws of Washington Territory, shall be the rule of decision in all the courts of this Territory.

SEC. 2. There shall be in this Territory hereafter but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be called a civil action.

SEC. 3. The party commencing the action shall be known as the plaintiff, and the opposite party the defendant.

SEC. 4. Every action shall be prosecuted 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. 5. 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. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

SEC. 6. When a married woman is a party, her husband shall be joined with her, except that when the action concerns her separate property or estate, or when the action is between herself and her husband, she may sue or be sued alone. If the husband and wife are sued together, the wife may defend for her own right. In no case shall it be necessary for said wife to prosecute or defend by guardian or next friend.

SEC. 7. Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of

them, or arising out of any contract in favor of either or both of them.

SEC. 8. The widow, or widow and her 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. 9. A father, or in case of the death or desertion of his family, the mother may maintain an action as plaintiff for the injury or death of a child, and a guardian for the injury or death of his ward.

SEC. 10. A father, or in case of his death or desertion of his family, the mother may maintain an action as plaintiff for the seduction of a daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

SEC. 11. An unmarried female over twenty-one years of age may maintain an action as plaintiff for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother or guardian, as prescribed in the preceding section, shall be a bar to an action by such unmarried female.

SEC. 12. When an infant is a party, he shall appear by guardian, or 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. 13. The guardian shall be appointed as follows:

1. 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.

2. 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. 14. All persons interested in the cause of action, or necessary to the complete determination of the question 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. 15. 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. 16. 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. 17. No action shall abate by the death, marriage or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his representatives or successors in interest.

SEC. 18. 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. 19. 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

the plaintiff, may be made a party, and the court in a final judgment may order the interest of 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. 20. The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall cause them to be brought in.

SEC. 21. 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. 22. 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, may 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. 23. 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 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. 24. The intervention shall be by petition or complaint

filed in 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 parties 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: *Provided*, That no intervention shall be cause for delay in the trial of an action between the original parties thereto beyond the term to which the action is brought.

CHAPTER II.

LIMITATION OF ACTIONS.

SEC. 25. 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. 26. The period prescribed in the preceding section for the commencement of actions shall be as follows:

Within twenty years:

1. 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. 27. Within six years:

1. An action upon a judgment or decree of any court of the

United States, or of any State or Territory within the United States.

2. An action upon a contract in writing, or liability express or implied arising out of a written agreement.

3. An action for the rents and profits or for the use and occupation of real estate.

SEC. 28. Within three years :

1. An action for waste or trespass upon real property.

2. 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.

3. An action upon a contract or liability express or implied which is not in writing and does not arise out of any written instrument.

4. 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.

5. 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 action for an escape.

6. An action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the Territory, except when the statute imposing it prescribed a different limitation, and for seduction and breach of marriage contract.

SEC. 29. Within two years :

1. An action for libel, slander, assault, assault and battery and false imprisonment.

2. An action upon a statute for a forfeiture or penalty to the Territory.

SEC. 30. Within one year :

1. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

SEC. 31. An action upon a statute for a penalty given in whole or in part to the person who will prosecute for the same, shall be commenced 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. 32. An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

SEC. 33. 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, but whenever a period of more than one year shall have elapsed between any of a series of items or demands, they are not to be deemed such an account.

SEC. 34. The limitations prescribed in this act shall apply to actions brought in the name of the Territory, or any county or other public corporation therein, or for its benefit, in the same manner as to actions by private parties.

SEC. 35. An action shall be deemed commenced as to each defendant when the complaint is filed.

SEC. 36. An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the complaint is filed.

SEC. 37. If when the cause of action shall accrue against any person who shall be out of the Territory or concealed therein, such action may be commenced within the terms herein respectively limited after the return of such person into the Territory, or the time of such concealment; and if 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. 38. If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either within the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action.

SEC. 39. 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. 40. 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. 41. 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. 42. 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. 43. No person shall avail himself of a disability unless it existed when his right of action accrued.

SEC. 44. 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. 45. 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 chapter, 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. 46. Whenever any payment of principal or interest has been or shall be made upon any existing contract, whether it be a 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. 47. 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 action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this Territory.

CHAPTER III.

OF VENUE OF CIVIL ACTIONS.

SEC. 48. Actions for the following causes shall be commenced in the county or district in which the subject of the action, or some part thereof, is situated :

1. For the recovery of, for the possession of, for the partition of, for a foreclosure of a mortgage on, or for the determination

of all questions affecting the title, or for any injuries to real property.

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

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

2. 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. 50. An 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. 51. In all other cases the action shall be commenced and tried in the district embracing the county in which the defendants or either of them reside, or may be served with process ; or if none of the parties reside in this Territory, the same may be tried in any district or county which the plaintiff may designate in his complaint.

SEC. 52. The court or judge thereof may change the place of trial, on the motion of either party to the action, when it appears from the affidavit of such party and other satisfactory proof, or if he is not a resident of the county, the affidavit of any one on his behalf, with like proof, either

1. That the action has not been commenced in the proper county, or

2. That the judge is a party to, or directly interested in the event of the action, or connected by consanguinity or affinity

within the third degree with the adverse party or those for whom he prosecutes or defends ; or

3. That the judge or the inhabitants of the county are so prejudiced against the party making the motion that he cannot expect an impartial trial before said judge or in said district or county, as the case may be : *Provided, however,* That if the district in which said action is pending be composed of more than one county, and the affidavit of prejudice of inhabitants is confined to one or more counties but not the whole district, the venue shall not be changed on such account, but in the empanneling of the jury to try such cases, jurors from the counties named in the affidavit shall be excluded, and the jury shall be constituted from the inhabitants of the other counties.

4. That the convenience of witnesses and the parties would be promoted by such change, and

5. That the motion is not made for the purpose of delay.

SEC. 53. The motion for a change of the place of trial cannot be made or allowed in any action until after the cause is at issue on a question of fact only. If the motion be allowed, the change shall be made to the county or district where the action ought to have been commenced, if it be for the cause mentioned in subdivision one of section fifty-two, and in other cases to the most convenient county where the cause alleged does not exist. Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed.

SEC. 54. Any party in a civil action pending in any district court of a county out of whose limits a new county, in whole or in part has been created, not attached to any other county for judicial purposes, and in which a district court has been created by law, may file with the clerk of such district court an affidavit setting forth that he is a resident of such newly created county, and that the venue of such action is transitory, or that the venue of such action is local and that it ought properly to be tried in such newly created county ; and upon the filing of such affidavit, the clerk shall make out a transcript of all the proceedings

already had in such action in such district court, and certify it under the seal of the court and transmit such transcript, together with all the papers on file in his office connected with such action to the clerk of the district court of such newly created county, wherein it shall be proceeded with as in other cases.

SEC. 55. When the place of trial has been changed, the clerk shall forthwith transmit to the clerk of the proper court a transcript of the proceedings in such cause, with all the original papers filed therein, having first made out and filed in his own office authenticated copies of all such original papers.

SEC. 56. The costs of such change of venue shall be paid by the applicant therefor, and not taxed as a part of the costs of the case, and the clerk may require payment of such costs before the transcript and papers shall be transmitted as aforesaid.

SEC. 57. If such transcript and papers be not transmitted to the clerk of the proper court within the time prescribed in the order allowing the change, and the delay be caused by the act or omission of the party procuring the change, the adverse party, on motion to the court or judge thereof, may have the order vacated, and thereafter no other change of the place of trial shall be allowed to such party.

SEC. 58. Upon the filing of the transcript and papers with the clerk of the court to which the cause is transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced in that court.

CHAPTER IV.

MANNER OF COMMENCEMENT OF CIVIL ACTIONS.

SEC. 59. Civil actions in the several district courts of this Territory, shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought, and the issuing of a summons thereon: *Provided*, That after the filing of the complaint, a defendant in the action may appear, answer or demur whether the summons has been issued or not, and such appearance, answer or demurrer shall be deemed a waiver of summons.

SEC. 60. The clerk shall endorse on the complaint the day, month, and year the same is filed, and at any time within one year after the filing of the same, the plaintiff may have a summons issued. The summons shall run in the name of the United States of America, be signed by the clerk, tested in the name of the judge of the court from which it issues, be directed to the defendant, and be issued under the seal of the court. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint within the time mentioned in this section, after the service of the summons, exclusive of the day of service, or that judgment by default will be taken against him according to the prayer of the complaint, briefly stating the sum of money or other relief demanded in the complaint, and the clerk shall also endorse on the summons the names of the plaintiff's attorneys. The time in which the summons shall require the defendant to answer the complaint, shall be as follows:

1. If the defendant is served within the county in which the action is brought, twenty days.

2. If the defendant is served out of the county but in the district in which the action is brought, thirty days.

3. In all other cases sixty days.

There shall also be inserted in the summons a notice in substance as follows :

1. In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein, if the defendant fail to answer the complaint.

2. In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

In an action affecting the title to real property, the plaintiff at the time of filing the complaint and the defendant at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file with the auditor of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties to and the object of the action, and a description of the property in that county affected thereby; and the defendants may also in such notice state the nature and extent of the relief claimed in the answer. From the time of filing only, shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby.

SEC. 61. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him or appointed by a judge of the court in which the action is brought, or by any citizen of the United States over twenty-one years of age, other than the plaintiff, and who is competent to be a witness on the trial of the action. A copy of this complaint shall be served with the summons. When the summons is served by the sheriff or his deputy, it shall be returned with the certificate or affidavit of the officer, of its service, and of the service of the copy of the complaint, to the office of the clerk from which the summons issued. When the summons is served by any other person, as

before provided, it shall be returned to the office of the clerk from which it issued. When the summons is served by any other person, as before provided, it shall be returned to the office of the clerk from which it issued, with the affidavit of such person of its service, and of the service of the copy of the complaint. The plaintiff shall be entitled to as many writs of summons in the same suit as may be necessary to obtain jurisdiction of the person of the defendant, and they may be issued at the same or different times."

SEC. 62. The summons shall be served by delivering a copy thereof, as follows :

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

2. If against any county in this Territory to the county auditor.

3. If the suit be against a foreign corporation, or a non-resident joint stock company or association doing business within this Territory, to an agent, cashier or secretary thereof.

4. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, 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.

5. If against a person for whom a guardian has been appointed for any cause, to such guardian.

6. In all other cases, to the defendant personally, or if he be not found to some suitable person at the dwelling house or usual place of abode of the defendant.

SEC. 63. When the person on whom the service is to be made, has property within this Territory but resides out of the Territory, or has departed from the Territory, or cannot, after due diligence, be found within the Territory, or conceals himself to avoid the service of summons, or the defendant is a foreign corporation and has property within the Territory, or the cause of action against such corporation arose within the Territory,

and the fact shall appear by affidavit to the satisfaction of the district court, or a judge thereof, or a judge of the probate court, and it shall, in like manner, appear that a cause of action exists against the defendant in respect to whom the service is made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of the summons.

SEC. 64. The order shall direct the publication to be made in a newspaper to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week : *Provided*, That publication against a defendant residing out of the Territory, or absent therefrom shall not be less than six weeks. In case of publication, where the residence or non-residence of an absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory, shall be equivalent to publication and deposit in the post office. In either case the service of the summons shall be deemed complete after the last day of publication prescribed by the order for publication.

SEC. 65. The defendant against whom publication is made, or his personal representatives, on application and sufficient cause shown at any time before judgment, shall be allowed to defend the action ; and the defendant against whom publication is made, or his representatives, may in like manner upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment, and within one year after the entry 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. But the title to property sold upon execution issued on such judgment to a purchaser in good faith, shall not be thereby affected.

SEC. 66. When the action is against two or more defendants and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows :

1. If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise direct, and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendants served.

2. If the action be against the defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

SEC. 67. Proof of the service of the summons and copy of complaint, shall be as follows:

1. If served by the sheriff or his deputy, the certificate of such sheriff or deputy.

2. If by any other person, his affidavit thereof.

3. If served by publication, the affidavit of the publishers, their foreman or principal clerk, showing the same, and an affidavit of deposit of the summons and copy of the complaint in the post office, as required above, if the same shall have been deposited ; or

4. The written admission of the defendant or his attorney.

5. If personal service shall be made out of the Territory, proof may be made by the affidavit of the person who makes the service, taken before the clerk of a court of record having a seal, and certified by him under the seal of said court, or by evidence in open court ; or if personal service is made by a person requested so to do by the plaintiff or his attorney, by the affidavit of such person taken before the clerk of a court having a seal, with his certificate thereto attached, under his hand and the seal of said court, but such affidavit must state the time, place and manner of service.

SEC. 68. In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of the service, and from the time of service of the summons and copy

of complaint in an action at law, the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent proceedings.

SEC. 69. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

CHAPTER V.

OF PLEADINGS.

SEC. 70. 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 rule by which the sufficiency of the pleadings is to be determined, shall be as herein prescribed.

SEC. 71. The only pleadings on the part of the plaintiffs shall be :

1. The complaint. 2. The demurrer. 3. The reply. And on the part of the defendant : 1. The demurrer. 2. The answer.

SEC. 72. The first pleading on the part of the plaintiff shall be the complaint.

SEC. 73. The complaint shall contain :

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

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

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

4. When the relief sought is of an equitable nature, the complaint shall be addressed to the judge of the district, in which the action is brought.

SEC. 74. The defendant may demur to the complaint, when it shall appear upon the face thereof, either

1. That the court has no jurisdiction of the person of the defendant or of the subject matter of the action.
2. That the plaintiff has no legal capacity to sue ; or
3. That there is another action pending between the same parties for the same cause ; or
4. That there is a defect of parties, plaintiff or defendant ; or
5. That several causes of action have been improperly united.
6. That the complaint does not state facts sufficient to constitute a cause of action.

SEC. 75. 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 one of the alleged causes of action stated therein.

SEC. 76. When any of the matters enumerated in section seventy-five do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 77. If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court. and if he omit to do so, the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

SEC. 78. If no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting always the objection that the court has not jurisdiction, or that the complaint does not state facts sufficient to constitute a cause of action, which objection can be made at any stage of the proceedings, either in the district or supreme court.

SEC. 79. The answer of the defendant shall contain:

1. A specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

2. A statement of any new matter constituting a defense or counter claim, in ordinary and concise language without repetition.

SEC. 80. The counter claim mentioned in the preceding section, must be one existing in favor of a defendant, and against a plaintiff between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the contract, or transaction set forth in the complaint, as the foundation of the plaintiff's claim.

2. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

3. The defendant may set forth by answer as many defenses and counter claims as he may have. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in such a manner that they may be intelligibly distinguished.

SEC. 81. The defendant may demur to one or more of several causes of actions stated in the complaint, and answer the residue.

SEC. 82. Sham, frivolous and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.

SEC. 83. When the answer contains new matter, constituting a defense or counter claim, the plaintiff may reply to such new matter, denying specifically each allegation controverted by him, on any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer.

SEC. 84. The plaintiff may demur to an answer containing new matter, when it appears upon the face thereof, that such

new matter does not constitute a defense or counter claim, or he may for like cause demur to one or more of such defenses or counter claims, and reply to the residue.

SEC. 85. If the answer contain a statement of new matter constituting a defense or counter claim, and the plaintiff fail to reply or demur thereto within the time prescribed by law, the defendant may move the court for such judgment as he is entitled to on the pleadings, and if the case require it he may have a jury called to assess the damages.

SEC. 86. The defendant may demur to any new matter contained in the reply, when it appears upon the face thereof that such new matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous and irrelevant replies, may be stricken out in like manner and on the same terms as like answers and defenses.

SEC. 87. The court shall establish the rules prescribing the time in which pleadings subsequent to the complaint shall be filed.

CHAPTER VI.

VERIFICATION OF PLEADINGS.

SEC. 88. Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, if there be several parties united in interest and pleading together, by one at least of such parties, if such party be within the county and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action or defense be founded on a written instrument for

the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney, it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer thereof, upon whom service of a notice might be made; and when the Territory, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known.

SEC. 89. When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering, to a criminal prosecution, the verification of the answer to such allegation may be omitted. No pleading shall be used in a criminal prosecution against the party, as evidence of a fact alleged in such pleading.

CHAPTER VII.

GENERAL RULES OF PLEADINGS.

SEC. 90. It shall not be necessary for a party to set forth in a 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 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. 91. In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

SEC. 92. 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 apparent, the court may require the pleading to be made definite and certain by amendment, or may dismiss the same.

SEC. 93. 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. 94. 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. 95. 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. 96. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic 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. 97. 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. 98. 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. 99. The plaintiff may unite several causes of action in the same complaint, when they all arise out of

1. Contract, express or implied ; or,
2. Injuries, with or without force, to the person ; or,
3. Injuries, with or without force, to property ; or,
4. Injuries to character ; or,
5. Claims to recover real property, with or without damages, for the withholding thereof ; or,
6. Claims to recover personal property, with or without damages, for the withholding thereof ; or,
7. Claims against a trustee, by virtue of a contract or by operation of law.

But the causes of action, so united, must affect all the parties to the action, and not require different places of trial, and must be separately stated.

SEC. 100. Every material allegation of the complaint, not specifically controverted by the answer, and every material allegation of new matter in the answer, not specifically controverted by the reply, shall, for the purpose of the action, be taken as true ; but the allegation of new matter in a reply, is to be deemed controverted by the adverse party, as upon a direct denial or avoidance, as the case may require.

SEC. 101. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

CHAPTER VIII.

MISTAKES IN PLEADINGS : AMENDMENTS.

SEC. 102. No variance between the allegation in a pleading, and the proof, shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense 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. 103. 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. 104. 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. 105. Where the plaintiff in an action to recover the possession of personal property on a claim of being the owner thereof, shall fail to establish on 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.

SEC. 106. 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, inadvertence, surprise, or excusable neglect, and supply an omission in any proceedings.

SEC. 107. When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself, without reference to the original, or any preceding amended one.

SEC. 108. Any pleading not duly verified and subscribed, may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be stricken out of the case. When a motion to strike out is allowed, the court may, upon such terms as may be proper, allow the party to file an amended pleading ; or, if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over.

SEC. 109. When the plaintiff shall be ignorant of the name of the defendant, it shall be so stated in his pleading, and 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. 110. The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.

SEC. 111. The court may, on motion, allow supplemental pleadings, showing facts which occurred after the former pleadings were filed.

CHAPTER IX.

OF ARREST AND BAIL.

SEC. 112. No person shall be arrested or held to bail in any civil action, except upon the order of the court where the action is brought, or a judge of the Supreme Court.

SEC. 113. The defendant may be arrested in the following cases :

1. In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is a non-resident of the Territory, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining or converting property.

2. In an action for a fine or penalty, or on a promise to marry, or for money received, or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action

is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which, the action is brought

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

6. 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.

7. 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, 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. 114. The court or judge making the order of arrest, shall first be satisfied by the affidavit of the party, or his agent or attorney, and other proof, that the case is one in which an arrest is provided for in section one hundred and fourteen, 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. 115. 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 indorse 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. 116. 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 may 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. 117. 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 alleged, 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 canceled, 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. 118. When an order of 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 complaint 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. 119. The warrant must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy thereof.

SEC. 120. The sheriff shall execute the warrant by arresting the defendant, and keeping him in custody until discharged by law. And the plaintiff, in [the] 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 defendant out of custody.

SEC. 121. 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 third subdivision of section one hundred and fourteen, 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 sixth subdivision of said section it shall be further conditioned that he will not commit the injury or destruction alleged to be threatened in the affidavit or proofs on which the arrest is ordered.

SEC. 122. The warrant shall, in all cases, contain a short statement of the alleged causes for which the order was granted, and also the amount for which bail is required.

SEC. 123. At any time before a failure to comply with their bonds, 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 :

1. 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.

2. 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 sixth subdivision of section one hundred and thirteen.

SEC. 124. 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 upon a certified copy of the bond, may empower any person of suitable age and discretion to do so.

SEC. 125. In case of failure to comply with the condition of the bond, the bail can be proceeded against by action only.

SEC. 126. The bail may be exonerated, either by the death of the defendant, or his imprisonment in the 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. 127. 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. 128. On the receipt of 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 their bail, (specifying the places of residences and occupations of the latter), before judgment of the court or justice of the peace, at a specified time and place, the time to be not less than five days nor more than ten thereafter. In case other bail be given, there must be a new bond in the form prescribed in section one hundred and twenty-one.

SEC. 129. The qualifications of the bail shall be as follow :

1. Each of them shall be a resident of the Territory ; but no counsellor 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.

2. 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 chapter, 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. 130. 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. 131. If the judge or justice find the bail sufficient, he shall annex the examination to the bond, endorse his allowance thereon, and cause them to be filed with the clerk, and the sheriff shall thereupon be exonerated from liability.

SEC. 132. 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 from custody.

SEC. 133. 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 proceeding

may be had on the official bond of the sheriff to collect the sum deposited, as in cases of delinquency.

SEC. 134. If money be 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. 135. 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 the satisfaction thereof, and, after satisfying 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. 136. If after being arrested, the defendant escapes, 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. 137. If the judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency.

SEC. 138. The bail taken on 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 X.

CLAIM TO RECOVER PERSONAL PROPERTY.

SEC. 139. 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 herein provided.

SEC. 140. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing :

1. 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.

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

3. 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,

4. The actual value of the property.

SEC. 141. 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 post-office, directed to the defendant, at the post-office nearest his place of residence.

SEC. 142. 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 objections 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. 143. 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 forty-nine, [eight].

SEC. 144. 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 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. 145. The qualification of sureties and their justification shall be as prescribed in respect to bail upon an order of arrest.

SEC. 146. 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. 147. 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. 148. 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 deliver 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. 149. 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 men-

tioned therein ; or if the clerk reside in another county, shall mail or forward the same within that time.

CHAPTER XI.

INJUNCTIONS AND RESTRAINING ORDERS.

SEC. 150. 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. 151. 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. 152. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment in that proceeding.

SEC. 153. 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 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. 154. On the hearing of an application for an injunction, each party may read affidavits.

SEC. 155. 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. 156. 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. 157. 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. 158. It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order or injunction duly certified by him, which shall be forthwith served by delivering the same to the adverse party.

SEC. 159. In application to stay proceedings after judgment, the plaintiff shall endorse upon his complaint a release of errors in the judgment whenever required to do so by the judge or court.

SEC. 160. An order of injunction shall bind every person and officer restrained from the time he is informed thereof.

SEC. 161. 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. 162. 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 injunction, subject to the order of the court.

SEC. 163. Whenever it shall appear to any court granting an order of injunction, or judge thereof in vacation, by affidavit, that any person has wilfully 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. 164. 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. 165. 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. 166. Motions to dissolve or modify injunctions may be made in open court, or before a judge of the supreme court in vacation, at any time after reasonable notice to the adverse party.

SEC. 167. 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. 168. 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 injunction.

SEC. 169. 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.

SEC. 170. The judge of the district court shall have power to make every order in vacation which, by the provisions of this chapter, may be made by the court in term time.

CHAPTER XII.

ATTACHMENT.

SEC. 171. The plaintiff at the time of issuing the summons, or at any time afterward, and before judgment, may have the property of the defendant attached in the manner herein-

after prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 172. A writ of attachment shall be issued by the clerk of the court in which the action is pending, whenever the plaintiff, or any one on his behalf, shall make and file an affidavit, that a cause of action exists against the defendant, and the grounds thereof, and that the defendant is either :

1. A foreign corporation ; or
2. That he is not a resident of this Territory, or has departed therefrom with intent to delay or defraud his creditors, or to avoid the service of process, or keeps himself concealed therein with the like intent ; or
3. That he has removed, or is about to remove any of his property from this Territory, with intent to delay or defraud his creditors ; or
4. That he has assigned, secreted, or disposed of any of his property, or is about to assign, secrete, or dispose of it, with intent to delay or defraud his creditors ; or
5. That the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought.

SEC. 173. Upon filing the affidavit with the clerk, the plaintiff shall be entitled to have the writ issue as soon thereafter as he shall file with the clerk his bond, with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plaintiff demands judgment, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, if the same be wrongful, oppressive, or without sufficient cause, not exceeding the sum specified in the bond. With the bond, the plaintiff shall also file the affidavits of the sureties, from which affidavits it must appear that such sureties are qualified, and that taken together they are worth the amount of the sum specified in the bond, over all debts and liabilities, and property exempt from execution. No person not

qualified to become bail upon an arrest, is qualified to become surety in a bond for an attachment.

SEC. 174. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and shall require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses. Several writs may be issued at the same time, to the sheriffs of different counties.

SEC. 175. The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest, and profits thereon, and all other property in this Territory of such defendant not exempt from execution, shall be liable to be attached. The sheriff shall note upon the writ the date of its delivery to him, and shall make a full inventory of the property attached, and return the same with the writ.

SEC. 176. The sheriff to whom the writ is directed and delivered, shall execute the same without delay, as follows :

1. Real property shall be attached by leaving a copy of the writ with the occupant thereof ; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the auditor of the county.

2. Personal property, capable of manual delivery, shall be attached by taking it into custody.

3. Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached, by leaving with the president, or other head of the same, or the secretary, cashier or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

4. Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the

person owing such debts, or having in his possession, or under his control such credits, or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

SEC. 177. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession or under his control any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

SEC. 178. All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

SEC. 179. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff, on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property containing the amount and description thereof.

SEC. 180. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each ; and if such memorandum be refused, he shall return the fact of the refusal with the writ. The party refusing to give the memorandum may be required to pay the cost of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

SEC. 181. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

SEC. 182. If any personal property attached be claimed by a third person as his property, the sheriff may summon a jury of six men to try the validity of such claim ; and such proceedings shall be had thereon with the like effect as in case of a claim after levy upon execution.

SEC. 183. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or a claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose :

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

SEC. 184. If after selling all the property attached by him remaining in his hands and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 185. If the execution be returned unsatisfied in whole or in part, the plaintiff may proceed as in other cases upon the return of an execution.

SEC. 186. If the defendant recover judgment against the plaintiff, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

SEC. 187. Whenever the defendant shall have appeared in the action he may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, or to the judge thereof, for an order to discharge the same upon the execution of the bond mentioned in the next section; and if the application be granted, all the proceeds of sales and moneys collected by the sheriff, and all the property attached remaining in his hands shall be released from the attachment and delivered to the defendant upon the justification of the sureties on the bond, if required by the plaintiff.

SEC. 188. Upon such application the defendant shall deliver to the court or judge a bond, executed by at least two sureties, residents and freeholders or householders in the county, to the effect that the sureties will on demand pay to the plaintiff the amount of any judgment that may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the bond, which shall be sufficient to satisfy the amount claimed by the plaintiff in his complaint, and the costs. The sureties may be required to justify on such application before the judge or court, and the property attached shall not be released from an attachment without their justification, if the same be required.

SEC. 189. The defendant may at any time before the time for answering expires, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the attachment be discharged on the ground that the writ was improperly issued.

SEC. 190. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the order of attachment was made.

SEC. 191. If upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

SEC. 192. The Sheriff shall return the writ of attachment with the summons, if issued at the same time ; otherwise, within twenty days after its receipt, with a certificate of his proceedings endorsed thereon, or attached thereto.

SEC. 193. Whenever property has been taken by an officer, under a writ of attachment, in pursuance of the provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court, to abide the judgment in the action. Such order shall be

made only upon notice to the adverse party or his attorney, in case such party have been personally served with a notice in the action.

SEC. 194. The judge of the district court shall have power to make every order in vacation which, by the provisions of this chapter, may be made by the court in term time.

CHAPTER XIII.

OF RECEIVERS AND DEPOSITS IN COURT.

SEC. 195. A receiver may be appointed by the court in the following cases :

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim.

2. In an action between partners, or other persons jointly interested in any property or fund.

3. In all actions where it is shown that the property, fund, or rents and profits in controversy are in danger of being lost, removed or materially injured.

4. In an action by a mortgagee 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 debt, to secure the application of the rents and profits accruing, before a sale can be had.

5. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights.

6. 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, provided that no party or attorney

or other person interested in an action, shall be appointed receiver therein.

SEC. 196. 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. 197. 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. 198. 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. 199. 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. 200. The receiver shall have power, under 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. 201. 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 XIV.

OF ISSUES IN CIVIL ACTIONS.

SEC. 202. 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 :

1. Of law ; and
2. Of fact.

SEC. 203. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

SEC. 204. An issue of fact arises :

1. Upon a material allegation in the complaint, controverted by the answer ; or
2. Upon new matter or a set-off, controverted by the reply ;
or
3. Upon new matter in the reply.

SEC. 205. Issues both of law and fact may arise upon different parts of the pleading in the same action. In such cases, the issues of law shall be first tried, unless the court otherwise direct.

CHAPTER XV.

OF THE TRIAL OF CIVIL ACTIONS.

SEC. 206. 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. The waiver of a

jury, or agreement to refer, shall be by stipulation of the parties filed, or the oral consent of parties given in open court and minuted in the records: *Provided*, That nothing herein contained shall be so construed as to restrict the chancery powers of the judges, or to authorize the trial of any issue by a jury, when the complaint alleges an equitable claim, and seeks relief solely upon the ground of the equities of the demand made by the pleadings in the action.

SEC. 207. 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, and also the name and residence of the witness or witnesses. 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. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.

SEC. 208. 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 or district, as many qualified persons as may be necessary to complete the jury. Whenever it shall be requisite for the sheriff to summon more than one person at a time from the bystanders or body of the district or county, the names of the talesmen shall be returned to the clerk, who shall thereupon write the names upon separate ballots and deposit the same in the trial jury box, and draw such ballots separately therefrom, as in the case of the regular panel. 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. 209. 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 be peremptory or for cause. Each party shall be entitled to three peremptory challenges.

SEC. 210. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

SEC. 211. A challenge for cause is an objection to a juror, and may be either :

1. General ; that the juror is disqualified from serving in any action; or
2. Particular ; that he is disqualified from serving in the action on trial.

SEC. 212. General causes of challenge are :
A conviction for a felony.

2. A want of any of the qualifications prescribed by law for a juror.
3. Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror.

SEC. 213. Particular causes of challenge are of two kinds:

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

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

SEC. 214. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise :

1. Consanguinity or affinity within the fourth degree to either party.

2. Standing in the relation of guardian and ward, attorney and client, master and servant or landlord and tenant, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages, of the adverse party, or being surety or bail in the action called for trial, or otherwise, for the adverse party.

3. Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the Territory against either party, upon substantially the same facts or transaction.

4. Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always, the interest of the juror as a member or citizen of the county or municipal corporation.

SEC. 215. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section two hundred and [fifteen.] But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

SEC. 216. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

SEC. 217. The jurors having been examined as to their qualifications, first by the plaintiff and then by defendant, and passed for cause, the peremptory challenges shall be conducted as follows, to wit :

The plaintiff may challenge one, and then the defendant may challenge one, and so alternately until the peremptory chal-

lenges shall be exhausted. The panel being filled and passed for cause, after said challenge shall have been made by either party, a refusal to challenge by either party in the said order of alternation, shall not defeat the adverse party of his full number of challenges, but such refusal on the part of the plaintiff to exercise his challenge in proper turn; shall conclude him as to the jurors once accepted by him, and if his right be not exhausted, his further challenges shall be confined, in his proper turn, to talesmen only.

SEC. 218. The challenges of either party shall be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class :

1. For general disqualification.
2. For implied bias.
3. For actual bias.
4. Peremptory.

SEC. 219. The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the facts.

SEC. 220. Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if determined or found otherwise, it shall be disallowed.

SEC. 221. The challenge, the exception and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side.

SEC. 222. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the

jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

SEC. 223. When the jury has been sworn, the trial shall proceed in the following order :

1. The plaintiff must briefly state the cause of action and the evidence by which he expects to sustain it. The defendant may in like manner state the defense and the evidence he expects to offer in support thereof, but nothing in the nature of comments or argument shall be allowed in opening the case. It shall be optional with the defendant whether he states his case before or after the close of the plaintiff's testimony.

2. The plaintiff or the party upon whom rests the burden of proof in the whole action, must first produce his evidence; the adverse party will then produce his evidence.

3. The parties will then be confined to rebutting evidence, unless the court for good reasons in furtherance of justice, permits them to offer evidence in their original case.

4. When the evidence is concluded, either party may request the judge to charge the jury in writing, in which event no other charge or instruction shall be given, except the same be contained in the said written charge; or either party may request instructions to the jury on points of law, and if the court refuse to give the same, the party requesting may except. Either party shall also be entitled to require of the judge that all interlocutory orders, instructions or rulings upon the evidence during the progress of the trial of a cause, shall be reduced to writing, together with any exceptions that may be made thereto, and the same shall be made a part of the record of the case, and any refusal on the part of the judge trying the cause or making the order to comply with all or any of the provisions of this section shall be regarded error, and entitle the party whose request shall have been refused to a reversal of the judgment on a writ of error: *Provided, always,* That the instruction or ruling so requested is pertinent and consistent with the law and evidence

of the case, and that such refusal has worked an injury to the party requesting the same.

5. After the conclusion of the evidence and the filing of request for charge in writing or instructions, the plaintiff or party having the burden of proof may, by himself or one counsel, address the court and jury upon the law and facts of the case, after which the adverse party may address the court and jury in like manner by himself and one counsel, or by two counsel, and be followed by the party or counsel of the party first addressing the court. No more than two speeches on behalf of plaintiff or defendant shall be allowed.

6. The court shall then charge the jury upon the law in the case. If no request has been made for said charge to be in writing, or if no instructions have been requested, said charge may be oral; but either party at any time before the jury return their verdict, may except to the same or any part thereof; but no exception shall be regarded by the supreme court, unless the same shall embody the specific parts of said charge to which exception is taken. In charging the jury, the court shall state to them all matters of law necessary for the information of the jury in finding a verdict; and if it become necessary to allude to the evidence, it shall also inform the jury that they are the exclusive judges of all questions of fact.

SEC. 224. Any party may, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or at the option of the court, oral, and entered in the judge's minutes.

SEC. 225. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it.

SEC. 226. All questions of fact other than those mentioned

in the section preceding, shall be decided by the jury, and all evidence thereon addressed to them.

SEC. 227. Whenever in the opinion of the court it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place which shall be shown to them by the judge or by a person appointed by the court for that purpose. While the jury are thus absent, no person, other than the judge or person so appointed, shall speak to them on any subject connected with the trial.

SEC. 228. 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 cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, 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. 229. If after the formation of the jury, and before 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 begin anew; or the jury may be discharged and a new jury then or afterwards formed.

SEC. 230. A juror may be examined by either party as a witness, if he be otherwise competent. If he be not so examined, he shall not communicate any private knowledge or information that he may have of the matter in controversy, to his fellow jurors, nor be governed by the same in giving his verdict.

SEC. 231. After hearing the charge, the jury may either decide in the jury box or retire for deliberation. If they retire, they must 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 by

the court. The officer shall, to the best of his ability, keep the jury thus separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor 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 on.

SEC. 232. If while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county.

SEC. 233. Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial, (except depositions,) or copies of such parts of public records or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

SEC. 234. 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 case, they may require the officer having them in charge 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 their attorneys.

SEC. 235. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

SEC. 236. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action shall be continued to the next term, without

both parties demand an immediate trial, in which case it shall go to the foot of the trial list.

SEC. 237. 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 discharged. A final adjournment of the court discharges the jury.

SEC. 238. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear, the rest shall be discharged without giving a verdict.

SEC. 239. If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the foreman answer in the affirmative, he shall on being required declare the same.

SEC. 240. When a verdict is given and before it is filed, the jury may be polled at the request of either party, for which purpose each shall be asked whether it be his verdict; if any juror answer in the negative the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out.

SEC. 241. When the verdict is given and is such as the court may receive, and if no juror disagree or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given.

CHAPTER XVI.

THE VERDICT.

SEC. 242. 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. 243. In an action for the recovery of specific personal property, if the property has 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 complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

SEC. 244. 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 fact, 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 in the minutes.

SEC. 245. 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. 246. 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 as established, the jury shall also assess the amount of the recovery ; they may also, under the direction of the court, assess the amount of the recovery when the court give judgment for the plaintiff on the answer.

CHAPTER XVII.

TRIAL BY THE COURT.

SEC. 247. Trial by jury may, with the assent of the court, be waived by the several parties in the manner following :

1. By failing to appear at the trial.
2. By written consent, in person or by attorney, filed with the clerk.
3. By oral consent in open court entered in the minutes.

SEC. 248. Upon the trial of an issue of fact by the court, its decisions 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.

SEC. 249. The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the facts shall be deemed a verdict, and may be set aside in the same manner and for the same reason as far as applicable, and a new trial granted.

CHAPTER XVIII.

TRIAL BY REFEREES.

SEC. 250. 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. 251. 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 :

1. 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 upon any specific question of fact involved therein ; or

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

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

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

SEC. 252. 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.

SEC. 253. When the appointment of referees is made by the court or judge, each referee shall be :

1. Qualified as a juror as provided by statute.
2. Competent as juror between the parties.

SEC. 254. When the referees are chosen by the court each party shall have the same right of challenge as to such referees,

to be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge.

SEC. 255. Subject to the limitations and directions prescribed in the order of reference, the trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, to preserve order and punish all violations thereof upon such trial, and to compel the attendance of witnesses, and to punish them for non-attendance or refusal to be sworn or testify as is possessed by the court.

SEC. 256. The report of the referees shall state the facts found, and when the order of reference includes an issue of law it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial and the party offering the same except to the decision rejecting such evidence at the time, the exceptions shall be noted by the referees and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous and inadmissible, require the party at whose instance it was taken and reported, to pay all costs and disbursements thereby incurred.

SEC. 257. The report shall be filed with the clerk. If it be filed in term time either party may within such time as may be prescribed by the rules of the court or by special order move to set the same aside or for judgment thereon, or such order or proceeding as the nature of the case may require. If the report be filed in vacation the like proceedings may be had at the next term following.

SEC. 258. The court may affirm or set aside the report either in whole or in part. If it affirms the report it shall give judgment accordingly. If the report be set aside either in whole or in part, the court may make another order of reference as to

all or so much of the report as is set aside, to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report the conclusions thereof shall be deemed and considered as the verdict of the jury.

CHAPTER XIX.

EXCEPTIONS.

SEC. 259. An exception is an objection taken at the trial to a decision upon matter of law, whether such trial be by jury or 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 exceptions shall be regarded on a motion for a new trial or on an appeal, unless the exception be material and affect the substantial rights of the parties.

SEC. 260. The point of the exception shall be taken at the time when the decision is made and be particularly stated, and may be delivered in writing to the judge or entered in his minutes, and at the time or afterwards be corrected until made conformable to the truth. If an objection is made to any ruling of the court in the progress of a trial, and the truth of the statement thereof is not agreed upon between the counsel and the court, the counsel may verify his statement thereof by his own oath and that of two respectable and disinterested bystanders, and file the same as an exception to the ruling objected to. Such statement must be filed within the day that the objection is made and not otherwise. Within one day thereafter the adverse party may file a statement of the objection as prepared or approved by the court, together with the affidavits of not more than three respectable and disinterested bystanders concerning the truth or

falsity of the statement of the exception as filed by the counsel and prepared or approved by the court. Each statement of the exception and all affidavits concerning either of them when filed as herein required, shall be deemed a part of the record of the cause, and upon an appeal or review the appellate court must first ascertain therefrom the truth of the matter as far as possible, and then determine the law arising thereon. The court must allow the counsel a reasonable time to procure the verification of his statement as herein required ; and all affidavits of bystanders shall be taken by the clerk of the court, who must certify thereon if he is satisfied of the fact that the bystander is respectable and disinterested.

SEC. 261. 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. 262. The statement of the exception, when settled and allowed, shall be signed by the judge and filed with the clerk, and thereafter it shall be deemed and taken to be a part of the record of the cause. No exception need be taken or allowed to any decision upon a matter of law, when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

SEC. 263. 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 XX.

ARBITRATION AND AWARD.

SEC. 264. All persons desirous to end by arbitration any controversy, suit or quarrel, except such as respect the title to

real estate, may submit their difference to the award or umpirage of any person or persons mutually selected.

SEC. 265. 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. 266. 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 arbitrators 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. 267. The arbitrators chosen under the provisions of this chapter 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 arbitrators to meet, said party shall be liable for all costs accruing that day, unless his absence was unavoidable, and shall be so established to the satisfaction of said arbitrators. 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.

SEC. 268. The party against whom an award may be made may except in writing thereto for either of the following causes :

1. That the arbitrators or umpire misbehaved themselves in the case.
2. That they committed an error in fact or law.
3. That the award was procured by corruption or other undue means.

SEC. 269. If upon exceptions filed it shall appear to the said district court that the arbitrators have committed error in fact or law, the court may refer the cause back to said arbitrators, 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. 270. Arbitrators, or a majority of them, shall have power :

1. 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 may deem material to the cause.
2. To administer oaths or affirmations to witnesses.
3. To adjourn their meetings from day to day, or for a longer time, and also from place to place, if they think proper.
4. To decide both the law and the fact that may be involved in the cause submitted to them.

SEC. 271. The laws in force in this Territory relating to evidence and the manner of procuring the attendance of witnesses, shall govern in arbitrations.

SEC. 272. 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. 273. The costs of witnesses, and other fees in the case, shall be taxed against the losing party ; said fees shall be indorsed 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. 274. 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 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.

CHAPTER XXI.

NEW TRIAL.

SEC. 275. 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. 276. The former verdict or other decision may be vacated and a new trial granted on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party :

1. Irregularity in the proceedings 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.

2. Misconduct of prevailing party or jury ; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions and arrived at by a resort to the determination of chance or lot ; such misconduct may be proved by the affidavits of one or more of the jurors.

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

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

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

6. Error in the assessment of the amount of recovery, whether too large or too small, when the action is upon a contract or for the injury or detention of property.

7. Insufficiency of the evidence to justify the verdict or other decision or that it is against law.

8. Error in law occurring at the trial and excepted to at the time by the party making the application.

SEC. 277. A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor in any other action where the damages shall equal the actual pecuniary injury sustained.

SEC. 278. When the motion 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. 279. Notice of an intended motion for a new trial shall be given on the day when the verdict or other decision in term is rendered, and the motion with the affidavits, if any in support thereof, shall be filed within two days thereafter. When the adverse party is entitled to oppose the motion by counter affidavits he shall file the same within one day after the filing of the motion. The motion shall be heard and determined during the term unless the court continue the same for advisement or want of time to hear it. When not so heard and determined, or continued, it shall be deemed withdrawn and may be disregarded.

SEC. 280. Upon a trial by the court when the decision is given in vacation, a motion for a new trial shall be filed within twenty days from the time of filing such decision. If the next regular term of said court shall commence within less than twenty days from the time of filing such decision, then such motion shall be filed by the first day of said term. In either case the adverse party may within four days after the filing of the motion, file counter affidavits where the same are allowed.

SEC. 281. In all cases of motion for a new trial, the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court.

SEC. 282. If the motion be supported by affidavits, counter affidavits may be offered by the adverse party, and if the cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be, shall be produced, or good reasons shown for their non-production.

CHAPTER XXII.

JUDGMENT IN GENERAL.

SEC. 284. A judgment is the final determination of the rights of the parties in the action.

SEC. 285. Judgment may be given for or against 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. 286. 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.

CHAPTER XXIII.

JUDGMENT OF NON-SUIT.

SEC. 287. An action may be dismissed or a judgment of non-suit entered in the following cases :

1. 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.

2. By either party upon the written consent of the other.

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

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

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

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

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

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

SEC. 287. In every case other than those mentioned in the last section, the judgment shall be rendered on the merits.

SEC. 288. When a judgment of non-suit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause.

CHAPTER XXIV.

JUDGMENT ON FAILURE TO ANSWER.

IN WHAT CASE JUDGMENT MAY BE HAD UPON FAILURE TO ANSWER.

SEC. 289. Judgment may be had if the defendant fail to answer to the complaint, as follows :

1. In an action arising upon contract for the recovery of money or damage only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge, the clerk, upon the application of the plaintiff, shall enter the default of the defendant and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants in the case provided for in section sixty-six.

2. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant, and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking an account or the 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. Where the action is for the recovery of damages, in whole or in part, 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.

3. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication may, upon proof of the publication and that no answer has been filed, 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, or is a foreign corporation, 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. In all cases the person recovering judgment in the district court shall have the right to an execution for the satisfaction thereof, as

soon as the same is rendered, unless a stay of execution shall be taken in accordance with the provisions of law relating to stay of execution.

SEC. 290. 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 XXV.

JUDGMENT BY CONFESSION.

SEC. 291. On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint.

SEC. 292. When the action is against the Territory, a county or other public corporation therein, or a private corporation, or a minor, the confession shall be made by the person who at the time sustains the relation to such Territory, corporation, county or minor, as would authorize the service of a notice upon him; or in case of a minor, if a guardian for the action has been appointed, then by such guardian. In all other cases, the confession shall be made by the defendant in person.

SEC. 293. When the action is upon a contract and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants thus jointly liable, whether such defendants have been served or not, to be enforced only against their joint property and against the joint and separate property of the defendant making the confession.

SEC. 294. The confession and assent thereto shall be in writing and subscribed by the parties making the same, and

acknowledged by each before some officer authorized to take acknowledgments of deeds; but such acknowledgment is not required when the parties shall appear in court when the judgment is given, or before the clerk in vacation by whom the judgment is entered. In all cases the confession and assent thereto and the acknowledgment, if any, shall be filed with the clerk.

SEC. 295. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter.

SEC. 296. A statement in writing shall be made, signed by the defendant and verified by his oath to the following effect:

1. It shall authorize the entry of judgment for a specified sum.

2. If it be for money due or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due or to become due.

3. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

SEC. 297. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall indorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with ten dollars costs. The statement and affidavit, with the judgment endorsed, shall thereupon become the judgment roll.

CHAPTER XXVI.

SUBMITTED CASES.

SEC. 298. Parties to a question in difference which might be the subject of a civil action may, without action, agree upon

a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon as if an action were pending.

SEC. 299. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission and a copy of the judgment shall constitute the judgment roll.

SEC. 300. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER XXVII.

OF THE MODE OF TAKING AND ENTERING JUDGMENTS.

SEC. 301. 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. 302. 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. 303. 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. 304. 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 with in case a return cannot be had, and damages for taking and withholding the same.

SEC. 305. All judgments shall be entered by the clerk, subject to the direction of the court, in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

SEC. 306. Immediately after entering the judgment the clerk shall attach all the papers in the case and keep them in his office.

SEC. 307. 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. 308. 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, and shall at the request of the judgment creditor or his attorney, upon the payment of costs of said transcript, furnish a transcript of said judgment to said judgment creditor, and upon the filing of said transcript in the office of the county auditor, it shall be a lien upon all real estate of said judgment debtor in the county where such transcript shall be filed for the period of five years from the date said judgment was rendered. And said lien shall have attached from the day of the date of said judgment if said transcript shall have been filed within the said twenty days. And in case where an attachment had been levied upon any real estate, then from the service of the attachment. The fees for making and filing such transcript shall be paid by the judgment creditor and be taxed as costs against the judgment debtor and

be collected as other costs in the case. Said statement and transcript shall contain :

1. The names at length of all the parties.
2. The date of the judgment and against whom rendered.
3. The amount or nature of the judgment and costs.
4. An abstract of the costs of each party, and to whom belonging.

SEC. 309. 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 by law. He shall in like manner, at the instance of the judgment creditor, furnish to any county auditor's office any certified transcript of said judgment for filing therein, the fees whereof shall be paid by the party requesting such transcript, but taxable as other costs in the case.

SEC. 310. 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 property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate on 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, modified, discharged or in any manner satisfied, the facts in respect thereto shall be entered. The parties interested 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. 311. The clerk shall prefix to the execution docket a full and correct alphabetical index, both direct and inverse, containing the names of all persons parties to judgments, plaintiffs and defendants, in separate columns.

SEC. 312. 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 all transcripts of judgments from the supreme or district courts presented to him for that purpose, and when a judgment is satisfied he shall write across the face in large letters the word "satisfied."

SEC. 313. The clerk shall also keep in his office a well bound book, to be called a 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 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 XXVIII.

LIEN OF JUDGMENTS.

SEC. 314. 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. 315. 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, said lien to commence as follows: On judgments of the district court of the district including the county or counties in which real estate of the judgment debtor is situated, from the date of the rendition, but within twenty days from the date of such rendition, a transcript thereof certified by the clerk of the said district court, shall be filed in the county auditor's office of the county where the said lands are situated, and if not so filed within said period of twenty days, the lien of said judgment shall be suspended until the filing of said transcript. From and after said filing of transcript by the county auditor of any county in the Territory, such judgment shall be a lien upon all real estate of the judgment debtor in such county for the period of five years, commencing from the date on which said judgment was rendered. In all other judgments which are by law a lien upon real estate, the lien upon lands in any particular county commences and attaches from the date of filing the transcript in the county auditor's office of said county, and continues for the period of five years from the date of rendition of the judgment.

SEC. 316. Nothing in the foregoing section contained shall

be so construed as to prevent the revival of a judgment and continuance of the lien thereof after the expiration of said period of five years, by agreement of the parties filed in writing in term or vacation, and entered upon the proper docket, or a revival of the same upon notice and motion for leave to issue execution as hereinafter prescribed. The certified transcript of such proceedings shall be filed with the county auditor as hereinbefore prescribed, within twenty days from the date of such revival, or the lien shall be suspended until so filed, and said revived judgment shall be and continue a lien on the real estate of the judgment debtor for the period of five years from the date of the revival: *Provided always*, That nothing herein contained shall affect the rights of third parties who may have acquired liens during the period which may have intervened between the expiration of the lien of the original judgment and the filing of the certified transcript of its revival: *And provided also*, That parties may continue said lien by proceedings had before the expiration of said period of five years; and provided further that no lien created by a mortgage or for the purchase price of any real or personal estate shall merge in any judgment, but the same shall be continued or remain in the judgment, whether a transcript thereof shall be filed as above provided or not, just the same as created by the original mortgage or claim.

SEC. 317. 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. Personal property shall only be held from the time it is actually levied upon.

CHAPTER XXIX.

OF EXECUTIONS.

SEC. 318. 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: *Provided, however,* That if the period of five years shall have elapsed without an execution being issued on the judgment, an execution shall not issue thereafter, except as herein provided :

1. The judgment creditor, his assignee or the party to whom said judgment is due and payable, shall file a motion with the clerk of the court where judgment is entered for leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry and the amount claimed to be due thereon or the particular property of which the possession was thereby adjudged to such party remaining undelivered. The motion shall be subscribed and verified in like manner as a complaint in an action at law.

2. At any time after filing such motion the party may cause notice to be served on the judgment debtor in like manner and with like effect as in an action at law. In case such judgment debtor be dead the notice may be served upon his representatives by publication, as in case of a non-resident, or by persona service.

3. The notice shall be substantially the same as in an action at law, and it shall also state the amount claimed or the property sought to be recovered.

4. The judgment debtor, or in case of his death, his representatives, may file an answer to such motion within the time allowed by law to answer a complaint, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed the motion shall be allowed of course. The moving party may demur or reply to the answer. The party opposed to the motion may demur to the same or to the reply. The pleadings shall be subscribed and verified and the proceedings conducted as in civil actions.

5. The word representatives in this section shall be deemed to include any or all of the persons in whose possession property of the judgment debtors may be, which is liable to be taken and sold or delivered in satisfaction of the execution.

6. The order shall specify the amount for which execution is to issue, or the particular property, possession of which is to be delivered; it shall be entered in the journal and docketed as a judgment, and a final record shall be made of the proceedings in the same manner as a judgment.

SEC. 319. Such leave shall not be given unless it be established by oath of the party or other satisfactory proof that the judgment, or some part thereof remains unsatisfied. The order of court granting such leave shall operate as a revival of the judgment for amount found due at the time of such revival, and the same shall be and continue a lien upon real estate of the judgment debtor for the period of five years from and after the date of such order, in like manner with the original judgment: *Provided*, That a transcript thereof shall within twenty days be filed in the office of the county auditor of the county where the lands lie of such judgment debtor, or said lien shall be suspended till such transcript be filed. Revived judgments shall be in all respects similar to original judgments, as to lien and enforcement or collection.

SEC. 320. 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. 321. There shall be four kinds of execution; 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. 322. 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 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 :

1. 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.

2. 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.

3. 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.

4. 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. 323. 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 outside 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. 324. The sheriff shall indorse upon a writ or execution the time when he received the same, and such execution shall be returnable within sixty days after its date, to the clerk who issued the same. And no sheriff shall retain any moneys collected on execution, more than twenty days before paying the same to the clerk of the court who issues the writ, under penalty of twenty per cent. on the amount collected, to be paid by the sheriff; the one-half to the party to whom the judgment is payable, and the other half to the county commissioners of the county wherein the action was brought, for the use of the school fund of said county. And the clerk shall immediately after the receipt of any moneys collected on any judgment, notify the party to whom the same is payable, and pay over the amount to the said party on demand. On failure to so notify and pay over, (without reasonable cause shown for delay), the clerk shall forfeit and

pay the same penalty to the same parties as is above prescribed for the sheriff.

SEC. 325. 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 satisfy said judgment.

SEC. 326. 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 therein prescribed.

SEC. 327. All property, real and personal, of the judgment debtor not exempt by law, shall be liable to execution.

SEC. 328. In all cases in which a judgment has been recovered in any of the courts of this Territory, which shall have been assigned to any person, execution may issue in the name of the assignee upon the assignment being recorded in the execution docket by the clerk of the court in which the judgment is recovered, and the provisions of this section shall extend to all judgments heretofore recovered as well as to those hereafter to be recovered.

CHAPTER XXX.

OF STAY OF EXECUTION.

SEC. 329. Stay of execution shall be allowed on judgments rendered in the supreme court and district courts as follows:

In the supreme court:

1. On all sums under five hundred dollars, thirty days.
2. On all sums over five and under fifteen hundred dollars, sixty days.

3. On all sums over fifteen hundred dollars, ninety days.

On judgments rendered in the district court :

1. On all sums under three hundred dollars, two months.

2. On all sums over three hundred and under one thousand dollars, five months.

3. On all sums over one thousand dollars, six months.

SEC. 330. Before any execution shall be stayed under the provisions of this act, the defendant shall give bond to the opposite party in double the amount of the judgment and costs, with surety to the satisfaction of the clerk, conditioned to pay said judgment, interest, costs and increased costs, at the expiration of the period of said stay.

SEC. 331. If the judgment is not satisfied at any time after the expiration of the period for which execution has been stayed, the plaintiff, at any subsequent term of the court from which the execution issued, may upon motion, supported by an affidavit that such judgment or any part thereof is unpaid, and stating how much still remains due thereon, have judgment against the sureties upon said bond for the balance remaining due, and have an execution therefor, upon which no stay shall be allowed.

SEC. 332. The sureties upon a bond for stay of execution shall possess the same qualifications, and justify in the same manner as bail upon arrest in civil actions.

SEC. 333. When execution has not been stayed, and execution issues before the time has elapsed for which it might have been stayed as is herein provided, the defendant may have stay for the balance of time, upon giving the proper bond and surety, which bond and surety shall be approved by and justified before the sheriff.

SEC. 334. Bonds required by this act shall, when taken, be lodged with the clerk of the court where the judgment was rendered, and placed on file in his office.

CHAPTER XXXI.

EXEMPTION.

SEC. 335. All real and personal estate belonging to any married woman at the time of her marriage, and all which she may have acquired subsequently to such marriage, or to which she shall hereafter become entitled in her own right, and all her personal earnings, and all the issues, rents and profits of such real estate, shall not be liable to attachment for or execution upon any liability or judgment against the husband, so long as she or any minor heir of her body shall be living: *Provided*, That her separate property shall be liable for debts owing by her at the time of her marriage.

SEC. 336. There shall be also exempt from execution and attachment to every householder being the head of a family, a homestead not exceeding in value the sum of one thousand dollars, while occupied as such by the owner thereof, or his or her family. Said homestead may consist of a house and lot or lots in any city, or of a farm consisting of any number of acres, so that the value of the same shall not exceed the aforesaid sum of one thousand dollars; but to entitle a person to the benefits of this act, he or she shall cause the word "homestead" to be entered of record in the margin of his recorded title to the same.

SEC. 337. When any person dies seized of a homestead leaving a widow, or husband, or minor children, the survivors shall be entitled to the homestead, but in case there be neither surviving husband, widow or children, the said homestead shall be liable for the debts of deceased.

SEC. 338. Nothing herein contained shall be construed to prevent the owner of a homestead from voluntarily mortgaging the same; but no mortgage shall be valid against the wife of any mortgagor who may be occupying said homestead with him,

unless she shall freely and voluntarily, separate and apart from her husband, sign and acknowledge said mortgage, and the officer taking the acknowledgment shall fully apprise her of her rights and the effect of signing such mortgage.

SEC. 339. When any creditor shall be of opinion that any homestead claimed under the provisions of this act is of greater value than one thousand dollars, on filing an affidavit to that effect with the clerk of the district court, the judgment creditor may proceed against said homestead as in other cases of real estate, and if said homestead shall sell for over one thousand dollars and costs, the surplus shall be applied to the payment of the judgment of said creditor, and in all such cases the sum of one thousand dollars, free of charge or expense, shall be paid to the owner of the homestead; and in case the said homestead shall not sell for more than one thousand dollars and costs, the person instituting the proceeding shall pay all costs of such proceeding, and the said proceeding cease and not affect or impair the rights of the owner of the homestead.

SEC. 340. In case of the sale of said homestead, any subsequent homestead acquired by the proceeds thereof, shall also be exempt from attachment and execution, nor shall any judgment or other claim against the owner of such homestead be a lien against the same in the hands of a bona fide purchaser for a valuable consideration.

SEC. 341. The following property shall be exempt from execution or attachment, except as is hereinafter specially provided :

1. All wearing apparel of every person and family.
2. All private libraries, family pictures and keepsakes.
3. To each householder, one bed and bedding, and one additional bed and bedding for every two members of the family, and other household goods and utensils and furniture, not exceeding one hundred and fifty dollars coin in value.
4. To each householder, two cows with their calves, five swine, two stands of bees, twenty-five domestic fowls, and provisions and fuel for the comfortable maintenance of such house-

holder and family for six months : *Provided*, That in case such householder shall not possess, or shall not desire to retain the animals named above, he may select from his property and retain other property not to exceed one hundred and fifty dollars coin in value.

5. To a farmer, one span of horses with harness, or two yoke of oxen with yokes and chains, and one wagon; also farming utensils actually used about the farm not exceeding in value two hundred dollars in coin.

6. To a mechanic, the tools and instruments used to carry on his trade for the support of himself and family; also material not exceeding in value five hundred dollars in coin.

7. To a physician, his library not to exceed in value five hundred dollars in coin; also one horse and buggy, the instruments used in his practice, and medicines not exceeding in value two hundred dollars in coin.

8. To attorneys, clergymen, and other professional men, their libraries not exceeding five hundred dollars in coin value; also office furniture, fuel and stationery not exceeding in value two hundred dollars in coin.

9. All firearms kept for the use of any person or family.

10. To any person, a canoe, skiff or small boat, with its oars, sails and rigging not exceeding in value fifty dollars in coin.

11. To a person engaged in lightering for his support or that of his family, one or more lighters, barges or scows, and a small boat with oars, sails and rigging not exceeding in the aggregate two hundred and fifty dollars in coin value.

12. To a teamster and drayman engaged for his support and that of his family, his team. The word team in this subdivision means a span of horses, harness, and one wagon or dray.

13. A sufficient quantity of hay, grain or feed to keep the animals mentioned in the several subdivisions of this section for six weeks. But no property shall be exempt from an execution issued upon a judgment for the price thereof, or any part of the price thereof, or for any tax levied thereon.

SEC. 342. This act shall not be so construed as to prevent

any single man, or married man, his wife joining him in the waiver, from waiving, by agreement in writing, to any person or persons the benefit of this act: *Provided*, That any agreement of waiver made by a married man and his wife, shall be witnessed and acknowledged by them in the same manner required in case of a deed made by them conveying real estate.

SEC. 343. In all cases the defendant himself may select the property which is exempt.

SEC. 344. 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, *Provided*, That nothing in this chapter shall be construed to exempt the property, real or personal, from attachment or execution of non-residents, or a person who has left or is about to leave the Territory for the purpose of defrauding his creditors.

CHAPTER XXXII.

CLAIM TO PROPERTY LEVIED UPON AND ATTACHED.

SEC. 345. 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 indorse his acceptance upon the bond.

SEC. 346. 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. 347. The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution, defendants.

SEC. 348. If the claimant makes good his title to the property the bond shall be canceled; if to a portion thereof, a like proportion of the bond shall be canceled; 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 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 it 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 XXXIII.

SALES OF PROPERTY UNDER EXECUTION.

SEC. 347. When the writ of execution is against the property of the judgment debtor, it shall be executed by the sheriff as follows:

1. If property has been attached, he shall endorse on the execution, and pay to the clerk forthwith the amount, if any, of the proceeds of sales of perishable property or debts due the defendant received by him, sufficient to satisfy the judgment.

2. If the judgment is not then satisfied and property has been attached and remains in his custody he shall sell the same, or sufficient thereof to satisfy the judgment.

3. If then any portion of the judgment remains unsatisfied, or if no property has been attached or the same has been discharged, he shall levy on the property of the judgment debtor sufficient to satisfy the judgment.

4. Property shall be levied on in like manner and with like effect as similar property is attached.

5. Until a levy personal property shall not be affected by the execution. When property has been sold or debts received by the sheriff on execution he shall pay the proceeds thereof, or sufficient to satisfy the judgment, as commanded in the writ.

6. When property has been attached and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment any property, or the proceeds thereof, remain in the custody of the sheriff, he shall deliver the same to the judgment debtor.

SEC. 350. In the case of property in the possession of or owing from any garnishee, the sheriff shall proceed as follows :

1. If it appear from the certificate of the garnishee that he is owing a debt to the judgment debtor which is then due, if such debt is not paid by such garnishee to the sheriff on demand, he shall levy on the property of the garnishee of the amount thereof, in all respects as if the execution was against the property of the garnishee. But if such debt be not then due, the sheriff shall sell the same according to the certificate as other property.

2. If in like manner it appear that the judgment debtor has rights or shares in the stock of the garnishee, the sheriff shall sell the same according to the certificate as other property.

3. If in like manner it appear that the garnishee has other personal property of the judgment debtor in his possession, and the same has not been bailed to such garnishee for a period then unexpired, unless the same be delivered to the sheriff on demand, he shall levy upon the same wherever he may find it. But if such property is in the possession of such garnishee upon a bailment then unexpired, the sheriff shall sell the same, or the interest of the judgment debtor therein according to the certificate as other property.

SEC. 351. When a sheriff with an execution levies upon any of the personal property mentioned in subdivisions three of section one hundred and seventy-seven, and if the same is not delivered, paid or transferred to him at the time, he shall proceed

thereafter in reference to such property as provided in the preceding section. Such property may be delivered, paid or transferred to the sheriff at the time of the levy, or sufficient thereof to satisfy the execution, and the sheriff's receipt to the person, association or corporation, as the case may be, shall be a sufficient discharge therefor.

SEC. 352. When the sheriff shall levy upon personal property by virtue of an execution, he may permit the judgment debtor to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written bond to the sheriff with sufficient surety, 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; but the sheriff shall not thereby be discharged from his liability to the plaintiff for such property.

SEC. 353. Before the sale of property on execution, notice thereof shall be given as follows :

1. 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 ten days successively.

2. In case of real property, by posting a similar notice, particularly describing the property, for four weeks successively in three public places of the county where the property is to be sold, 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 published nearest to the place of sale.

SEC. 354. All sales of property upon execution shall be made by auction between nine o'clock in the morning and four o'clock in the evening. 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, and not in the possession of a third person, association or corporation, 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 otherwise as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately. Sales of real property shall be made at the court house door.

SEC. 355. 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 cause, he may postpone the sale not exceeding one week next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment by public proclamation made at the same time. The sheriff for like causes may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with the consent of the plaintiff endorsed upon the writ.

SEC. 356. When the purchaser of any personal property capable of manual delivery and not in the possession of a third person, association or corporation, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired shall give him a bill of sale containing an acknowledgement of the payment. In all other sales of personal property the sheriff shall give the purchaser a bill of sale with the like acknowledgment.

SEC. 357. 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 he is required to make upon the execu-

tion, which shall include damages, interests and costs up to the day of sale, and increased costs. 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. 358. 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. 359. When an entire tract or parcel of land 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. 360. 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: *Provided, however,* That when final judgment shall have been entered in the supreme court and the execution upon which sale has been made issued from said court, the proceedings on execution and return shall be docketed for confirmation in the district court in which the action was originally commenced, and like proceedings shall be had as though said execution had issued from the said district court.

SEC. 361. 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 the following proceedings shall be had :

1. The plaintiff shall be entitled, on motion therefor, to have an order confirming the sale at the term next following the return of the execution, or if it be returned in term time, then at such term, unless the judgment debtor, or in case of his death, his representatives, shall file with the clerk ten days before such term, or if the writ be returned in term time, then five days after the return thereof, his objections thereto.

2. If such objections be filed the court shall notwithstanding allow the order confirming the sale, unless on the hearing of the motion it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case the court shall disallow the motion and direct that the property be resold inwhole or in part, as the case may be, as upon an execution received of that date.

3. Upon the return of the execution, the sheriff shall pay the proceeds of the sale to the clerk, who shall then apply the same or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale.

4. Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken except for a greater amount. If the motion to confirm be not heard and decided at the term at which it is made, it may be continued and heard and determined before the judge, or at any term thereafter. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever.

5. If after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds

to the judgment debtor or his representative, as the case may be, at any time before the order is made upon the motion to confirm the sale, provided such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to such party of course, otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

SEC. 362. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid with interest and the costs and disbursements of the suit by which he was evicted, from the plaintiff in the writ of execution.

SEC. 363. When 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 case 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 an entry thereof in the margin of the docket where the judgment is entered.

SEC. 364. Upon a sale of real property when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases, such property shall be subject to redemption, as hereinafter provided in this chapter. At the time of sale the sheriff shall give to the purchaser a certificate of the sale, containing:

1. A particular description of the property sold.

2. The price bid for each distinct lot or parcel.
3. The whole price paid.
4. When subject to redemption, it shall be so stated. The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ.

SEC. 365. Property sold subject to redemption, as provided in the last section, or any part thereof separately sold, may be redeemed by the following persons or their successors in interest :

1. The judgment debtor or his successor in interest, in the whole or any part of the property separately sold.
2. A creditor having a lien by judgment, decree or mortgage on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold.

The persons mentioned in subdivision two of this section are termed redemptioners.

SEC. 366. The judgment debtor or redemptioner may redeem the property within six months from the date of the order confirming the sale, by paying the amount of the purchase money, with interest at the rate of two per centum per month thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon, and if the purchaser be also a creditor having a lien prior to that of the redemptioner, the amount of such lien with interest.

SEC. 367. If the property be so redeemed by a redemptioner, either the judgment debtor or any other redemptioner may within sixty days from the last redemption, again redeem it on paying the sum paid on the last redemption, with interest at the rate of two per centum per month thereon from the date of the last preceding redemption in addition, together with the amount of any taxes which the last redemptioner may have paid thereon, and unless his lien be prior to that of such redemptioner, the amount of such lien with interest. The property may be again and as often as a debtor or a redemptioner is disposed, redeemed from the last previous redemptioner, within sixty

days from the date of the last redemption, on paying the sum paid on the last previous redemption, with interest at the rate of two per centum per month thereon from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner, prior to his own, with interest. Notice of redemption shall be given to the sheriff.

SEC. 368. If no redemption be made within six months from the confirmation of the sale, the purchaser shall be entitled to a conveyance from the sheriff, or if so redeemed, whenever sixty days has elapsed, and no other redemption has been made, the time for redemption shall have expired and the last redemptioner shall be entitled to a conveyance from the sheriff. If the judgment debtor redeem at any time before the time for redemption expires, the effects of the sale shall be terminated and he shall be restored to his estate.

SEC. 369. The mode of redeeming shall be as provided in this section :

1. The person seeking to redeem shall give the purchaser or redemptioner, as the case may be, two days' notice of his intention to apply to the sheriff for that purpose. At the time and place specified in such notice, such person may redeem by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate as in case of sale on execution, adding therein the sum paid on redemption, from whom redeemed and the date thereof. A party seeking to redeem shall submit to the sheriff the evidence of his right thereto, as follows :

2. Proof that the notice required by this section has been given to the purchaser or redemptioner, or waived.

3. If he be a lien creditor, a copy of the docket of the judgment or decree under which he claims the right to redeem, certified by the clerk of the court where such judgment or decree is docketed, or if he seeks to redeem upon mortgage the certificate of the record thereof.

4. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent showing the amount

then actually due on the judgment, decree or mortgage.

5. If the redemptioner or purchaser have a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the like evidence thereof, and of the amount due thereon, or the same may be disregarded.

SEC. 370. When two or more persons apply to the sheriff to redeem at the same time, he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemytion, or if not, at any time thereafter when demanded. Where a sheriff shall wrongfully refuse to allow any person to redeem, his right thereto shall not be prejudiced thereby, and upon the submission of the evidence and the tender of the money to the sheriff as herein provided, he may be required by order of the court or judge thereof, to allow such redemption.

SEC. 371. Until the expiration of the time allowed for redemption, the court or judge thereof may restrain the commission of waste on the property by order granted, with or without notice, on the application of the purchaser or judgment creditor, but it shall not be deemed waste for the person in possession afterwards during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs to buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family while he occupies the property.

SEC. 372. The purchaser from the day of sale until a resale or a redemption, and the redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the same period.

SEC. 373. The party to whom such sheriff's deed is given shall upon the receipt thereof take the same to the clerk of the district court, who shall enter in his book of levies where the levy is recorded, the sale of real estate therein conveyed, and shall endorse the fact upon the deed with the date when presented to him and when made. And no county auditor shall record any such deed without such endorsement.

CHAPTER XXXIV.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

SEC. 374. After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the court or of a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may by an order require the judgment debtor to appear at a specified time and place before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into a bond with sufficient surety, that he will attend from time to time before the judge or referee, as shall be directed during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such bond, he may be committed to prison.

SEC. 375. 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. 376. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may by an order require such person or corporation, or any officer or member thereof to appear at a specified time and place, before him or a referee appointed by him, and answer concerning the same.

SEC. 377. Witnesses may be required to appear and testify before the judge or referee upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

SEC. 378. The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within sixty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

SEC. 379. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt; and the court or judge may by an order forbid a transfer or other disposition of such interest or debt, until an action can be com-

menced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time upon such terms as may be just.

SEC. 380. If any person, party or witness disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference for a contempt.

CHAPTER XXXV.

OF WITNESSES AND EVIDENCE.

SEC. 381. Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action or proceeding.

SEC. 382. Any person offered as a witness shall not be excluded from giving evidence by reason of his interest in the event of the action, as a party thereto, or otherwise, but such interest may be shown to affect his credibility. *Provided, however,* That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased or insane person, or as a guardian of a minor under the age of fourteen years, then a party in interest or to the record shall not be admitted to testify in his own behalf.

SEC. 383. Any person offered as a witness shall not be excluded from giving evidence by reason of conviction for crime, but such conviction may be shown to affect his credibility: *Provided,* That any person who shall have been convicted of the crime of perjury, shall not be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon.

SEC. 384. The following persons shall not be competent to testify :

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

2. 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.

SEC. 385. In order to encourage confidence and to preserve it inviolate the following persons shall not be examined as witnesses :

1. 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.

2. An attorney or counsellor 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.

3. 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.

4. 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.

5. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

CHAPTER XXXVI.

MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES.

SEC. 386. No person shall be obliged to attend as a witness before any court of record, judge, justice of the peace, commissioner, referee or other officer, in any civil action out of the judicial district, sub-district or county in which he resides, unless his residence be within twenty miles of such court, judge, justice of the peace, commissioner, referee or other officer. And no person shall be compelled to attend as a witness in any civil action or proceeding, unless the fees be paid or tendered to him which are allowed by law for one day's attendance as a witness, and for traveling to and returning from the place where he is required to attend, provided such fees be demanded by him at the time of service of the subpoena.

SEC. 387. The subpoena 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. 388. The subpoena shall be issued as follows:

1. To require attendance before a court of record, or at the trial of an issue therein, it shall be issued in the name of the United States, and be under the seal of the court before which the attendance is required, or in which the issue is pending.

2. To require attendance out of such a court before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths or to take testimony in any matter under the laws of this Territory, it shall be issued by such

judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required.

3. To require attendance before a commissioner appointed to take testimony by a court of any other State, Territory or county, it may be issued by any judge or justice of the peace, in places within their respective jurisdictions.

SEC. 389. Such subpoena may be served by any suitable 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. 390. 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 subpoena issued by such court or officer.

SEC. 391. If any person duly served with a subpoena and obliged to attend as a witness, shall fail to do so, 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. 392. Such failure to attend as required by the subpoena, 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. 393. 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 testify as witness in the cause in which he was subpoenaed.

SEC. 394. 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. 395. 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 XXVII.

EXAMINATION OF PARTIES.

SEC. 396. 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. 397. 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. 398. 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. 399. A party to an action having filed interrogatories to be answered by the adverse party, as prescribed by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial.

SEC. 400. The testimony of a party, either upon examination at the trial, or upon interrogatories filed, may be rebutted by adverse testimony.

SEC. 401. 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.

CHAPTER XXXVIII.

DEPOSITIONS OF WITNESSES RESIDING IN THE TERRITORY.

SEC. 402. The testimony of a witness in this Territory may be taken by deposition, to be read in evidence in an action, suit, or proceeding commenced and pending in any court in this Territory in the following cases:

1. When the witness resides out of the district and more than twenty miles from the place of trial.

2. When the witness is about to leave the district, and go more than twenty miles from the place of trial, and there is a probability that he will continue absent when the testimony is required.

3. When the witness is sick, infirm or aged, as to make it probable that he will not be able to attend at the trial.

SEC. 403. Either party may have the deposition of a witness taken in this Territory, before any judge of the district court, justice of the peace, clerk of the supreme or district court, mayor of a city, or notary public, on serving on the adverse party or his attorney previous notice of the time and place of examination. Such notice shall be at least three days, and in addition one day, Sundays excepted, for every ten miles of the distance of the place of examination from the residence of the person to whom notice is given.

SEC. 404. The deposition 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., justice of the peace in and for said county, (or judge, clerk, etc., 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 hereto 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.

A. B. (Justice of the Peace.)

Dated at —, the — day of — 18—.

SEC. 405. 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. 406. 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 if 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. 407. 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. 408. 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 have remained in the custody of the court, from the termination of the first action until the commencement of the other.

SEC. 409. 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 in writing to such depositions in the court below.

SEC. 410. Any witness may be subpoenaed and compelled by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of such witness, in like manner and under the same penalties as he may be subpoenaed and compelled to attend as a witness in any court.

CHAPTER XXXIX.

DEPOSITIONS OF WITNESSES OUT OF THE TERRITORY.

SEC. 411. 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. 412. The deposition of a witness out of the Territory but residing within one hundred miles of the place of holding court, may be taken under a notice in the same manner and before officers of the like character as depositions are taken in this Territory, and all such depositions shall be governed by the same rules as if taken in the Territory.

SEC. 413. 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 a witness. At the time and place named in the

notice the parties or their attorneys may attend, and the party notified may present his cross interrogatories, if any he have, and failing so to do, shall be deemed to have waived the cross examination. If the court be not in session or the judge in said notice named be unable to attend, the parties may appear before the clerk of the court, who shall note any and all objections to such interrogatories and cross interrogatories by writing the words "objected to" after such interrogatories. The clerk shall issue the commission, annexing thereto a copy of interrogatories, cross interrogatories, and the objections, and the commissioners taking said deposition shall note both questions and answers as "objected to," when the objection has been noted as aforesaid, and the parties at the trial shall have the full benefit of such objections taken at the time of the issue of said commission. 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. 414. Such proper interrogatories, as well on the part of the plaintiff as on the 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, the examination may be without written interrogatories. Said agreement to be in writing and appended to the commission.

SEC. 415. The commission shall authorize the commissioner or commissioners to administer an oath to the witness and 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. 416. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon affi-

davit or other evidence satisfactory to the court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

CHAPTER XL.

PROCEEDINGS TO PERPETUATE TESTIMONY.

SEC. 417. 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 the 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 judge thereof, to allow the examination of such witness.

SEC. 418. 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. 419. If upon hearing of the parties or of the applicant alone, should no adverse party appear, the court or judge shall

be satisfied 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 may direct a commission to issue therefor, in like manner as a commission to take the testimony of witnesses as in other cases.

SEC. 420. 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. 421. 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 his inability to attend the trial by reason of age, sickness, 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 XLI.

RECORDS, DOCUMENTS, BOOKS, ETC.

SEC. 422. 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 defense 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 contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers or documents where he is examined as a witness.

SEC. 423. 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. 424. The records and proceedings of any court of the United States, or 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. 425. 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 other writing, duly certified by the officer having the lawful custody thereof, with the seal of the office annexed, if there be such seal, if there be no such seal, then with the official certificate of such officer, shall be received in evidence to all intents and purposes as the originals themselves.

SEC. 426. Copies of all papers on file in the office of the Surveyor Generals of Oregon and Washington, Secretary of Washington Territory, Territorial Treasurer, Territorial Auditor and 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. 427. 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 courts of this Territory.

SEC. 428. A seal of court or public office, when required to any writ, process, or proceeding 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. 429. 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 government, 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 XLII.

WRITS OF ERROR AND APPEALS TO THE SUPREME COURT.

SEC. 430. 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 supreme court for error in law: *Provided*, Every such writ shall be taken within three months next succeeding the term of the district court at which the final judgment, order or decision was made, and not afterwards: *Provided*, That if the party entitled to have such writ shall be absent from the Territory, and shall not have been personally served with process, nor appeared to the action; or if the party be an infant, married woman, or imprisoned or insane, then such writ may be made

returnable at the next term of the supreme court succeeding the removal of such disability, and not afterwards.

SEC. 431. Notice of the taking of such writ shall be served upon the party or his attorney of record thirty days or more preceding the first day of the term of the supreme court at which the case shall be docketed for trial, and the failure of the plaintiff in error to appear and prosecute his said writ of error, shall be ground for dismissal thereof; and a writ of error dismissed for want of diligence in the prosecution thereof, or laches of the plaintiff in error, shall be conclusive against said plaintiff, and entitle the defendants in error to affirmance of the judgment below, with costs: *Provided*, That whenever a term of any district court in this Territory shall be held at such times as not to allow thirty day's notice to be given by a plaintiff in error to a defendant in error of the suing out of a writ of error to the next coming term of the supreme court of the Territory, it shall be competent for a party desirous of suing out such writ of error to give notice in the said district court of his intention to take such writ and have the same entered upon the records thereof, and the filing of the precipe within said term shall be sufficient notice to entitle the cause to be docketed and heard at the next term of said supreme court: *Provided further*, That if such term of the district court shall expire without a plaintiff in error giving such notice to the defendant in error, he shall not sue out such writ subsequent to the expiration of such term of the district court without leave of the judge of said court first obtained upon satisfactory reasons presented for such delay: *And provided further*, That if any term of the district court shall adjourn more than thirty days before the return day of the next term of the supreme court, then nothing herein contained shall be construed as altering the required notice as prescribed by law for writs of error and appeal.

SEC. 432. 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 a particular description of the errors assigned, which precipe shall also direct the clerk to issue, under seal of the court, notice to the adverse party of the filing of such precipe, and said precipe shall state the term of the supreme court at which such writ 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 : *Provided*, That in the case mentioned in the preceding section, the notice given in open court shall be deemed equivalent to service of notice on the defendant in error.

SEC. 433. The notice shall be issued and served in the same manner as other process is served, and shall be returned to the clerk of the court from which the notice issued. 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 manner in which such notice may be given ; and after the order for giving notice has been fully complied with, may proceed as though notice had actually been given.

SEC. 434. Upon filing of such precipe, the plaintiff in error shall pay to the clerk his fees for the transcript of the judgment, and the precipe and notice to the defendant in error ; which transcript shall by the clerk be forwarded immediately to the clerk of the supreme court ; and 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, (upon the payment of his fees by the plaintiff in error), at least ten days before the commencement of the term of said supreme court.

SEC. 435. The transcript of the record shall contain a copy of the pleadings, the journal entries, judgment, order or decision, bills of exceptions, execution and return, precipe, notice 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. 436. 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 provisions of this act, the writ of error or appeal shall be dismissed. Either party may upon a suggestion of the diminution of the record, and upon a proper case made, have an order that a further record be sent up.

SEC. 437. The court of error shall proceed to hear the cause upon the errors assigned in the *precipis*, and the defendant may take issue on the errors so assigned.

SEC. 438. 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. 439. 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 order or judgment may be substituted for that complained of, or the writ of error may be dismissed by the plaintiff in error or by the court, and the cause be remitted to the district court for such further proceedings as the supreme court by mandate shall direct ; and execution may issue from the supreme court to satisfy the judgment of the court below, together with all costs and accruing costs, in the case of dismissal or other order or judgment of the supreme court aforesaid ; or its judgment may be executed by the district court on a *mandate* for that purpose.

SEC. 440. In case the judgment in the court below shall have been for a sum of money, and shall be affirmed against the plaintiff in error, or the writ of error dismissed, damages shall be awarded to the defendant in error not exceeding ten per cent. on the amount, exclusive of interests and costs of such judgment; and in all cases damages, interest and costs shall be allowed on the original judgment.

SEC. 441. Any person who may be a party or privy to a judgment, order or decision, may prosecute a writ of error to reverse the same, and the reversal shall enure to the benefit of all the parties and privies therein, and no other party or privy shall afterwards prosecute a writ of error for the same cause.

SEC. 442. 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 direct in what manner notice shall be given.

SEC. 443. The reversal of a judgment, order or decision shall not affect the title of property sold upon an execution issued upon such judgment, order or decision; but 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. 444. When the supreme court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

SEC. 445. 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. 446. 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 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.

CHAPTER XLIII.

SET-OFF.

SEC. 447. 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 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 been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

SEC. 448. If the plaintiff be a trustee to any other, or if the action be in a name of the 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. 449. 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. 450. 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. 451. 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. 452. To entitle a defendant to a set-off he must set the same forth in his answer.

SEC. 453. If the amount of the set-off duly established, be equal to the plaintiff's debt or demand, judgment shall be rendered 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. 454. 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 con-

tract 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 XLIV.

COSTS IN CIVIL ACTIONS.

SEC. 455. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement expressed or implied of the parties, but there shall 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. 456. Costs shall be allowed the party in whose favor the judgment is rendered, except as is otherwise provided by law.

SEC. 457. 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. 458. In an action for 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. 459. 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. 460. 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. 461. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such defendants as recover judgments in their favor, or either of them.

SEC. 462. When allowed to either party, costs to be called the attorney fee, shall be as follows :

1. In all actions settled before issue is joined, five dollars.
2. In all actions where judgment is rendered without a jury, ten dollars.
3. In all actions where judgment is rendered after impanneling a jury, fifteen dollars.
4. In all actions removed to the supreme court and settled before argument, ten dollars.
5. In all actions where judgment is rendered in the supreme court after argument, fifteen dollars.

SEC. 463. 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 disbursement shall be stated in detail and verified by affidavit, which shall be filed with the clerk of the court, within two days after the conclusion of the trial.

SEC. 464. 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 rate of compensation, and thereupon such rate shall be allowed.

SEC. 465. 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. 466. When in an action for the recovery of money, the defendant alleges in his answer, that before the commencement of the action he tendered to the plaintiff the full amount to which he is entitled, in such specie as by agreement ought to be tendered, and thereupon brings into court, for the plaintiff, if in money, the amount tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant.

SEC. 467. 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. 468. 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. 469. 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. 470. 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 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 defense.

SEC. 471. 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 defense 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 execution.

SEC. 472. 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. 473. 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. 474. In the following cases the costs of an appeal to the supreme court shall be in the discretion of the court:

1. When a new trial shall be ordered.
2. When a judgment shall be affirmed in part and reversed in part.

SEC. 475. In all actions and proceedings other 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. 476. 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 or proceeding is had.

SEC. 477. 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 pro-

ceedings 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 XLV.

OF COMMISSIONERS TO CONVEY REAL ESTATE.

SEC. 478. The several district courts may, whenever it is necessary, appoint a commissioner to convey real estate :

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

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

SEC. 479. 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. 480. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

SEC. 481. 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. 482. 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. 483. It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the name of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance.

SEC. 484. 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. 485. 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 XLVI.

ACTIONS TO RECOVER AND AFFECTING REAL ESTATE.

SEC. 486. 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. 487. A defendant who is in actual possession may for answer plead that he is in possession only as a tenant of another, naming him and his place of residence, and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord do not apply to be made defendant within the time the tenant is allowed to answer,

thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant, on motion of the plaintiff he shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him defendant, or such further notice as the court or judge thereof may prescribe.

SEC. 488. The plaintiff in his complaint shall set forth the nature of his estate in the property, whether it be in fee, for life, or for a term of years, and for whose life, or the duration of such term, and that he is entitled to the possession thereof, and that the defendant wrongfully withholds the same from him to his damage such sum as may be therein claimed. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.

SEC. 489. The defendant shall not be allowed to give in evidence any estate in himself or another in the property, or any license or right to the possession thereof unless the same be pleaded in his answer. If so pleaded the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him.

SEC. 490. The jury by their verdict shall find as follows:

1. If the verdict be for the plaintiff that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest in either, as the case may be.

2. If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the

complaint, or to such part thereof as the defendant defends for and the estate in such property or part thereof, or license, or right to the possession of either established on the trial by the defendant, if any, in effect as the same is required to be pleaded.

SEC. 491. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement, to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant or those under whom he claims holding under color of title adversely to the claim of the plaintiff, in good faith, the value thereof at the time of trial shall be allowed as a set-off against such damages.

SEC. 492. If the right of the plaintiff to the possession of the property expire after the commencement of the action and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages.

SEC. 493. The court or judge thereof, on motion, and after notice to the adverse party, may for cause shown grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof, for the purposes of the action.

SEC. 494. The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement, but if any unnecessary injury be done to the premises, he shall be liable therefor.

SEC. 495. An action for the recovery of the possession of real property against a person in possession, cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant do not satisfy the judgment recovered for damages for withholding the

possession, such damages may be recovered by action against the purchaser.

SEC. 496. A mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law.

SEC. 497. 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. 498. When in the case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to re-enter for such failure; he may bring an action to recover the possession of such property, and such action is equivalent to a demand of the rent and a re-entry upon the property. But if at any time before judgment in such action, the lessee or his successor in interest as to the whole or a part of the property, pay to the plaintiff or bring into court the amount of rent then in arrear, with interest and costs of the action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease.

SEC. 499. In an action to recover the possession of real property, the judgment therein shall be conclusive as to the estate in such property and the right to the possession thereof, so far as the same is thereby determined, upon the party against whom the same is given, and against all persons claiming from, through or under such party after the commencement of such action, except as in this section provided. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order vacating the judgment and grant-

ing him a new trial, upon the payment of the costs of the action.

SEC. 500. If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in the preceding section, such possession shall not be thereby affected in any way, and if judgment be given for defendant in the new trial, he shall be entitled to restitution by execution in the same manner as if he were plaintiff.

SEC. 501. In an action to recover the possession of real property by a tenant in dower, or her successor in interest, if such estate in dower has not been admeasured before the commencement of the action, the plaintiff shall not have execution to deliver the possession thereof until the same be admeasured as follows :

1. At any time after the entry of judgment, the plaintiff may upon notice to the adverse party, move the court for the appointment of referees to admeasure the dower out of the real property of which the possession is recovered by the action. The court shall allow such motion, unless it appear probable on the hearing that a partition of such property cannot be made without prejudice to the interests of the other owners. In the latter case, the court shall disallow the motion, and thereafter the plaintiff shall only proceed for partition of sale of such real property, as provided in the succeeding chapter.

2. If the court allow the motion, thereafter the proceedings shall be conducted as provided in such chapter. At any time after the confirmation of the report of the referees, the plaintiff may have execution for the delivery of the possession of the property according to the admeasurement thereof, and for the damages recovered, if any, for withholding the same, if such damages remain unsatisfied.

3. If the motion for admeasurement be made at the term at which judgment was given, the notice thereof shall be served on the adverse party at such time as the court by general rule or special order may prescribe.

SEC. 502. In an action at law for the recovery of the possession of real property, if either party claim the property as a donee of the United States, and under the act of Congress approved September 27, 1850, commonly called the donation law, or the acts amendatory thereof, such party from the date of his settlement thereon, as provided in said acts, shall be deemed to have a legal estate in fee in such property, to continue upon condition that he perform the conditions required by such acts, which estate is unconditional and indefeasible after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property by virtue of settlement under such acts, such settlement and the performance of the subsequent conditions shall be conclusively presumed in favor of the party having or claiming under the elder certificate or patent, as the case may be, unless it appear upon the face of such certificate or patent that the same is absolutely void.

CHAPTER XLVII.

PARTITION OF REAL PROPERTY.

SEC. 503. When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, an action may be maintained by one or more of such persons, for a partition thereof according to the respective rights of the persons interested therein, and for sale of such property or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 504. The interest of all persons in the property, shall be set forth in the complaint specifically and particularly as for as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the

ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

SEC. 505. The plaintiff may, at his option, make creditors having a lien upon the property or any portion thereof, other than by judgment or decree, defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

SEC. 506. The notice shall be directed by name to all the tenants in common, who are known, and in the same manner to all lien creditors who are made parties to the suit, and generally to all persons unknown, having or claiming an interest or estate in the property.

SEC. 507. If a party, having a share or interest in, or lien upon the property, be unknown, or either of the known parties reside out of the Territory or cannot be found therein, and such fact be made to appear by affidavit, the notice may be served by publication, as in ordinary cases. When service is made by publication, the notice must contain a brief description of the property which is the subject of the suit.

SEC. 508. The defendant shall set forth in his answer the nature and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security.

SEC. 509. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined in such suit, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the decree for partition or sale is given.

SEC. 510. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees, therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

SEC. 511. In making the partition, the referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

SEC. 512. The court may confirm or set aside the report in whole or in part, and if necessary appoint new referees. Upon the report being confirmed a decree shall be entered that such partition be effectual forever, which decree shall be binding and conclusive:

1. On all parties named therein, and their legal representatives who have at the time any interest in the property divided, or any part thereof as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder or inheritance of such property or any part thereof, after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life.

2. On all persons interested in the property to whom notice shall have been given by publication.

3. On all other persons claiming from or through such parties or persons or either of them.

SEC. 513. Such decree and partition shall not affect any tenants, for years or for life, of the whole of the property which is the subject of partition, nor shall such decree and partition preclude any persons except such as are specified in the last section, from claiming title to the property in question or from controverting the title of the parties between whom the partition shall have been made.

SEC. 514. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff and may be allowed as costs.

SEC. 515. If the referees report to the court that the property, of which partition shall have been decreed, or any separate portion thereof is so situated that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that such report is correct, it may thereupon by an order direct the referees to sell the property or separate portion thereof.

SEC. 516. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered to be sold.

SEC. 517. Before making an order of sale, if lien creditors other than those by judgment of decree, have not been made parties, the court, on motion or either party, shall order the plaintiff to file a supplemental complaint, making such creditors defendants.

SEC. 518. If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the clerk of the county where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree upon the property or any portion thereof, and

unless he do so the court shall order a reference to ascertain them.

SEC. 519. If it appear by such certificate or reference, in case the certificate is not produced that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby respectively, and the order of priority in which they are entitled to be paid out of the property.

SEC. 520. The plaintiff must cause a notice to be served at least twenty days before the time for appearance on each person having such lien by judgments or decree, to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely on his judgment or decree.

SEC. 521. The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts due thereon or secured thereby, and their priority respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him.

SEC. 522. The report of the referee may be excepted to by either party to the suit, or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the Territory or his residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his agent or attorney, of record, or by publication thereof, for such time and in such manner as the order may prescribe.

SEC. 523. If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the suit, and upon the lien creditors who have been duly served with the notice to appear before the referee, as provided in section five hundred and twenty-two.

SEC. 524. The proceeds of the sale of the encumbered property shall be distributed by the decree of the court, as follows :

1. To pay its just proportion of the general costs of the suit.
2. To pay the costs of the reference.
3. To satisfy the several liens in their order of priority, by payment of the sums due, and to become due, according to the decree.
4. The residue among the owners of the property sold, according to their respective shares.

SEC. 525. Whenever any party to the suit who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may in its discretion, order such sureties to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

SEC. 526. The proceedings to ascertain the amount of the liens, and to determine their priority as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale, nor affect any other party, whose rights are not involved in such proceedings.

SEC. 527. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no such direction be given, all such proceeds and securities shall be paid into court, or deposited as directed by the court.

SEC. 528. When the proceeds of sale of any shares or parcel belonging to persons who are parties to the suit and who are known, are paid into court, the suit may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original suit.

SEC. 529. All sales of real property made by the referees shall be made by public auction, to the highest bidder, in the

manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice.

SEC. 530. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants or parties out of the Territory.

SEC. 531. The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successors in office; and for the shares of any known owner of full age, in the name of such owner.

SEC. 532. When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the suit, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if in the judgment of the court, a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered.

SEC. 533. Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged and filed with the clerk.

SEC. 534. If such consent be not given, as provided in the last section, before the report of sale, the court shall ascertain

and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be deposited in court for that purpose.

SEC. 535. The proportion of the proceeds of the sale to be invested as provided in the preceding section, shall be ascertained and determined in the several cases as follows:

1. If an estate in dower be included in the order of sale, its proportion shall be one-third of the proceeds of the sale of the property, or of the sale of the undivided share in such property upon which the claim of dower existed.

2. If an estate by the curtesy or other estate for life or years, be included in the order of sale, its proportion shall be the whole proceeds of the sale of the property or of the sale of the undivided share thereof in which such estate may be. And in all cases the proportion of the expenses of the proceedings shall be deducted from the proceeds of the sale.

SEC. 536. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

SEC. 537. In all cases of sales in partition, when it appears that a married woman has an inchoate right of dower in any of the property sold, or that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such inchoate, contingent or vested right or estate, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties.

SEC. 538. In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately or otherwise, if the court so directs.

SEC. 539. Neither of the referees, nor any person for the

benefit of either of them, shall be interested in any purchase, nor shall the guardian of an infant party be interested in the purchase of any real property being the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section, shall be void.

SEC. 540. After completing the sale the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any taken. The report shall be filed with the clerk.

SEC. 541. The report of sale may be excepted to in writing by any party entitled to a share of the proceeds. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale.

SEC. 542. When a party entitled to a share of the property, or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

SEC. 543. When there are proceeds of sale belonging to an unknown owner, or to a person without the Territory who has no legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into court or otherwise deposited by order of the court, the same shall be invested in securities on interest for the benefit of the persons entitled thereto.

SEC. 544. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

SEC. 545. When security is taken by the referees on a sale and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon

the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

SEC. 546. The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

SEC. 547. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

SEC. 548. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale to his general guardian, or the special guardian appointed for him in the suit, upon giving the security required by law, or directed by order of the court.

SEC. 549. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing a bond with sufficient sureties, approved by the judge of the court, conditioned that he

will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

SEC. 550. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without suit and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may respectively be entitled, upon an order of the court.

SEC. 551. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interest therein, and may be included and specified in the decree. In that case they shall be a lien on the several shares, and the decree may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

CHAPTER XLVIII.

OF WASTE AND TRESPASS.

SEC. 552. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs.

SEC. 553. If a guardian, tenant in severalty, or in common, for life or for years, of real property, commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant; in which

action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice.

SEC. 554. Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons of public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city against the persons committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be.

SEC. 555. • If upon the trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodland, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages.

SEC. 556. 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 injunction and restraining orders.

CHAPTER XLIX.

NUISANCE.

SEC. 557. 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 the life and property, is a nuisance, and the subject of an action for damages and other and further relief.

SEC. 559. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance. If judgment be given for the plaintiff in such action, he may in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the sheriff to abate such nuisance. Such motion must be made at the term at which judgment is given, and shall be allowed of course, unless it appear on the hearing that the nuisance has ceased or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may have the defendant enjoined.

SEC. 559. If the order be made, the clerk shall thereafter (at any time within six months, when requested by the plaintiff,) issue such warrant directed to the sheriff, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings endorsed thereon. The expense of abating the nuisance may be levied by the sheriff on the property of the defendant, and

in this respect the warrant is to be deemed an execution against property.

SEC. 560. At any time before the order is made or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself, upon his giving bond to the plaintiff in a sufficient amount with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order. The sureties shall justify as bail upon arrest. If the defendant fails to abate such nuisance within the time specified, the warrant for the abatement of the nuisance may issue as if the same had not been stayed.

CHAPTER L.

FORECLOSURE OF MORTGAGE.

SEC. 561. 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 mortgagee.

SEC. 562. 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. 563. 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 interests and costs at any time before sale, shall satisfy the judgment.

SEC. 564. 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 on any property of the mortgage debtor.

SEC. 565. 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, interests and costs, as upon execution; and if any part of the judgment, interest and costs, remain unsatisfied, the sheriff shall forthwith proceed to levy the residue of the property of the defendant. The sheriff shall endorse upon the order of sale, the time when he received it, and all subsequent proceedings under the said order shall conform, except as hereinafter provided, to the provisions regulating sales of property upon execution.

SEC. 566. 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. 567. 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 the 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. 568. 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. 569. 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 do not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns.

SEC. 570. The provisions herein contained, so far as the same shall be applicable, shall govern in actions for the foreclosure of chattel mortgages or bills of sale creating liens on personal property. The mortgagee or holder of the lien may proceed upon his mortgage or lien, if there be a separate obligation in writing to pay the same secured by said mortgage or lien, he may bring suit upon such separate promise. When he proceeds on the mortgage, if there be a specific agreement therein contained for the payment of a certain sum, or there is a separate obligation for the said sum, in addition to a decree of sale of mortgaged property, judgment shall be rendered for the amount due upon said mortgage or other instrument, the payment of which is secured thereby. The order of sale shall direct the sale of the mortgaged property, and if the proceeds of said sale be insufficient under such order of sale, the sheriff is authorized to levy upon and sell other property of mortgage debtor, not exempt from execution, for the sum remaining unsatisfied.

SEC. 571. In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a

judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same order of sale. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the district or county where the said property is located, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county. Nothing herein contained shall prevent the issue of an execution, as in ordinary cases, either for the whole mortgage debt or such deficiency, after applying the proceeds of the sale of mortgaged property. When, however, an execution shall issue upon a judgment recovered for a debt secured by mortgage, a schedule of the mortgaged property, real or personal, shall be endorsed upon such an execution, and the sale thereof under such order, shall foreclose the equity of redemption or the mortgage therein.

SEC. 572. When sales of other property not embraced in the mortgage or decree of sale are made under the order of sale, to satisfy any deficiency remaining due upon the judgment, two weeks publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the district or county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said district or county.

SEC. 573. Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collection thereof enforced in the same manner.

CHAPTER LI.

NE EXEAT.

SEC. 574. 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. 575. 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. 576. 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. 577. 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. 578. 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 of them when they are residents and solvent.

SEC. 579. The defendant may have the same remedy by writ of habeas corpus as in other cases of arrest and bail.

SEC. 580. The proceedings may be had before justices of the peace in all cases within their jurisdiction.

SEC. 581. The affidavit and bond may be filed, and proceedings had in any district where the defendants may be found.

CHAPTER LII.

ACTIONS OF SURETIES AGAINST PRINCIPALS.

SEC. 582. 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.

SEC. 583. 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. 584. When any action is brought against two or more defendants 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. 585. 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 principal before a levy shall be made upon the property of the surety, and the clerk shall indorse a memorandum of the order upon the execution.

SEC. 586. 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. 587. 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. 588. 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. 589. The foregoing provisions of this chapter shall extend to heirs, executors and administrators of deceased persons, but the provisions of the five hundred and eighty-fifth section shall not operate against persons under legal disabilities.

CHAPTER LIII.

SUITS ON OFFICIAL BONDS, FINES AND FORFEITURES.

SEC. 590. The official bond of a public officer to the Territory, or to any county, city, town or other municipal or public corporation of like character therein, shall be deemed a security to the Territory, or to such county, city, town or other municipal or public corporation, as the case may be, and also to all persons severally for the official delinquencies against which it is intended to provide.

SEC. 591. When a public officer by official misconduct or neglect of duty, shall forfeit his official bond or render his sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled.

SEC. 592. Before an action can be commenced by a plaintiff other than the Territory, or the municipal or public corporation named in the bond, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the bond and an affidavit of the plaintiff, or some person on his behalf, showing the delinquency. But if the matter set forth in his affidavit be such that if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein pro-

vided for has been granted, the defendant, on motion, shall be entitled to judgment of non-suit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, judgment shall be given accordingly.

SEC. 593. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same bond for another delinquency.

SEC. 594. In an action upon an official bond, if judgments have been recovered against the surety therein, other than by confession, equal in the aggregate to the penalty or any part thereof of such bond, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him.

SEC. 595. Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them.

SEC. 596. When an action shall be commenced for a penalty, which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense.

SEC. 597. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant wholly or partially from the consequences contemplated by law, in case when the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person.

SEC. 598. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid into the treasury of the proper county. Whenever by the provisions of law, any property real or personal shall be forfeited to the Territory, or to any officer for its use, the action for the

recovery of such property may be commenced in any county where the defendant may be found or where such property may be.

CHAPTER LIV.

ACTIONS BY AND AGAINST PUBLIC CORPORATIONS AND OFFICERS.

SEC. 599. An action at law may be maintained by any county, incorporated town, school district or other public corporation of like character in this Territory, in its corporate name, and upon a cause of action accruing to it, in its corporate character and not otherwise, in either of the following cases :

1. Upon a contract made with such public corporation.
2. Upon a liability prescribed by law in favor of such public corporation.
3. To recover a penalty or forfeiture given to such public corporation.
4. To recover damages for an injury to the corporate rights or property of such public corporation.

SEC. 600. An action may be maintained against a county or other of the public corporations mentioned or described in preceding section either upon a contract made by such county or other public corporation in its corporate character and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation.

SEC. 601. In such actions the pleadings of the public corporation shall be verified by any of the officers representing it in its corporate capacity, in the same manner as if such officer was a defendant in the action, or by the agent or attorney thereof as in ordinary actions.

SEC. 602. If judgment be given for the recovery of money or damages against such county or other public corporation, no

execution shall issue thereon for the collection of such money or damages, but such judgment in such respect shall be satisfied as follows :

1. The party in whose favor such judgment is given may at any time thereafter when execution might issue on a like judgment against a private person, present a certified transcript of the docket thereof to the officer of such county or other public corporation who is authorized to draw orders on the treasury thereof.

2. On the presentation of such transcript such officer shall draw an order on such treasurer for the amount of the judgment in favor of the party for whom the same was given. Thereafter such order shall be presented for payment and paid with like effect and in like manner as other orders upon the treasurer of such county or other public corporation.

3. The certified transcript herein provided for shall not be furnished by the clerk unless at the time an execution might issue on such judgment if the same were against a private person, nor until satisfaction of the judgment in respect to such money or damages be acknowledged as in ordinary cases. The clerk shall include in the transcript a memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contain such memorandum no order upon the treasurer shall issue thereon.

SEC. 603. Should the proper officer of said corporation fail or refuse to satisfy said judgment as in the preceding section provided, an attachment may be issued to compel his performance of said duty.

CHAPTER LV.

HABEAS CORPUS.

SEC. 604. Every person restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.

SEC. 605. 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 :

1. 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.)

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

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

SEC. 606. 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. 607. 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. 608. If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay.

SEC. 609. 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. 610. 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 posting the same on some conspicuous place, either of his dwelling house or where the party is confined or under restraint.

SEC. 611. 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. 612. The return must be signed and verified by the person making it, who shall state :

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

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

3. 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 at the hearing unless prevented by sickness or infirmity, which must be shown in the return.

SEC. 613. 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 a delay.

SEC. 614. 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. 615. No court or judge shall inquire 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 :

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

2. 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 enforce the remedy of a party, is not included in any of the foregoing specifications.

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

SEC. 616. 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 re-commit the prisoner, as may be just and legal, and recognize witnesses when proper.

SEC. 617. 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, and the prisoner shall not be discharged until the person having such interest is notified.

SEC. 618. 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. 619. 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. 620. 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 judge 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. 621. 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. 622. The officer shall execute the writ by bringing the person therein named before the court or judge, and the like return of proceedings shall be required and had as in case of writs of habeas corpus.

SEC. 623. 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. 624. Any writ or process authorized by this chapter may be issued and served, in case of emergency, on Sunday.

SEC. 625. 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. 626. 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 proceedings shall in all cases conform to the provisions of this chapter.

CHAPTER LVI.

MANDATE AND PROHIBITION.

SEC. 627. 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. In the district court the writ may be made returnable either in term time or vacation, and may be tried before the judge of said court in like manner and with like effect as in term time.

SEC. 628. The district court or judge thereof of the county wherein the defendant, if a public officer or body, exercise his or its functions, or if a private person or corporation, wherein such person resides or may be found, or such private corporation might be sued in an action, shall have exclusive jurisdiction of the proceeding, except that the supreme court shall have jurisdiction in all cases where it may be necessary or proper to enable such court to maintain its appellate jurisdiction.

SEC. 629. Writs of mandate may be issued to any inferior court, corporation, board, officer or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. But though the writ may require such court, corporation, board, officer or person, to exercise its or his judgment, or proceed to the discharge of any of its or his functions, it shall not control judicial discretion. The writ shall not be issued in any case where there is any other plain and adequate remedy.

SEC. 630. 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. 631. The first writ shall be in the alternative or peremptory, as the court shall direct.

SEC. 632. 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 judgment as in civil actions.

SEC. 633. In case a verdict shall be found for plaintiff when the writ is in the alternate, 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. 634. 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. 635. Obedience to such writ, may be enforced by attachment and fine and imprisonment, or both.

SEC. 636. 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 further proceeding in the matter.

SEC. 637. 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. 638. Costs shall be awarded in these proceedings as in civil actions.

SEC. 639. From the judgment of the district court or judge thereof refusing or directing such writs, an appeal or writ of error may be taken to the supreme court in like manner and effect as in civil actions.

CHAPTER LVII.

INFORMATION.

SEC. 640. An information may be filed against any person or corporation in the following cases :

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

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

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

4. 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. 641. The information may be filed by the prosecuting attorney in 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. 642. The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court.

SEC. 643. 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. 644. 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. 645. 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, at the time of the judgment.

SEC. 646. 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 books and papers in his custody or within his power, belonging to the office from which he shall have been ousted.

SEC. 647. 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. 648. 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. 649. 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. 650. 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 provisions 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. 651. 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 executions 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. 652. 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 civil action for the recovery of the property.

SEC. 653. 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. 654. 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 of those claiming under him have done or omitted an act in violation of the terms on which the letters, deeds or certificates were granted, or have by any other means forfeited the interest acquired under the same.

SEC. 655. In such cases the information may be filed by the prosecuting attorney upon his relation, or by any private person upon his relation showing his interest in the subject matter ; and the subsequent proceeding, judgment of the court and awarding of costs, 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 LVIII.

ACTIONS BY AND AGAINST EXECUTORS.

SEC. 656. When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action at law therefor against the latter, if the former might have maintained an action had he lived, against the latter, for an injury caused by the same act or omission. Such action shall be commenced within two years after the death, and the damages therein shall not exceed five thousand dollars, and the amount recovered, if any, shall be administered as other personal property of the deceased person.

SEC. 657. All other causes of action by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. Where the cause of action survives as herein provided, the executors or administrators may maintain an action at law thereon against the party against whom the cause of action accrued, or after his death against his personal representatives.

SEC. 658. In an action against several executors or administrators, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the notice be served only on part of them in the

same manner and with like effect as if served on all, except as provided in the next section.

SEC. 659. When a judgment is given against an executor or administrator for want of answer, such judgment is not to be deemed evidence of assets in his hands, unless it appear that the complaint alleged assets and that the notice was served upon him.

SEC. 660. In an action against executors and administrators, in which the fact of their having administered the estate of their testator or intestate, or any part thereof, is put in issue and the inventory of the property of the deceased returned by them is given in evidence, the same may be contradicted or avoided by evidence :

1. That any property has been omitted in such inventory or was not returned therein at its full value, or that since the return thereof such property has increased in value.

2. That such property has perished or been lost without the fault of such executors or administrators, or that it has been fairly and duly sold by them at a less price than the value so returned, or that since the return of the inventory such property has deteriorated in value. In such action the defendants cannot be charged for any things in action specified in their inventory, unless it appear that they have been collected or with due diligence might have been.

SEC. 661. No person is liable to an action as executor of his own wrong for having taken, received or interfered with the property of a deceased person, but is responsible to the executors or administrators of such deceased person for the value of all property so taken or received, and for all injury caused by his interference with the estate of the deceased.

SEC. 662. An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof.

SEC. 663. An action may be commenced against an exec-

utor or administrator at any time after the expiration of one year from the granting of letters testamentary or of administration, and until the final settlement of the estate and discharge of such executor or administrator, or from the trust and not otherwise: *Provided*, The claim upon which suit is brought has been duly presented according to law.

SEC. 664. In an action against an executor or administrator as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such executor or administrator, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally.

CHAPTER LIX.

CONTEMPTS AND THEIR PUNISHMENT.

SEC. 665. The following acts or omissions, in respect to a court of justice or proceedings therein, are deemed to be contempts of court:

1. Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings.

2. A breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding.

3. Misbehavior in office or other wilful neglect or violation of duty by an attorney, clerk, sheriff or other person appointed or selected to perform a judicial or ministerial service.

4. Deceit, abuse of the process or proceedings of the court by a party to an action, suit or special proceeding.

5. Disobedience of any lawful judgment, decree, order or process of the court.

6. Assuming to be an attorney or other officer of the court, and acting as such without authority in a particular instance.

7. Rescuing any person or property in the lawful custody of an officer, held by such officer under an order or process of such court.

8. Unlawfully detaining a witness or party to an action, suit or proceeding, while going to, remaining at or returning from the court where the same is for trial.

9. Any other unlawful interference with the process or proceedings of a court.

10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

11. When summoned as a juror in a court, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any other person in relation to the merits of such action, suit or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

12. Disobedience by an inferior tribunal, magistrate or officer, of the lawful judgment, decree, order or process of a superior court, or proceeding in an action, suit or proceeding, contrary to law, after such action, suit or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate or officer.

SEC. 666. Every court of justice, and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six months; and when the contempt is not one of those mentioned in sub-divisions one and two of the last section, it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby, before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars.

SEC. 667. When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts

as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed.

SEC. 668. In cases other than those mentioned in preceding section, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance.

SEC. 669. If the party charged be in the custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody that he may answer, and he shall thereupon be produced and held until an order be made for his disposal.

SEC. 670. In the proceeding for a contempt, the Territory is the plaintiff. In all cases of public interest, the proceeding may be prosecuted by the district attorney on behalf of the Territory, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a co-plaintiff with the Territory.

SEC. 671. Whenever a warrant of arrest is issued pursuant to this chapter, the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail, and if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer and detain him until an order be made in the premises, unless the person arrested execute and deliver to the sheriff, at any time before the return day of the warrant, a bond with two sufficient sureties, to the effect that he will appear on such return day and abide the order or judgment of the court or officer thereupon.

SEC. 672. The sheriff shall return the warrant of arrest and the bond, if any, given him by the defendant, by the return day therein specified. When the defendant has been brought up or appeared, the court or judicial officer shall proceed to investigate the charge by examining such defendant, and witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

SEC. 673. Upon the evidence so taken, the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged ; and, it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter.

SEC. 674. If any loss or injury to a party in an action, suit or proceeding prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover of the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit or proceeding by the aggrieved party for such loss or injury.

SEC. 675. When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it, and in such case the act must be specified in the warrant of commitment.

SEC. 676. Persons proceeded against according to the provisions of this chapter, are also liable to indictment for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on the indictment, in passing sentence shall take into consideration the punishment before inflicted.

SEC. 677. When the warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the bond to be prosecuted, or both. If the bond be prosecuted and the aggrieved party join in the action, and the

sum specified therein be recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued, shall be deemed to be recovered for such party exclusively.

SEC. 678. Either party to a judgment in a proceeding for a contempt, may appeal therefrom in like manner and with like effect as from judgment in an action, but such appeal shall not have the effect to stay the proceeding in any other action, suit or proceeding, or upon any judgment, decree or order therein, concerning which, or wherein such contempt was committed. Contempts of justice's courts are punishable in the manner specially provided in the "act relating to justices of the peace and to their practice and jurisdiction."

CHAPTER LXI.

SUITS ON FOREIGN JUDGMENTS

SEC. 679. Judgment for debt, rendered in any State or other Territory against any person or persons residents of this Territory at the time of the rendition of such judgment, shall not be of any higher character as evidence of indebtedness than the original claim or demand upon which such judgment is rendered, unless such judgment shall be rendered upon personal service of summons, notice or other due process against the defendant therein.

SEC. 680. The same defense to suits on judgments rendered without such personal service may be made by the judgment debtor which might have been set up in the original proceeding.

CHAPTER LXII.

MISCELLANEOUS PROVISIONS.

SEC. 681. 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. 682. 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. 683. 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. 684. All process issuing out of the district court shall be directed to the sheriff of the county in which it was to be served, and be by him executed according to law.

SEC. 685. 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 security 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. 686. 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. 687. 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. 688. 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. 689. 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. 690. 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. 691. 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 or abettors, and shall recover such a sum as to the jury shall seem reasonable.

SEC. 692. 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-partner of any such defendants or interested in any such property subjecting the same to the debts of the co-partnership.

SEC. 693. 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 it 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 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 LXIII.

OF CONSTRUCTION.

SEC. 694. 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: *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. 695. 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. 696. 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. 697. 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 proceedings, shall conform to the provisions of this act as far as practicable.

SEC. 698. The provisions of this act shall be liberally construed, and shall not be limited by any rule of strict construction.

SEC. 699. All acts or parts of acts heretofore enacted upon any subject matter contained in this act, be and the same are hereby repealed: *Provided*, That rights acquired in actions now pending under existing laws shall not be affected by anything herein contained.

APPROVED November 13, 1873.

AN ACT

RELATIVE TO CRIMES AND PUNISHMENTS AND PROCEEDINGS IN
CRIMINAL CASES.

CHAPTER I.

OF THE RIGHTS OF PARTIES ACCUSED.

SECTION 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 cases of misdemeanor before a justice of the peace, or before a 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 offence 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: *Provided*, That all persons accused of crime in any court of this Territory, whether by indictment or otherwise, shall be admitted to bail by the court, where the same is pending, or by a judge in vacation, when it shall appear to the court or judge that the accused has offered to go to trial in good faith and without collusion with witnesses, and has been denied a trial by the court, or that the accused is so sick or infirm that further confinement in jail would greatly endanger his life or make his sickness or infirmity permanent, and the bail bond in such cases shall be reasonable and at the sound discretion of the court.

SEC. 9. Offenses cognizable at common law, if not controlled 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 ; for offenses, the punishment of which may be 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.

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. Any person, or persons, who shall willfully and maliciously displace any switch or rail, disturb, injure, or destroy

any part of a track or bridge of any railroad, or place any obstruction thereon, with intent that any person or property passing over said railroad should thereby be injured, and human life shall thereby be destroyed, such person or persons so offending, 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 authority to commute.

SEC. 14. Any person or persons guilty of either the offenses enumerated in the preceding section, and thereby endangering and not destroying human life or thereby causing injury or destruction of property, upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term of not less than one, nor more than ten years and shall be kept at hard labor.

SEC. 15. 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. 16. If either party to a duel be killed, the survivor shall be deemed guilty of murder in the second degree.

SEC. 17. 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. 18. 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. 19. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter.

SEC. 20. Any person navigating any boat or vessel for gain, who shall willfully or negligently receive so many passengers, or such a quantity of other lading, that by means thereof such boat or vessel shall sink or upset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter.

SEC. 21. 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. 22. 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. 23. 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. 24. 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. 25. 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. 26. 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. 27. Every person who shall mingle poison with any food, drink or medicine, with 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. 28. Every person who on purpose, and of malice 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. 29. An assault is an attempt in a rude, insolent and angry manner, unlawfully to touch, strike, beat or wound another person, coupled with a present ability to carry such attempt into execution and every person convicted thereof, shall be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment in the county jail not exceeding six months.

SEC. 30. An assault with an intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the

penitentiary for a term of not less than one year, or more than fourteen years.

SEC. 31. An assault with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show a willful, malignant and abandoned heart, shall subject the offender to imprisonment in the penitentiary not exceeding two years, or to a fine not exceeding five thousand dollars, or to both such fine and imprisonment.

SEC. 32. Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year.

SEC. 33. Every person 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. 34. 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. 35. 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. 36. Every person who shall violently and unlawfully, but without premeditation deprive another of the use of any bodily member, or who shall unlawfully and wilfully but without premeditation 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. 37. Rape is the carnal knowledge of a female forcibly and against her will, and a person duly convicted thereof, shall be punished by imprisonment in the penitentiary for a term not less than five years, and which may extend to life ; and any person of the age of fourteen years and upwards who shall have carnal knowledge of any female child under the age of twelve years, either with or without her consent, shall be adjudged guilty of the crime of rape, and be punished as before provided. In prosecution for the latter offense, proof of penetration shall be sufficient evidence of the commission thereof.

SEC. 38. Every person who shall forcibly and feloniously take from the person of another, or from his immediate presence, any article of value by violence or putting in fear, shall be deemed guilty of robbery, and upon conviction thereof shall be punished with imprisonment in the penitentiary for any length of time not more than twenty years nor less than one year.

S. c. 39. 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 person, according to the laws of this Territory or of the United States, shall be deemed guilty of kidnaping, and upon conviction thereof shall be imprisoned in the penitentiary not more than fourteen nor less than one year, and be fined not more than five thousand dollars nor less than one hundred dollars.

SEC. 40. 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. 41. 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. 42. Every person who shall administer to any pregnant woman whom 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. 43. 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 OFFENSES AGAINST PROPERTY.

SEC. 44. Every person who shall willfully 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 occupied 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 no 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 willfully set fire to, the offender, on conviction thereof, shall be deemed guilty of murder in the first degree.

SEC. 45. Every person who shall willfully 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, stacks 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. 46. Every person who shall willfully 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. 47. The three preceding sections shall severally extend to a married woman who may commit either of the offenses therein described, though the property set fire to may belong partly or wholly to her husband.

SEC. 48. Every person who shall unlawfully enter in the night time or shall unlawfully break or enter in the day time, any dwelling house or out house thereunto 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 misdemeanor or a felony, shall be deemed guilty of burglary and upon conviction thereof shall be imprisoned in the penitentiary not more than fourteen years nor less than one year.

SEC. 49. Every person, who shall be guilty of any such unlawful entry or unlawful breaking and entry as described in the next preceding section shall be deemed to have made such entry or breaking or entry with intent to commit a misdemeanor or a felony, unless such entry or breaking and entry shall be explained by testimony satisfactory to the jury trying the case to have been made for some purpose without criminal intent.

SEC. 50. 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. 51. 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. 52. 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 personal goods, of which larceny may be committed.

SEC. 53. If any person shall steal any horse, mare, gelding, foal or filly, ass or mule, of any value, or if any person shall receive or buy any horse, mare, gelding, foal or filly, ass or mule, that shall have been stolen, knowing the same to have been stolen, with intent, by such receiving or buying, to defraud the owner, or if any person shall conceal any horse thief, knowing him to be such, or if any person shall conceal any horse, mare or gelding, foal or filly, ass or mule, knowing the same to have been stolen, every person so offending shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than ten nor less than one year.

SEC. 54. 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, sheat 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. 55. 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. 56. In any prosecution for the offense 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. 57. 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 alleged 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. 58. 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. 59. 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 any length of time not exceeding one year.

SEC. 60. 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. 61. 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. 62. If any warehouseman, miller, storage, forwarding or commission merchant, or his or their servants, agents, or clerks, shall willfully 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 merchandise, 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, he 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. 63. 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, promissory note for money or property, receipt for 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 tobacco, beet, 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. 64. 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. 65. In any case where the intent to defraud is neces-

sary to constitute the offense of forgery, or any other offense 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 trial 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. 66. 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. 67. 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. 68. Every person who shall willfully 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

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not more than one year, and be fined in any sum not exceeding one thousand dollars, or fined only.

SEC. 69. Every person who shall willfully and maliciously cut, break, injure or destroy any bridge, mill-dam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining or agricultural purposes, or any embankment necessary to the same, or either of them, or shall willfully or maliciously make or cause to be made, any aperture in the dam, canal, flume, aqueduct, reservoir, embankment or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or be imprisoned in the penitentiary at hard labor not more than two years, or both such fine and imprisonment.

SEC. 70. Any person who shall counterfeit any kind or species of gold dust, gold bullion or bars, lumps, pieces or nuggets of gold, or any description whatsoever of uncoined gold, currently passing in this Territory, or shall alter or put off any kind of uncoined gold mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold as aforesaid; every such person so offending, or any person or persons aiding or abetting in or about said offense or offenses, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than fourteen years.

SEC. 71. Every person who shall wilfully and maliciously set on fire, or cause to be set on fire any timber lands, woods, prairie, grass, pasturage 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 offense, be fined in any sum not exceeding five hundred dollars.

SEC. 72. Any person or persons who shall purposely and maliciously break down, destroy or injure any fence, gate, sign-board, mile-post, car or other useful structure upon the line of any railroad shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year, or by both fine and imprisonment, and any person, or persons who shall paint, print or mark any fence, building, bridge or other structure with an advertisement, without first obtaining the consent of the agent or owner of such structure, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding fifty dollars.

CHAPTER IV.

OF OFFENSES AGAINST PUBLIC PEACE.

SEC. 73. If three or more persons shall do an act in a violent and tumultuous manner, they shall be deemed guilty of 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. 74. 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 rea-

son of their resisting the persons endeavoring to disperse or seize them, the magistrate or officers shall be held guiltless.

SEC. 75. All persons who shall have been commanded peaceably to disperse, shall refuse so to disperse, or shall willfully 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. 76. 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 spirituous liquor at any booth, wagon, shed or open place, or any boat, canoe or other water-craft, 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 people 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. 77. If two or more persons by agreement fight in any public place, the person 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 OFFENSES AGAINST PUBLIC JUSTICE, AND BY AND AGAINST
PUBLIC OFFICERS.

SEC. 78. If any person authorized by any law of this Territory to take an oath or affirmation, or of whom an oath or

affirmation shall be required by such law, shall willfully swear or affirm falsely in regard to any matter or thing concerning which such oath or affirmation is authorized or required, such person shall be deemed guilty of perjury, and if any person shall procure another to commit the crime of perjury, such person shall be deemed guilty of subornation of perjury.

SEC. 79. Every person who shall willfully, corruptly and falsely, before any officer authorized to administer oaths, under oath or affirmation, voluntarily make any false certificate, affidavit or statement of any nature, for any corrupt purpose, shall be deemed guilty of perjury.

SEC. 80. Every person convicted of the crime of perjury, committed on the trial of, or proceedings in a criminal action for a crime punishable with death or imprisonment for life, shall be punished by imprisonment in the penitentiary not less than five nor more than twenty years. Every person convicted of the crime of perjury, committed in any proceeding in a court of justice, other than such criminal action, shall be punished by imprisonment in the penitentiary, not less than three nor more than ten years, and every person convicted of the crime of perjury, committed otherwise than in a proceeding before a court of justice, or convicted of the crime of subornation of perjury, however committed, shall be punished by imprisonment in the penitentiary, not less than two nor more than five years.

SEC. 81. If any person shall endeavor to procure or incite another to commit the crime of perjury, though no perjury be committed, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one nor more than three years.

SEC. 82. 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. 83. If any executive, judicial, or ministerial officer, or member of the Legislative Assembly, shall 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. 84. 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. 85. 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. 86. 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 escaping be 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 offense wherewith he stood charged; and if the prisoner was charged with or convicted of a capital offense, he shall be imprisoned in the penitentiary not more than twenty years nor less than five years.

SEC. 87. 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 willfully 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. 88. 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. 89. If any officer authorized to serve process, shall willfully 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 any offense, or shall willfully 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. 90. If any sheriff, jailor or other officer shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, he shall, on conviction thereof, be imprisoned 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. 91. If any officer shall willfully 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. 92. If any officer or person required by law to collect, disburse, receive or keep any public money, shall willfully neglect or refuse to pay over such money at the time prescribed by law, or shall willfully refuse to pay any warrant lawfully drawn, or shall pay over a less valuable kind of money than that collected or received by him, or scrip, or county or territorial orders in lieu of money so collected or received by him in any sum whatever, 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, or both.

SEC. 93. If any auditor shall knowingly issue any warrant not authorized by law, he shall, on 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. 94. 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. 95. 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. 96. 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 that he is by law authorized to demand or receive, he shall, on conviction 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. 97. 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. 98. 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. 99. 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. 100. 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. 101. If any person shall fraudulently cause, or attempt to cause any elector, at any election 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. 102. If any elector shall vote or attempt to vote more than once at any election, or shall knowingly hand in two or more tickets together, 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. 103. 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. 104. If any person knowing that he does not possess the legal qualifications of a voter, at any election 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. 105. If any judge, inspector, clerk or any 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. 106. 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.

SEC. 107. If any person shall induce, or attempt to induce, any Indian to vote or offer his vote at any such election, such person so offending, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment in the county jail not to exceed three months, *Provided*, That this section shall not be so construed, as to include Indians, who are citizens and entitled to vote under the amendments to the constitution of the United States and the laws of Congress.

SEC. 108. If any inspector or judge of any such election shall knowingly permit any elector to cast a second vote at any such election, or shall knowingly permit any person not a qualified elector to vote at any such election, such inspector or judge of election, upon conviction thereof, shall be imprisoned in the county jail not more than thirty nor less than ten days, be fined in any sum not exceeding five hundred dollars, and be incapable of holding any office in this Territory for five years thereafter.

SEC. 109. 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. 110. Every person who shall deal at the game of 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 purpose of gaming, or shall have in his possession, to be used for such purposes, any gaming device whatever, shall, on conviction thereof, be fined in any sum not exceeding twenty-five dollars.

SEC. 111. Every person who shall let or rent any room or building for a gaming house or house of ill-fame, or for rent or hire shall permit any game to be dealt upon his premises prohibited by the preceding section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars.

SEC. 112. If the taker up of stray 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 stray property.

SEC. 113. 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 road or bridge, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 114. Every master, mate, or other officer, or other person belonging to, or in 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. 115. 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. 116. 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, he shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 117. If any supervisor of roads fail to keep the 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. 118. 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 drawing of jurors, he shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 119. 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 thereof, he shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one month.

SEC. 120. 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. 121. 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. 122. 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. 123. 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 express or implied to compound or conceal such crime, or not to prosecute therefor, 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.

SEC. 124. Any person who shall willfully or maliciously cut, carve, otherwise deface or injure any guide-board, bridge building, column, monument or structure, grounds or trees, belonging to the public or any incorporated, charitable, religious

or scientific institution shall, on conviction thereof, be fined in any sum not less than ten dollars, which shall be recoverable in any court having competent jurisdiction thereof.

CHAPTER VII.

OF OFFENSES AGAINST MORALITY AND DECENCY.

SEC. 125. 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. 126. 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. 127. 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, 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. 128. 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 polygamy, 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. 129. 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. 130. Every person who shall print, publish, sell, or distribute any book, or any pamphlet, ballad, printed paper or other thing, containing 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 the 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 than six months, or be fined in any sum not exceeding five hundred dollars.

SEC. 131. If any person not being lawfully authorized, shall willfully 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. 132. Every person who shall willfully 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. 133. 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. 134. 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. 135. 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. 136. 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. 137. Every person who shall sell or give to a minor, or person under the age of eighteen years, intoxicating or spirituous liquor, without the written permission of the parent or guardian of such minor, shall be deemed guilty of a 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.

SEC. 138. If any person shall allow any minor to play at cards in his house, without the written permission of the parent or guardian, he shall be liable to the same penalties as for furnishing to such minor spirituous liquors, as mentioned in the foregoing section.

SEC. 139. Any tavern keeper, grocery keeper, brewer, distillers, or person or persons, Indian or Indians, who shall sell, barter, give or in any manner dispose of any wines, spirituous liquors, ale, beer, porter, cider or any other intoxicating beverage, to any Indian or Indians, or Kanakas within this Territory, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof by 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 one hundred dollars for each and every offense, and in all prosecutions under this section, Indians shall be competent as witnesses.

CHAPTER IX.

OF PRINCIPALS AND ACCESSORIES.

SEC. 140. 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. 141. 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. 142. 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. 143. 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 of the county where such conviction shall have been had, to go into the general county fund. The county treasurer 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. 144. 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. 145. 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. 146. 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. 147. 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. 148. In the prosecution of any offense committed upon, or in relation to, or in any way affecting 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. 149. 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 corporation, as well as an individual.

SEC. 150. 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. 151. No prosecution for any offense committed, shall be affected 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. 152. 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 whenever in this act the word "county" or "district" occur, they shall be construed to mean either "district" or "county."

CHAPTER XII.

OF SEARCH WARRANTS AND PROCEEDINGS THEREON.

SEC. 153. 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 pretenses, 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 for such property.

SEC. 154. Any such magistrate, when satisfied that there is reasonable cause, may also upon like complaint made on oath, issue search warrant in the following cases, to wit:

1. 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.

2. 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. 155. 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. 156. 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. 157. 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 knowledge, 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. 158. When a demand shall be made upon the Gov-

ernor 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 warrant 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. 159. 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 matters as are necessary to bring the offense 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. 160. 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 a 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 there be detained until 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 conditions 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 be detained until the day so appointed for his appearance before the court or magistrate.

SEC. 161. 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 persons 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. 162. 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.

OF THE GRAND JURY.

SEC. 163. Challenges to the panel shall be allowed to any person in custody or held to answer for 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. 164. Challenges to individual grand jurors may be made by such person for reason of want of qualification 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. 165. 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 persons to act as grand jurors at such term of the court.

SEC. 166. If a challenge to an individual juror be allowed, he shall be discharged and the panel filled.

SEC. 167. The following oath shall be administered to the grand jury :

“ You, as grand jurors for the body of the (district or county, as the case may be,) do solemnly swear (or affirm) that you will diligently inquire 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 unrepresented 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. 168. 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. 169. 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. 170. The prosecuting officer may attend on the grand jury for the purpose of examining witnesses and giving them such advice as they may ask.

SEC. 171. The grand jury shall only inquire into the cases of parties in custody or under bail, charged with commission of offenses against the laws of the United States or of this Territory, and duly returned by a committing magistrate, justice of the peace or United States commissioner, or upon a complaint sworn to before an officer authorized to administer oaths and presented by the prosecuting attorney, or under the instructions of the court; and no complainant who may institute a prosecution shall be competent to be present at the deliberations of a grand jury, or vote for the finding of an indictment. Where a grand jury ignore a bill of indictment, they shall also find whether the prosecution is malicious and frivolous, and find whether the complainant or county shall pay the costs, which shall be returned with their proceedings into open court.

SEC. 172. The grand jury shall especially inquire as to the offenses 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. 173. 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. 174. No indictment shall be found unless twelve grand jurors vote for the finding thereof.

SEC. 175. 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. 176. 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. 177. Whenever the grand jury shall have been dismissed at any term of the court for which they shall have been impaneled, 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 XV.

FINDING AND PRESENTATION OF THE INDICTMENT.

SEC. 178. An indictment cannot be found without the concurrence of at least twelve grand jurors, and when so found, it must be endorsed "a true bill," and such endorsement signed by the foreman of the jury.

SEC. 179. When an indictment is found, the names of the witnesses examined before the grand jury must be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court, and if the indictment be for a misdemeanor only, and any witness has voluntarily appeared before the grand jury to complain of the defendant, his name must be marked as private prosecutor.

SEC. 180. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and filed with the clerk, and remain in his office as a public record; but if the defendant has not been held to answer the charge, neither the indictment or any order or process in relation thereto, must be inspected by any person other than the judge of the court or an officer thereof in the discharge of a duty concerning the same, until after the arrest of the defendant.

SEC. 181. No grand juror or officer of the court must disclose any fact concerning such indictment while it is not subject to public inspection; and a violation of this section, or the foregoing section, is punishable as a contempt.

SEC. 182. When a person has been held to answer a criminal charge, and the indictment in relation thereto is not found "a true bill," it must be endorsed "not a true bill," which endorsement must be signed by the foreman, and presented to the court and filed with the clerk, and remain a public record; but in

the case of an indictment not found "a true bill," against a person not so held, the same, together with the minutes of the evidence in relation thereto, must be destroyed by the grand jury.

SEC. 183. When an indictment, endorsed "not a true bill," has been presented in court and filed, the effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by the grand jury, unless the court so order.

SEC. 184. A presentment is made to the court, by the foreman, in the presence of the grand jury, and with the concurrence of twelve of their number; but being a mere informal statement of facts, for the purpose of obtaining the advice of the court as to the law arising thereon, is not to be filed in court or preserved beyond the sitting of the grand jury.

CHAPTER XVI.

THE INDICTMENT.

SEC. 185. All the forms of pleading in criminal actions, heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed herein.

SEC. 186. The first pleading on the part of the Territory is the indictment.

SEC. 187. The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties.
2. A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 188. The indictment may be substantially in the following form :

“THE TERRITORY OF WASHINGTON, } District court for the ——
 vs. } Judicial district of W. T.,
 A——— B——— } holding terms at ——.

A. B. is accused by the grand jury of the ——, by this indictment, of the crime of ——,” (here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter or the like, or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law,) “committed as follows :

“The said A. B., on the —— day of ——, 18—, in the county of —— in the district aforesaid,” (here set forth the act, charged as a crime). “Dated at ——, in the district aforesaid, the —— day of ——, A. D. 18—.” (Signed) “C. D., district attorney.” (Endorsed) “a true bill.”

(Signed) “E. F., foreman of the grand jury.”

SEC. 189. The indictment must be direct and certain, as it regards :

1. The party charged.
2. The crime charged ; and,
3. The particular circumstances of the crime charged when they are necessary to constitute a complete crime.

SEC. 190. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

SEC. 191. The indictment must charge but one crime, and in one form only, except that where the crime may be committed by use of different means, the indictment may allege the means in the alternative.

SEC. 192. The precise time at which the crime was committed need not be stated in the indictment ; but it may be alleged to have been committed at any time before the finding thereof, and within the time which an action may be commenced

therefor, except where the time is a material ingredient in the crime.

SEC. 193. When the crime involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material.

SEC. 194. When a crime involves the taking of or injury to an animal, the indictment is sufficiently certain in that respect if it describe the animal by the common name of its class.

SEC. 195. The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

SEC. 196. Words used in a statute to define a crime, need not be strictly pursued in the indictment, but other words, conveying the same meaning, may be used.

SEC. 197. The indictment is sufficient if it can be understood therefrom :

1. That it is entitled in a court having authority to receive.
2. That it was found by a grand jury of the county or district in which the court was held.
3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown.
4. That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein.
5. That the crime was committed at some time prior to the finding of the indictment, and within the time limited by law for the commencement of an action therefor.
6. That the act or omission, charged as the crime, is clearly and distinctly set forth, in ordinary and concise language, with-

ont repetition, and in such a manner as to enable a person of common understanding to know what is intended.

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

SEC. 198. No indictment is insufficient, nor can the trial, judgment or other proceedings thereon be affected by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

SEC. 199. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment.

SEC. 200. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial.

SEC. 201. In pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute, by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

SEC. 202. An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial.

SEC. 203. When an instrument which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

SEC. 204. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court, or before whom, the oath alleged to be false, was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

SEC. 205. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

CHAPTER XVII.

OF PROCEEDINGS BEFORE TRIAL.

SEC. 206. 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. 207. 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. 208. 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 indorse 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 indorse 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. 209. When writs of attachment are returnable after the close of the term, the court must direct the amount of bail to be required of the defendant.

SEC. 210. The officer must inform the defendant that he acts under authority of a warrant, and must also show the warrant if required.

SEC. 211. 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. 212. 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 given in cases of arrest.

SEC. 213. Recognizances in criminal proceedings may be taken in open court and entered on the order book.

SEC. 214. 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. 215. 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. 216. 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. 217. If without sufficient excuse the defendant neglect to appear for 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 default 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. 218. As soon as may be after the finding of an 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. 219. 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 thereof without paying any fees therefor.

SEC. 220. 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. 221. 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 XVIII.

OF THE DOCKET.

SEC. 222. 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 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 XIX.

OF THE ARRAIGNMENT OF THE DEFENDANT.

SEC. 223. 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 empaneled to hear testimony, and determine the degree of murder and the punishment therefor.

SEC. 224. 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. 225. 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 to him by the court.

SEC. 226. When the defendant is arraigned, he shall be interrogated 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. 227. 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. 228. If the indictment be for a misdemeanor, punishable by fine only, the defendant may appear upon arraignment by counsel.

CHAPTER XX.

OF WITNESSES AND EVIDENCE.

SEC. 229. 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 subpoenaed, 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, and any person accused of any crime in this Territory by indictment or otherwise, may in the examination or trial of the cause, offer himself or herself as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when such accused shall so testify he or she shall be subject to all the rules of law relating to cross examinations of other witnesses: *Provided*, That nothing in this act shall be construed to compel such accused persons to offer himself or herself as a witness in such case: *And provided further*, That it shall be the duty of the court to instruct the jury, that no inference of guilt shall arise against the accused if the accused shall fail or refuse to testify as a witness in his or her own behalf.

SEC. 230. The clerk shall, at the time of issuing a warrant for the defendant, issue a subpoena for all the witnesses whose names are indorsed 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 indorsed on the indictment.

SEC. 231. Witnesses competent to testify in civil cases shall be competent in criminal prosecutions, but regular physi-

cians 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 and character; and Indians shall be competent witnesses as hereinbefore provided, or in any prosecutions in which an Indian may be a defendant.

SEC. 232. 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. 233. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions.

CHAPTER XXI.

VENUE.

SEC. 234. The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial, which must be supported by other satisfactory proof, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county, or some part thereof, and demand to be tried by disinterested triers.

SEC. 235. When the affidavit is founded on prejudice of the judge, the court may, in its discretion, grant a change of venue to some county in another district, or may continue the cause to the next term of the court, which may be held by any other district judge; if the affidavit is founded upon excitement or prejudice in the county or district, against the defendant, the court may, in its discretion, grant a change of venue to the most convenient county or district. The clerk must thereupon make a transcript of the proceedings and order of court, and, having

sealed up the same with the original papers, deliver them to the sheriff, who must without delay deposit them in the clerk's office of the proper county, and make his return accordingly.

SEC. 236. 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 defendant and prosecuting attorney consent to so try the case.

SEC. 237. The court may at its discretion at any time order a change of venue or place of trial to any county or district in the territory, upon the written consent or agreement of the prosecuting attorney and the defendant.

SEC. 238. When a change of venue is ordered, if the offense be bailable, the court shall recognize the defendant, and, in all cases, the witnesses to appear at the term of the court to which the change of venue was granted.

CHAPTER XXII.

OF TRIALS.

SEC. 239. 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.

SEC. 240. In prosecution for capital offenses, the defendant may challenge peremptorily 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. 241. The prosecuting attorney, in capital cases, may challenge peremptorily six jurors, in all other cases, three jurors.

SEC. 242. 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. 243. 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. 244. 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. 245. 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. 246. The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in capital cases.

SEC. 247. No person prosecuted for an offense punishable by death, or by confinement in the penitentiary or in the county jail, shall be tried unless personally present during the trial.

SEC. 248. No person prosecuted for an 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. 249. The court shall decide all questions of law which shall arise in the course of the trial. The same laws in relation to giving instructions 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. 250. 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 meat or drink, unless otherwise ordered by the court, to be furnished at the expense of the county.

SEC. 251. The court may order a view by any jury impaneled to try a criminal case.

SEC. 252. When two or more defendants are indicted jointly, any defendant requiring it shall be tried separately.

SEC. 253. 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 Territory. 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. 254. 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 appear 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. 255. 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. 256. When a jury has been impaneled in either case contemplated in the two last preceding sections, such jury may be discharged without prejudice to the prosecution.

SEC. 257. 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. 258. 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. 259. 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. 260. 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. 261. 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 re-consider their verdict ; and if, after such re-consideration 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. 262. When any person indicted for an offense shall, on trial, be acquitted 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. 263. 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. 264. When the defendant is found guilty, the court, and not the jury, shall fix the amount of fine and the punishment to be inflicted. The verdict of the jury may be substantially in the following form :

“ We, the jury, in the case of the Territory of Washington,

plaintiff, against —, defendant, find the defendant (guilty or not guilty, as the case may be.) (Signed,) A. B., Foreman.

SEC. 265. 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 XXIII.

OF NEW TRIALS AND ARRESTS OF JUDGMENT.

SEC. 266. An application for a new trial must be made before judgment, and may be granted for the following causes:

1. 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.

2. Misconduct of the jury.

3. For newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial.

4. Accident or surprise.

5. Admission of illegal testimony and misdirection of the jury by the court, in a material matter of law, excepted to, at the time.

6. When the verdict is contrary to law and evidence; but not more than two new trials shall be granted for these causes alone.

SEC. 267. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the preceding section, the facts on which it is based shall be set out in an affidavit.

SEC. 268. Judgment may be arrested on the motion of the defendant for the following causes:

1. 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.

2. That the facts as stated in the indictment do not constitute a crime or misdemeanor.

SEC. 269. The court may also, on its view of any of these defects, arrest the judgment without motion.

SEC. 270. 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 re-committed, or admitted to bail anew, to answer a new indictment.

SEC. 271. Exceptions may be taken by the defendant, as in civil cases, on any matter of law by which his substantial rights are prejudiced.

CHAPTER XXIV.

OF JUDGMENTS AND EXECUTIONS.

SEC. 272. 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. 273. 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 ; judgment may then be rendered in his absence.

SEC. 274. 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. 275. 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. 276. 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. 277. When the defendant is adjudged to pay a 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. 278. 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. 279. Every court before whom any person shall be convicted upon an indictment for an 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. 280. 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. 281. 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 such fine and costs.

SEC. 282. 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. 283. 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, 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. 284. 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, who shall execute it accordingly.

SEC. 285. 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 in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order.

SEC. 286. If there shall be no penitentiary within 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. 287. 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 costs, no execution shall issue therefor. When any defendant is in the custody of the sheriff, by virtue of a sentence of imprisonment in the county jail, and there be no county jail in the county, he shall, under order of the county commissioners, who shall make such order, cause such person to work out his unexpired term of imprisonment, in such manner as they may direct.

SEC. 288. 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. 289. The punishment of death prescribed by law must be inflicted by hanging by the neck.

SEC. 290. 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. 291. 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 of the sentence of death.

SEC. 292. 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 of petit jurors, judgment, orders or decision, and bill of exceptions.

CHAPTER XXV.

ACTIONS ON FORFEITED RECOGNIZANCES.

SEC. 293. In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments.

SEC. 294. The parties, or either of them, against whom such judgment may be entered in the district or supreme courts, may stay said execution till the next regular term of the court in which such judgment is entered, by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment after the adjournment of such succeeding term of court, unless the same shall be vacated before the end of such term.

SEC. 295. If a bond be given and execution stayed, as provided in the preceding section, and the principal shall be produced at such term of court, the judge may vacate such judgment upon such terms as may be just and equitable, otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors.

CHAPTER XXVI.

OF WRITS OF ERROR AND APPEALS.

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 arrested 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, as 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 affect 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 by 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 in so far 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 felony be allowed the benefit of bail, but such a 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 errors shall be dismissed for any informality or defect in taking or suing out the same, if such informality or defect shall be corrected within a reasonable 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 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. All persons in custody charged with the commission 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 maintenance 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 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 pardons 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 respites 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 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 of 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 windows of a dwelling house or other building, or any other inclosure, 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 thereof, or to supply any omitted case, are hereby continued in force, but all laws heretofore enacted upon any matter provided for by this act, are hereby repealed, and hereafter judgments shall only be pronounced and enforced in criminal cases, for crimes and offenses prescribed by this act: *Provided*, That no offense against the laws heretofore in force shall be affected by the provisions of this act, except when any punishment may have been mitigated,

they may be extended and applied to any judgment hereafter to be pronounced.

APPROVED, November 10, 1873.

AN ACT

DEFINING THE JURISDICTION AND PRACTICE IN THE PROBATE COURTS OF WASHINGTON TERRITORY.

CHAPTER I.

THE PROBATE COURT, ITS POWERS AND JURISDICTION.

SECTION 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 two years thereafter in each county in this Territory, one suitable person, who shall have the qualifications of an elector, who shall be styled the judge of the probate court, and the court hereby constituted shall be called the probate court, and such judge shall hold his office for two years, and until his successor is duly elected and qualified. The county auditor shall certify the name of the person elected to the Governor of the Territory, who shall thereupon commission said person judge of the probate court of the county for which he may have been elected.

SEC. 2. Every person elected judge of the probate court shall at the time of filing his oath of office enter into a bond with the Territory of Washington, with two or more sureties residents of his county, to be approved by the board of county commissioners of his county, in a sum of not less than one thousand nor more than ten thousand dollars, to be fixed by the

said county commissioners, conditioned that he will well and faithfully perform the duties of his office and pay over according to law any and all moneys that may come into his hands as such judge.

SEC. 3. The said probate court shall have and possess the following powers :

1. Exclusive original jurisdiction within their respective counties in all cases relative to the probate of last wills and testaments.

2. The granting of letters testamentary and of administration, and revoking the same.

3. The appointment and displacing guardians of orphans, minors and of persons of unsound mind, and the binding of apprentices.

4. In the settlement and allowance of accounts of executors, administrators and guardians.

5. To hear and determine all disputes and controversies between masters and their apprentices. •

6. To allow or reject claims against estates of deceased persons as hereinafter provided.

7. To award process and cause to come before said court all and every person or persons whom they may deem necessary to examine, whether parties or witnesses, or who, as executors, administrators or guardians or otherwise, shall be entrusted with, or in any way be 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.

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SEC. 6. A regular term of the probate court shall be held at the county seat of each county, commencing on the fourth Monday in January, April, July and October, for the transaction of all business of which said court has jurisdiction: *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 judges of the several probate courts in the Territory of Washington may act as clerks of said court and receive the fees for such clerical services, or they may appoint the clerk, who shall qualify in the same manner and be subject to the same restrictions as prescribed by law for clerks of the district court, and be entitled to receive the fees and emoluments as prescribed by law.

SEC. 8. 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 process issuing out of the district court.

SEC. 9. 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. 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 in which he may have been counsel.

SEC. 12. 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 district court of the district including the county, which shall proceed thereon to final judgment and determination.

SEC. 13. 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 upon the record of the court.

SEC. 14. Each judge of probate court shall be a conservator of the peace throughout his county.

SEC. 15. Letters of administration, or letters of guardianship, may be granted, inventory or account of sale of property returned during term time or vacation, and be entered of record of the same day that such grant or return shall be made.

CHAPTER II.

PRACTICE IN PROBATE CASES.

SEC. 16. 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 clerk 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. 17. The officer to whom the citation is directed, shall serve it by delivering a copy to the person or persons named

therein, and shall return the original to the court according to its direction, endorsing thereon the time and manner of service.

SEC. 18. In all cases in which citations are issued from the probate court, they shall be served at least ten days before the first day of the term, except when issued from the court in cases where the law requires the judge to issue them upon his own motion, and he does so issue them, and in such cases they shall be served in sufficient time to allow the person served to be in attendance on the court, and may be made returnable on any day of the term.

SEC. 19. All orders, settlements, trials, and other proceedings entrusted 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. 20. 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 the 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. 21. In all matters pending in the probate court where the deposition of a witness or witnesses becomes necessary, said court, or the judge thereof, shall issue a commission for taking the same, in like manner and with like restrictions as are prescribed in the civil practice act. And any or all such depositions lawfully taken upon any issue pending in the probate court may be used on an appeal to the district court.

CHAPTER III.

WILLS AND RULES APPLICABLE TO AND GOVERNING THEIR CONSTRUCTION.

SEC. 22. Every person who shall have attained the age of majority, of sound mind, may by last will, devise all his or her estate, real and personal.

SEC. 23. Every will shall be in writing, signed by the testator or testatrix, or by some other person under his or her 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. 24. Every person who shall sign the testator's or testatrix's name to any will by his or her 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. 25. 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 testatrix, or in his or her presence, or by his or her consent and direction.

SEC. 26. If, after making any will, the testator shall marry and the wife shall be living at the time of the death of the testator, such will shall be deemed revoked, unless provision shall have been made for her by marriage settlement or unless she 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. 27. 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, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific 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. 28. 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. 29. 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. 30. 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. 31. 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. 32. 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. 33. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, unless the same be proved by two witnesses, who were present at the making thereof, and 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, and 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. Nothing herein contained shall prevent any mariner at sea, or soldier in the military service from disposing of his wages or other personal property by nuncupative will.

SEC. 34. 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 to the widow or next of kin of the deceased, that they may contest the will if they think proper.

SEC. 35. 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 witnesses to the same, but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. 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.

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 intent and meaning of the testator in all matters brought before them.

SEC. 43. Words in this chapter contained, or in this act which impart the singular number only, may also be applied to the plural of persons and things, and words imparting the masculine gender only, may be extended to females also when such construction shall be necessary.

CHAPTER V.

VENUE.

SEC. 44. Wills shall be proved and letters testamentary or of administration shall be granted:

1. In the county of which deceased was a resident or had his place of abode at the time of his death.
2. In the county in which he may have died, leaving estate therein, and not being a resident of the Territory.
3. 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. 45. 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 VI.

OF THE PROOF OF WILLS.

SEC. 46. 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. 47. 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. 48. An executor named in the 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. 49. 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. 50. 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. 51. 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. 52. 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. 53. Applications for the probate of a will, or for letters testamentary, may be made to the judge of the probate court in vacation, and he may also at any time issue all necessary orders and process to enforce the production of any will.

SEC. 54. 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. 55. 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. 56. If such witness appear before such officer 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 presence of the testator, the testimony so taken shall have the same force as if taken before the court.

SEC. 57. 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 handwriting 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. 58. 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 handwriting 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. 59. All the testimony adduced in support of the will shall be reduced to writing, signed by the witnesses and certified by the judge of the probate court.

SEC. 60. All wills shall be recorded in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed.

SEC. 61. Every will proved according to the provisions of this act, recorded and certified by the judge of the probate court

and attested by the seal of said court, may be read as evidence without any further proof.

SEC. 62. The record of any will made, proved and recorded as aforesaid, 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 be if produced and proven.

SEC. 63. In all cases where 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. 64. 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. After the trial of such issue, without an appeal or writ of error shall be taken in said case to the supreme court, the district court shall remit the proceedings upon such trial, together with the findings and decision, to the probate court. The probate court shall render judgment according to the decision of the district court, or upon appeal to the supreme court, then upon the judgment or decision of said supreme court.

SEC. 65. 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 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. 66. 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 period of one year after their respective disabilities are removed.

SEC. 67. 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. 68. 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. 69. 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. 70. 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. 71. 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 persons interested having first been given ; such proof 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. 72. 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. 73. 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 VI.

LETTERS TESTAMENTARY AND OF ADMINISTRATION, AND BONDS OF EXECUTORS AND ADMINISTRATORS.

SEC. 74. 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, 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. 75. Any person interested in a will may file objections in writing to the granting of letters testamentary, to the persons named as executors, or any of them, and the objection shall be heard and determined by the court.

SEC. 76. 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. 77. 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. 78. 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. 79. 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. 80. If an executor or administrator become of unsound mind, or be convicted of felony or other infamous crime, or become an habitual drunkard, or otherwise incapable of or unsuitable for executing the trust reposed in him, or so fail to discharge his official duties, or waste or mismanage the estate, or so act 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 found to be just, shall revoke the letters granted.

SEC. 81. 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. 82. 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. 83. 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. 84. 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. 85. 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. 86. The judge of probate shall cause to be recorded 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. 87. 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. 88. 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. }

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 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.

Witness my hand and the seal of said court this _____ day of _____, A. D., 18_____.

SEC. 89. Letters of administration with the will annexed, may be substantially in the following form:

UNITED STATES OF AMERICA, }
 Territory of Washington. }

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.

Witness my hand and the seal of said court this _____ day of _____ A. D., 18_____.

SEC. 90. 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:

1. The surviving husband, or wife, or such person as he or she may request to have appointed.
2. The next of kin in the following order: 1. Child or children; 2. Father or mother; 3. Brothers or sisters; 4. Grand children.
3. To one or more of the principal creditors: *Provided*, That if the persons so entitled or interested shall neglect for

more than forty days after the death of the intestate to present a petition for letters of administration, the probate court or judge may appoint any suitable and competent person to administer such estate.

SEC. 91. 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. 92. 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. 93. 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. }

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.

Witness my hand and the seal of said court this _____ day of _____, A. D., 18_____.

SEC. 94. Every executor or administrator, before entering upon the execution of his trust, shall give bond with sufficient sureties, resident of the proper county, in such sum as the judge of the probate court 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 said 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. 95. 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. 96. 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. 97. The judge of the probate court 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. 98. The judge of the probate court shall cause to be recorded in a well-bound book kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular files.

SEC. 99. 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 insufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond at least ten days' notice of such application, the court, if satisfied, may order new and additional security to be given.

SEC. 100. 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 wasting the estate, and shall have given to the principal in such bond at least ten days' notice of such complaint, the court shall make examination of the same, and if satisfied, shall order new or additional security 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 the probate court may, in his discretion, appoint a special admin-

istrator, (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 the probate court shall order, payable to the Territory of Washington, with condition as required of an executor, or in other cases of administration, to make and return into the probate court as soon as practicable, 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 probate court, 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 administrator 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 probate court shall order sold, and he shall be allowed such compensation for his services as the said court 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 the usual form, in like manner as if such special administration had not been granted.

SEC. 109. The special administrator shall also render an account under 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.

SEC. 111. Such person shall then surrender his letters, his power from that time shall cease, and he shall pay the expense 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 to 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.

SEC. 113. If the executor or administrator of an estate shall die, resign, or the letters be revoked before the settlement of the estate, letters of administration of the goods remaining unadministered, shall be granted to 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 *de bonis non* 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 by 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 not show good cause for such failure, after having been cited for that purpose, the probate court shall order such executor or administrator 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 delinquent 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, the collection of which costs may be enforced by attachment.

SEC. 120. The executor or administrator of a deceased person who was a member of a co-partnership, shall include in the

inventory of such person's estate, in a separate schedule, the whole of the property of such partnership; and the appraisers shall estimate the value thereof, and also the value of such person's individual interest in the partnership property, after the payment or satisfaction of all the debts and liabilities of the partnership.

SEC. 121. After the inventory is taken, the partnership property shall be in the custody and control of the executor or administrator for the purposes of administration, unless the surviving partner shall within five days from the filing of the inventory, or such further time as the court may allow, apply for the administration thereof, and give the bond therefor hereinafter prescribed.

SEC. 122. If the surviving partner apply therefor, as provided in the last section, he is entitled to the administration of the partnership estate, if he have the qualifications and competency required for a general administrator. He is denominated an administrator of the partnership, and his powers and duties extend to the settlement of the partnership business generally, and the payment or transfer of the interest of the deceased in the partnership property remaining after the payment or satisfaction of the debts and liabilities of the partnership, to the executor or general administrator within six months from the date of his appointment, or such further time, if necessary, as the court may allow. In the exercise of his powers and the performance of his duties, the administrator of the partnership is subject to the same limitations and liabilities, and control and jurisdiction of the court, as a general administrator.

SEC. 123. The bond of the administrator of the partnership shall be in a sum not less than double the value of the partnership property, and shall be given in the same manner and be of the same effect as the bond of a general administrator.

SEC. 124. In case the surviving partner is not appointed administrator of the partnership, the administration thereof devolves upon the executor or general administrator, but before entering upon the duties of such administration, he shall give

an additional bond in double the value of the partnership property.

SEC. 125. Every surviving partner, on the demand of an executor or administrator of a deceased partner, shall exhibit and give information concerning the property of the partnership at the time of the death of the deceased partner, so that the same may be correctly inventoried and appraised; and in case the administration thereof shall devolve upon the executor or administrator, such survivor shall deliver or transfer to him on demand, all the property of the partnership, including all books, papers and documents pertaining to the same, and shall afford him all reasonable information and facilities for the performance of the duties of his trust.

SEC. 126. Any surviving partner who shall refuse or neglect to comply with the requirements of the last section, may be cited to appear before the court and unless he show cause to the contrary, the court shall require him to comply with such section in the particular complained of.

SEC. 127. The following persons are not qualified to act as executors or administrators: Non-residents of this Territory, minors, judicial officers other than justices of the peace, persons of unsound mind or who have been convicted of any felony or of a misdemeanor involving moral turpitude, or a married woman. And when any person to whom letters testamentary or of administration have been issued, becomes disqualified to act because of leaving the Territory, becoming of unsound mind, or is convicted of any crime or misdemeanor involving moral turpitude, or of a woman and she ceases to be single, the probate court having jurisdiction shall revoke his or her letters as in this act provided.

SEC. 128. In all cases where it is provided in the last will and testament of the deceased, that the estate shall be settled in a manner provided in such last will and testament, and that letters testamentary or of administration shall not be required, it shall not be necessary to take out letters testamentary or of administration, except to admit to probate such will in the man-

ner required by existing laws, and after the probate of such will, all such estates may be managed and settled without the intervention of the probate court, if the said last will and testament so provides: *Provided, however,* In all such cases, if the party named in such will as executor shall decline to execute the trust, or shall die or be otherwise disabled from any cause from acting as such executor, then letters testamentary or of administration shall issue as in other cases: *And provided further,* If the party named in the will shall fail to execute the trust faithfully and to take care and promote the interests of all parties taking under the will, then upon petition of any creditor of such estate, or of any of the heirs, or of any person on behalf of any minor heirs, it shall be the duty of the probate court of the county wherein such estate is situated, to cite such person having the management of such estate to appear before such court, and if, upon hearing of such petition, it shall appear that the trust in such will is not faithfully discharged, and that the parties interested or any of them have been or are about to be damaged by such acts or doings of the executor, then letters testamentary or of administration shall be had and required in such cases, and all other matters and proceedings shall be had and required as are now required in the administration of estates, and in such cases, the costs of the citation and hearing shall be charged against the party failing and neglecting to execute the trust as required in such will.

CHAPTER VII.

OF THE INVENTORY AND EFFECTS OF DECEASED PERSONS.

SEC. 129. 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 tenantable repair all houses, buildings and fixtures thereon, which are under his control.

SEC. 130. Every executor and administrator shall make and return, upon oath, into the probate court, within one month after his appointment, a true inventory of the real and personal estate of the deceased, which shall come to his possession or knowledge.

SEC. 131. The estate and effects comprised in the inventory, shall be appraised by three suitable disinterested persons, who shall be appointed by the probate court. If any part of the estate shall be in another county than that in which letters are issued, appraisers residing in such county may be appointed by the probate court having jurisdiction of the case, or if most advisable the same appraisers may act. Such appraisers shall receive as compensation for their services, three dollars per day, to be paid out of the estate, and when they have to go out of their county mileage shall be allowed.

SEC. 132. Before proceeding to the discharge of their duties, the appraisers shall take and subscribe an oath before any officer authorized to administer oaths, 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; 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, 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. 133. 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. 134. The naming of any person as executor in a will, or the appointment of any person as administrator, shall not operate as a discharge from any just claim which the testator or intestate had against the executor or administrator, but the claim shall be included in the inventory, and the executor and administrator shall be liable to the same extent as he would have been had he not been appointed executor or administrator.

SEC. 135. 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 proportions as other specific legacies.

SEC. 136. The inventory shall be signed by the appraisers, and be verified by the oath of the executor or administrator to the effect that the inventory contains a true statement of all of 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.

SEC. 137. If any executor or administrator shall neglect or refuse to return the inventory within the period 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 to any party interested for the injury sustained by the estate through his neglect.

SEC. 138. Whenever property, not mentioned in an inventory 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 additional inventory to be returned, subscribed and sworn to as is provided in this chapter, as soon as practicable after the discovery thereof, and the making of such inventory may be enforced, after notice, by attachment to which may be added the revocation of the letters.

SEC. 139. 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. 140. 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. 141. If the executor, administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate court, 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. 142. 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. 143. The probate court 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 said 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.

SEC. 144. If by 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 five 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. 145. Whenever it shall appear from the inventory or from other satisfactory showing, that the estate of any decedent does not exceed one thousand dollars in value, the costs, fees and charges in the administration of the same shall be reduced to half the amounts now allowed by law: *Provided, however,* That nothing in this section shall be so construed as to conflict with the next preceding section withdrawing certain estates from further proceedings in administration.

CHAPTER VIII.

PROVISION FOR THE SUPPORT OF THE FAMILY.

SEC. 146. When a person shall die, leaving a widow and minor child or children, the widow, child or children shall 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.

SEC. 147. 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. 148. 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.

SEC. 149. 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. 150. 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. 151. 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 distribution according to law.

CHAPTER IX.

OF CLAIMS AGAINST THE ESTATE.

SEC. 152. 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 probate court shall deem necessary, but not less than once in a week for four successive weeks.

SEC. 153. 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. 154. If a claim be not presented within one year after the first publication of the notice, it shall be barred.

SEC. 155. 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. 156. When a claim accompanied by the affidavit required in the preceding section has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the judge of the probate court, who shall in the same manner indorse on it his allowance or rejection. If the executor or administrator reject the claim, he shall notify the claimant forthwith of said rejection.

SEC. 157. Every claim which has been allowed by the executor or administrator and the said judge, 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. 158. Any judge of a probate court may present a claim against the estate of any decedent for allowance, to the executor or administrator, and if the executor or administrator allows such claim, he shall in writing designate some judge of the probate court of an adjoining county, and the said 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. 159. When a claim is rejected by either the executor, administrator or the judge of probate court, the holder must bring suit in the proper court against the executor or administrator within three months after its rejection, otherwise the claim shall be forever barred.

SEC. 160. No claim shall be allowed by the executor, administrator or probate court which is barred by the statute of limitations.

SEC. 161. 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. 162. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

SEC. 163. 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. 164. Whenever any claim shall have been presented to an executor or administrator and the judge of the probate court, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. 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. 165. 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 court; and the judgment shall be that the executor or administrator 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. 166. 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. 167. 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 judge of the probate court. Upon filing the agreement in the probate court, the court shall enter an order referring the matter in controversy to the persons so selected.

SEC. 168. 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. 169. 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 court, and its allowance by the judge shall be sufficient evidence of its correctness.

SEC. 170. If the 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. 171. 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.

SEC. 172. In case of resignation or removal for any cause of any executor or administrator, and the appointment of another or others after notice has been given by publication as required by law by such executor or administrator first appointed to persons to present their claims against the estate or be forever barred, it shall be the duty of the judge of the probate court to cause notice of such resignation or removal and such new appointment to be published two successive weeks in the same newspaper in which the original notice was published, if the publication of such paper is at the time continued, and if not, then in some other newspaper published in the Territory; and said estate shall be closed up and settled within the year from the date of said original notice, unless further time be granted by the probate court as provided by law.

CHAPTER X.

SALES OF PROPERTY BY EXECUTORS AND ADMINISTRATORS.

SEC. 173. No sale of any property shall be valid unless made under order of the probate court.

SEC. 174. 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. 175. At the term of the court at which the inventory is returned, the executor or administrator 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.

SEC. 176. 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. 177. 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. 178. 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 ten 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. 179. 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. 180. 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 probate court. To obtain such order he shall present a petition to the 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 condi-

tion 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. 181. 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 court shall thereupon make an order, directing all persons interested to appear 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 the real estate of the deceased, or so much thereof as shall be necessary, as shall be requisite to pay such allowances, charges and debts.

SEC. 182. 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 to such sale, the notice may be dispensed with.

SEC. 183. The probate court 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 allegation and proofs of the petitioners and of all persons interested in the estate, who may oppose the application.

SEC. 184. 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 no

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. 185. 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 cases.

Sec. 186. 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 of the interest of all concerned.

SEC. 187. If the probate court 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. 188. The order shall specify the lands to be sold and the terms of sale, which may be either for cash or on credit, and 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. 189. 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 hearing.

SEC. 190. Upon making such order, the clerk of the probate court shall deliver it to the executor or administrator, who shall thereupon be authorized to sell the real estate as directed.

SEC. 191. 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 proper certainty.

SEC. 192. 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. 193. 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. 194. 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. 195. 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 court, 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. 196. 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. 197. 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. 198. 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 conveyance; 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. 199. Before any order is entered confirming the sale, it shall be proven to the satisfaction of the probate court that notice of the sale was given, as herein prescribed, and the order of confirmation shall state that such proof was made.

SEC. 200. 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 its 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. 201. 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. 202. 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 administrator.

SEC. 203. 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. 204. 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.

SEC. 205. 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. 206. If the 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. 207. 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 court 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 court shall approve.

SEC. 208. 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 person 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. 209. 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 land 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. 210. 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. 211. 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 required in other cases of real estate provided for in this act, and the executor or administrator shall thereupon 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 the sale, shall first be applied to the payment and discharge of such mortgage, and the residue in due course of administration. If said sale of the mortgaged premises shall be insufficient to secure the mortgage debt, the mortgagee shall file a claim for balance, authenticated as other claims and payable in due course of administration.

SEC. 212. If there shall be any neglect or misconduct in the proceedings of the executor 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. 213. 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.

CHAPTER XI.

OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR AND OF THE MANAGEMENT OF THE ESTATE.

SEC. 214. 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. 215. 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. 216. 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. 217. 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. 218. 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. 219. 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 court, compound with him and give him a discharge upon receiving a fair and just dividend of his effects.

SEC. 220. 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, which deed or conveyance by law 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, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 221. 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; and the creditors making such applications shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the probate court shall direct.

SEC. 222. 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 XII.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SEC 223. 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. 224. 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 court shall appoint a time and place for hearing such petition, which shall be 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. 225. 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 publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear and resist 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. 226. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the probate court is satisfied that the petitioner is

entitled to a conveyance of the real estate described in the petition, the court shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

SEC. 227. Any person interested may, within thirty days, 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, 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 auditor 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. 228. If, upon a hearing in the probate court as hereinbefore provided, the said court shall doubt the right of the petitioner to have a specific performance of the contract, the petition shall be dismissed without prejudice to the rights of the petitioner who may at any time within three months thereafter, institute proceedings in the proper district court to enforce a specific performance.

SEC. 229. 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. 230. A copy of the decree for the conveyance made by the probate court and duly certified and recorded in the office of the county auditor of the county where the lands lie, shall give to 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. 231. 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 processes.

SEC. 232. 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 XIII.

OF ACCOUNTS TO BE RENDERED BY EXECUTORS OR ADMINISTRATORS AND OF THE PAYMENT OF DEBTS.

SEC. 233. 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. 234. 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. 235. 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 excess 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. 236. 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. 237. 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. 238. 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. 239. 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 court 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. 240. 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. 241. 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 court to issue a citation requiring him to appear and render it.

SEC. 242. Any person interested in the estate may at any time before the final settlement of accounts, present his petition to the probate court 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. 243. If the probate court be satisfied, 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, a citation shall be issued 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 an exhibit as prayed for.

SEC. 244. 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. 245. 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. 246. 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 court 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. 247. 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 succeeding to the administration of the estate, in like manner as he might have been cited by any person interested in the estate, during the time he was administrator or executor.

SEC. 248. If the executor or administrator resides out of the county, or absconds or conceals himself so that the citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after having been committed where the attachment has been executed, his letters shall be revoked..

SEC. 249. In rendering his account the executor or administrator shall produce vouchers for 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. 250. 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 whom payment was made, if such oath be uncontradicted; but such allowances, in the whole, shall not exceed three hundred dollars for payment in behalf of any one estate.

SEC. 251. When the account is rendered for settlement, notice for the hearing and settlement thereof shall be given by the probate court, 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 account, which shall be on some day of a regular term of court. The court may order such further notice to be given as he may deem proper.

SEC. 252. 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. 253. 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. 254. The hearing and allegations of the respective parties may be adjourned from time to time as shall be necessary.

SEC. 255. 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 right 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. 256. The account shall not be allowed 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. 257. The debts of the estate shall be paid in the following order :

1. Funeral expenses.
2. Expenses of the last sickness.
3. Debts having preference by the laws of the United States.
4. Taxes or any dues to the Territory.
5. 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.
6. All other demands against the estate.

SEC. 258. 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. 259. 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. 260. 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. 261. Upon the settlement of the accounts of the executor or administrator at the end of the year, as required by 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 executors or administrators, the court shall specify in the decree the sum to be paid each creditor.

SEC. 262. 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 reduction therefrom of the legal interest for the time the claim has yet to run he shall be entitled to be paid accordingly.

SEC. 263. 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 judgment of 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 be liable on his bond to each creditor.

SEC. 264. 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. 265. If all the debts shall have been paid by the first distribution, 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 same.

SEC. 266. 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 hands 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. 267. 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 XVI.

OF THE PARTITION AND DISTRIBUTION OF THE ESTATE.

SEC. 268. 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. 269. 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. 270. 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. 271. If, on the hearing, it appear to the court that the estate is but little in debt, and that the share of the 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 court, and with sureties to be approved by the judge thereof, 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. 272. 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. 273. 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. 274. 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 equally apportioned among them.

SEC. 275. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator 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. 276. Upon the settlement of the account 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 among the persons who are by law entitled.

SEC. 277. In the decree the court shall name the person and the portion or part 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. 278. 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. 279. 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 court, 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. 280. 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. 281. 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 court may direct.

SEC. 282. 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. 283. 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. 284. 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, 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 the commissioners appointed by probate court, and sworn for that purpose.

SEC. 285. When any tract of land or tenement, shall be of greater value than either party's share of 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. 286. 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. 287. 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. 288. 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. 289. 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, under the seal of the court, shall be recorded in the office of the county auditor in the county where the land lies.

SEC. 290. 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. 291. 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. 292. 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. 293. Such agent shall give a bond to the county in which such estate shall be situated, to be approved by the court, 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. 294. 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 county auditor, and another with the probate court.

SEC. 295. 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 preceding section, and may be sued thereon by any person interested.

SEC. 296. When any person shall appear and claim the money paid into the treasury, the probate court making the dis-

tribution, 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. 297. 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 entitled, the court shall make a decree discharging him from all liability to be incurred thereafter.

SEC. 298. 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 XVII.

THE APPOINTMENT AND DUTIES OF GUARDIANS.

SEC. 299. The probate court of each county, when it shall become necessary, 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. 300. If the minor is under fourteen years of age, the 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 court, shall be appointed accordingly: *Provided*, That no judicial officer, excepting justice of the peace, no person of unsound mind or a party convicted of felony, or of a misdemeanor involving moral turpitude,

shall be appointed guardian, and when a guardian shall incur either of the foregoing disabilities he shall be displaced. If a guardian becomes probate judge, the district court of the proper county or district shall appoint his successor.

SEC. 301. 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 court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

SEC. 302. 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. 303. The father of the minor if living, and in case of his decease, the mother, being themselves respectively competent to transact their own business, shall be entitled to the guardianship of a minor.

SEC. 304. 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. 305. 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, except as hereinafter provided, 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. 306. Guardians, by virtue of their office as such, shall be allowed, in all cases to prosecute and defend for their wards.

SEC. 307. The probate court 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 probate court 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 into 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 the use and benefit of any person entitled by a breach thereof, until the whole penalty shall be recovered thereon.

SEC. 308. Probate courts 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 guardianship, 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. 309. It shall be the duty of every guardian of any minor:

1. 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 court to remove him and appoint a successor.

2. To manage the estate for the best interest of his ward.

3. 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.

4. 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.

5. 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.

6. 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. 310. 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. 311. The probate court in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered of 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 re-

moved, 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. 312. All the provisions of this act relative to bonds given by executors and administrators, shall apply to bonds taken of guardians.

SEC. 313. 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. 314. Nothing contained in this act shall affect 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, or to commence and prosecute any suit in his behalf.

SEC. 315. 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 court may, on the application of such guardian, order the same, or a part thereof, to be sold.

SEC. 316. Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth:

1. The value and character of all personal estate belonging to such ward that has come to the knowledge or possession of such guardian.
2. The disposition made of such personal estate.
3. 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.

4. The annual value of the real estate of the ward.
5. The amount of rent received and the application thereof.
6. The proposed manner of re-investing the proceeds of the sale, if asked for that purpose.
7. Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.
8. The age of the ward, where and with whom residing.
9. 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 belonging 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. 317. 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.

SEC. 318. All the provisions of the act regulating sales by executors and administrators shall be applicable to sales made by guardians.

SEC. 319. 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. 320. 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. 321. The guardian of any minor may join in and assent to the partition of the real estate of such minor, under the direction of the court, upon a petition for partition.

SEC. 322. 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. 323. When the guardian and ward are both non-residents, and the ward is entitled to property in this Territory, which may be removed to another State or Territory, without conflict to any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the State or Territory in which such ward may reside, upon the application of the guardian to the judge of the probate court of the county in which the estate of the ward, or the principal part thereof, may be, in the manner following:

The guardian so applying must produce a transcript from the records of a court of competent jurisdiction, certified according to the laws of this Territory, showing his appointment as guardian of the ward in the State or Territory in which he and the said ward reside; that he has qualified as such according to the laws thereof, and given bond, with sureties, for the performance of his trust; and must also give thirty days' notice to the resident executor, administrator, guardian, agent or trustee, if there be such of the applications: Thereupon, if no objection be made, or if no good cause be shown to the contrary, the judge of the probate court shall make an order granting such guardian leave to remove the property of said ward to the State or Territory in which he or she may reside; which order shall be full and complete authority to said guardian to sue for and receive the same in his own name, for the use and benefit of said ward.

SEC. 324. 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. 325. 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 XVIII.

RELATING TO IDIOTS AND INSANE.

SEC. 326. 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 of their estates, real and personal; the maintenance of themselves and families, and the education of their children.

SEC. 327. The probate court of any county in this Territory, upon application of any person under oath, setting forth that any person by reason of insanity is unsafe to be at large, or is suffering under mental derangement, shall cause such person to be brought before said court at such time and place as the judge may direct; and the judge shall cause to appear before him at said time and place, one or more respectable physicians, who shall state under oath in writing, their opinion of the case, which opinion shall be carefully preserved by the said judge with the other papers of the case; and if the said physician shall certify to the insanity or idiocy, (as the case may be) of said person, he shall cause them to be taken and placed in the asylum for the insane and idiotic. The said judge shall also cause inquiry to be made into the ability or inability of such insane or idiotic person to bear the charge or expense for the time he may remain under treatment, and he shall certify the result to the governor; and in those cases where the person possesses the ability to pay the expense, the said judge shall cause to be placed in the hands of the governor the amount of two months' expenses in said asylum in advance, and regularly every two months there-

after, so long as said person shall continue in said asylum; but the indigent insane shall, in all cases be maintained at the expense of the Territory.

SEC. 328. The county shall, in all cases where the person is indigent, be at the expense of such conveyance to the asylum, and in the event of the death of such person, be chargeable with the funeral expenses.

SEC. 329. Paying patients, whose friends or whose property can pay their expenses shall do so in accordance with the contract made with the proprietors of the institution; the charge in all cases shall be reasonable and in proportion to the amount of care and accommodation required by their friends or guardians.

SEC. 330. If it be found by the court 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 estate of such insane person.

SEC. 331. 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. 332. If the person alleged to be insane shall be discharged and it shall be thought by the court that there were no grounds for such impression of insanity, then the cost shall be paid by the person at whose instance the proceeding was had, and execution may issue for the same.

SEC. 333. 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. 334. 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 such manner as the court shall decide.

SEC. 335. 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. 336. 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 to his knowledge. 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. 337. All such inventories shall be made in the presence of, and attested by two credible witnesses in the neighborhood, and shall be verified by the oath of the guardian.

SEC. 338. 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 or which may be brought against such ward.

SEC. 339. 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. 340. Every probate court shall have power to make orders 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, all 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. 341. 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 owing, 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. 342. The court making such order shall direct the time and terms for 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. 343. 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 guardian 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. 344. If such proceedings be disapproved by said court, the court may set them aside and proceed in like manner as if no sale had been made.

SEC. 345. Every such guardian, as often as required by the court appointing him, shall render a true and perfect account of his guardianship.

SEC. 346. 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.

SEC. 347. 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. 348. 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 Territorial treasury.

SEC. 349. In all cases of appropriation out of the Territorial treasury for the support and maintenance, treatment, or confinement of any insane person, the amount thereof may be recovered by the Territory from any person, who by law is bound to provide for the support and maintenance of such insane person, if there be any such ability to pay the same.

SEC. 350. 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.

SEC. 351. 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; the guardian shall immediately settle his accounts and deliver the estate and effects of his ward to his legal representatives.

SEC. 352. The several probate courts shall have the power to remove any such guardian at any time, for neglect of duty, mismanagement, or of 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.

CHAPTER XIX.

ESTATES OF NON-RESIDENT MINORS AND PERSONS OF UNSOUND MIND.

SEC. 354. Real estate belonging to minors and persons of unsound mind, residing out of this Territory, may be sold upon the application of the foreign guardian of such minor or person of unsound mind to the probate court of the county in which such land is situated, upon the terms as are or may be provided by law in case of the sale of real estate belonging to minors residing in this Territory.

SEC. 355. That when any minor or person of unsound mind residing out of the limits of this Territory, has any real estate, goods, chattels, rights, credits, money or effects in this Territory, the probate court having jurisdiction of the county in which such property or any part thereof is situate or may be shall, upon the application of the foreign guardian of such minor

or person of unsound mind, appoint a trustee of such minor or person of unsound mind to manage, collect, lease, and take care of said property.

SEC. 356. The first appointment of a trustee lawfully made, shall extend to all the property and effects of the minor in this Territory, and shall exclude the jurisdiction of the probate court of any other county.

SEC. 357. The said trustee shall give bond with surety, to the satisfaction of the probate court, and shall take upon himself the management of the estate and property of such minor or persons of unsound mind situate in this Territory, and the collection of debts and other demands due such minor or person of unsound mind from persons residing or being in this Territory, and shall settle with the court, and be liable to suit or removal, or both, for neglect or misconduct in the performance of his duties, in like manner as is or may by law be provided in the case of guardians of minors.

SEC. 358. The said trustee shall, under the order of the probate court, deliver up to the foreign guardian of such minor or person of unsound mind all the personal property, rights and credits belonging to such minor or person of unsound mind: *Provided*, That the probate court shall make no such order except upon application of the foreign guardian, and sufficient proof of his appointment and qualification in accordance with the laws of the State or place of residence of such guardian.

SEC. 359. The said trustee shall have no power to apply to the probate court for the sale of the real estate of such minor or person of unsound mind.

SEC. 360. The said trustee, unless removed by the court, holds his appointment so long as the services of a trustee may be required, and shall receive such compensation for his services as may be stipulated between him and the foreign guardian; and in case no agreement has been made, then such compensation as is or may be by law provided for guardians.

SEC. 361. All moneys due such minor or person of unsound

mind, in the hands of such trustee, shall be paid over to the foreign guardian so long as he shall remain such guardian or in case of the decease of such minor or person of unsound mind, then to the administrator or legal representative of such minor or person of unsound mind.

SEC. 362. All appointments heretofore made of trustees for non-resident minors or persons of unsound mind by any probate court in this Territory, under the provisions of an act passed January 21, 1859, entitled "An act relative to minors and persons of unsound mind residing without the limits of this Territory;" are hereby fully legalized and made valid; and all acts lawfully done by trustees so appointed, are hereby declared valid. And all such trustees and the property under their control by virtue of such appointment by such probate courts, shall be fully subject to all the provisions of this chapter.

CHAPTER XX.

OF APPEALS.

SEC. 363. An appeal shall be allowed from the decision of the probate court to the district court in the cases following:

1. On granting or revoking letters testamentary, or of administration, or guardianship.
2. On admitting a will to probate.
3. On revoking the probate or determining the validity of a will.
4. On setting apart property or making an allowance for a widow or child.
5. On determination of the application for the sale or conveyance of real property.
6. On the settlement of an executor, administrator or guardian.

7. On declaring, allowing, or rejecting the payment of a debt, legacy or distributive share of the estate.

8. On all other final orders and decrees.

SEC. 364. At any time within sixty days after the same is made, and not later, any person interested in the estate of any deceased person may appeal to the district court from any order or decision of any probate judge or court made that affects said estate; said appeal shall be taken in the same manner, and like notice shall be given as in cases of appeal from justices' courts to the several district courts of this Territory.

SEC. 365. Writs of certiorari may, at any time within sixty days after the rendition of the order or decision in the probate court, issue out of the district court to examine and determine upon any alleged errors occurring in the final decision or order of the probate court, which shall be heard and determined in the same manner as are like writs to justices of the peace: *Provided*, The party will, under the order of the court, file a proper bond, and will correct such irregularities as may exist: *And provided further*, The court shall be satisfied that the party making the application to correct, is not in fault, and that no injustice is done to the opposite party: *Provided*, That none of the provisions of this act shall be construed as prohibiting appeal to the district court.

CHAPTER XXI.

REPEAL OF FORMER LAWS.

SEC. 366. All acts and parts of acts heretofore enacted upon any of the subjects or matters herein contained, be and the same are hereby repealed. And the foregoing shall be the code of practice and procedure in the probate courts of this Territory.

Approved, November 11th, 1873.

AN ACT

RELATING TO JUSTICES OF THE PEACE, AND TO THEIR PRACTICE AND JURISDICTION.

CHAPTER I.

SECTION 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 general election, elect one or more justices of the peace.

SEC. 2. Each precinct shall be entitled to one justice of 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 justice 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 virtue 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 county 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 dockets, 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.

JURISDICTION OF JUSTICES OF THE PEACE.

SEC. 13. 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. 14. 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 his county.

SEC. 15. 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. 16. 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. 17. Every justice of the peace shall have jurisdiction over, and cognizance of the following actions and proceedings:

1. Of an action arising on contract for the recovery [of money] only, if the sum claimed do not exceed one hundred dollars.

2. Of an action for damages, for the 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.

3. Of an action for a penalty, not exceeding one hundred dollars.

4. 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.

5. Of an action on an undertaking or surety bond, taken by him, if the amount claimed do not exceed one hundred dollars.

6. 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.

7. 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.

8. Of an action for a forcible or unlawful detention of lands, tenements, or other possessions.

9. Of an action to try the right of occupancy or possession to a mining claim.

10. To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars.

11. And shall, in all cases, have power to issue writs of attachments upon goods, chattels, moneys and effects, where the amount does not exceed one hundred dollars.

SEC. 18. The jurisdiction conferred by the last section shall not however extend to the following civil actions:

1. In which the title to real property shall come in question.

2. Nor to an action for the foreclosure of a mortgage on, or (*before*) enforcement of a lien on real estate.

3. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction.

4. Nor to any action against an executor or administrator, as such.

CHAPTER III.

COMMENCEMENT OF ACTIONS—SERVICE AND RETURN OF PROCESS.

SEC. 19. Civil actions in the several justices' courts of this Territory may be instituted either by the voluntary appearance and agreement of the parties, by the service of a summons, or by the service upon the defendant of a true copy of the complaint and notice, which notice shall be attached 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 filing the complaint.

SEC. 20. A party desiring to commence an action before a justice of the peace for the recovery of a debt by summons shall file his claim with the justice of the peace, verified by his own oath, or that of his agent or attorney and thereupon the justice of the peace shall, on payment of his fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form, or as nearly as the case will admit, viz:

TERRITORY OF WASHINGTON, }
 _____ County, } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to summon _____ if he (or they) be found in your county

to be and appear before me at _____ on _____ day of _____ at _____ o'clock P. M. or A. M., to answer the complaint of _____ for a failure to pay him a certain demand, amounting to _____ dollars and _____ cents, upon _____ (here state briefly the nature of the claim) and of this writ make due service and return.

Given under my hand this _____ day of _____ 18____,

Justice of the Peace.

And the summons shall specify a certain place, day and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff's claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his place of abode with some person over twelve years of age, a true copy of such summons, certified by the officer to be such.

SEC. 21. Any person desiring to commence an action before a justice of the peace by the service of a complaint and notice, can do so by filing his complaint verified by his own oath or that of his agent or attorney with the justice, and when such complaint is so filed, upon payment of his fees if demanded, the justice shall attach thereto a notice, which 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 _____, 18____, 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.

Dated _____, 18____,

J. P.

SEC. 22. The complaint and notice shall be served at least five days before the time mentioned in the notice for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of the complaint and notice, certified by the officer or person making the service to be such.

SEC. 23. 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, and the same as also the complaint and notice shall be served by one of said officers unless otherwise directed by the justice.

SEC. 24. Every constable or sheriff serving any process, or complaint and notice, shall return thereon in writing, the time and manner of service, and shall sign his name to such return and endorse thereon his fees for service.

SEC. 25. Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding or action to serve any process or paper issued by such justice, and any such person making such service shall return on such process, or paper in writing, the time and manner of service, and shall sign his name to such return and be entitled to like fees for making such service as a sheriff or constable, and shall endorse his fees for service thereon. *Provided*, It shall not be lawful for any justice to issue any process or papers to any person but a regularly qualified sheriff or constable in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable are not able to serve the same.

SEC. 26. Proof of service in either of the above cases shall be as follows: When made by a constable or sheriff his return signed by him and indorsed on the paper or process. When made by any person other than such officer, then by the affidavit of the person making the service.

SEC 27. In case personal service cannot be had by reason of the absence of the defendant from the county in which the ac-

tion is sought to be commenced, it shall be proper to publish the summons or notice with a brief statement of the object and prayer of the claim or complaint in some weekly newspaper published in the county wherein the action is commenced, or if there is no paper published in such county then in some newspaper published in the nearest adjoining county, which notice shall be published not less than once a week for three weeks prior to the time fixed for the hearing of the cause, which shall not be less than four weeks from the first publication of said notice. Said notice may be substantially as follows:

TERRITORY OF WASHINGTON, }
 County of _____, } ss.
 In Justice's Court, _____ Justice.

To _____.

You are hereby notified that _____ has filed a complaint (or claim as the case may be) against you in said court which will come on to be heard at my office in _____ in _____ county, W. T., on the _____ day of _____ A. D. 18____, at the hour of _____ o'clock _____ m., and unless you appear and then and there answer, the same will be taken as confessed and the demand of the plaintiff granted. The object and demand of said claim (or complaint, as the case may be) is (here insert a brief statement).

Complaint filed _____, A. D. 18 ____.

 J. P.

SEC. 28. Proof of service, in case of publication, shall be the affidavit of the printer, or his foreman, or principal clerk, showing the same.

SEC. 29. The written admission of the defendant, his agent or attorney, endorsed upon any summons, complaint and notice, or other paper, shall be complete proof of service in any case.

SEC. 30. The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed,

after completion of service, whether by publication or otherwise, and shall have control of all subsequent proceedings.

SEC. 31. Every justice of the peace shall keep a docket in a well bound book, in which he shall enter:

1. The titles of all actions commenced before him.
2. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand.
3. 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 is issued.
4. The time when the parties, or either of them, appear, or their non-appearance, if default be made.
5. 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, and every motion, rule, order, and exception with the decision of the court thereon.
6. Every continuance, stating at whose request, and for what time.
7. The demand for 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.
8. The names of the jury who appear and are sworn; the names of witnesses sworn, and at whose request.
9. The verdict of the jury, and when received; and if the jury disagree and are discharged, the fact of such disagreement and discharge.
10. The judgment of the court, and the time when rendered.
11. 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.
12. The fact of an appeal having been made and allowed, and the time when.
13. Satisfaction of the judgment, or any money paid thereon, and the time when.
14. And such other entries as may be material.

SEC. 32. 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. 33. In an action for the recovery of money, the plaintiff, at the time of filing his claim or complaint with the justice, 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. 34. A writ of attachment shall be issued by any justice with whom a complaint or claim has been filed, 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; and that, as affiant verily believes:

1. The defendant is a non-resident of the county; or,
2. Is secretly leaving, or has left, the county, with the intent to hinder, defraud or delay his creditors; or,
3. Is about to sell, convey or otherwise dispose of his property with like intent; or,
4. Is removing or is about to remove his property subject to execution, or a material part thereof, out of the county, not leaving enough therein to satisfy the claim of the plaintiff; or,
5. Has concealed, or is attempting to conceal, himself so that the ordinary process of law cannot be served upon him.

SEC. 35. No attachment for the causes mentioned in the first and second clauses of the preceding section, shall issue against any debtor while his family remains settled in the county, if he shall not remain absent more than six months, after he shall have absented himself, unless an attempt be made to conceal his absence.

SEC. 36. 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. 37. 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 justice, 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. 38. The writ shall be directed to the sheriff or constable, and shall be delivered to such officer or such other person as may be specially authorized to execute the same. It shall require such officer 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. 39. The plaintiff shall not have judgment for costs of such attachment except in some of the following cases, viz:

1. When the defendant shall have been personally served with process; or,
2. When the property of the defendant shall have been attached; or,
3. When a garnishee shall have been summoned in the county, who shall be found to be indebted to the defendant, or to have property or assets in his hands subject to the attachment.

SEC. 40. 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. 41. Upon receipt of the writ the sheriff, constable or other person authorized to serve the same, shall proceed, with the assistance of a disinterested and credible householder of the county, to attach the property, goods and chattels of the defendant subject to execution, and shall, with the assistance of such householder, make an inventory and appraisalment and return the same with the writ.

SEC. 42. A writ of attachment binds the defendant's property from the time it is served.

SEC. 43. If after a writ of attachment is placed in the hands of the officer or other person authorized to serve the same, any property of the defendant's is removed from the county, the officer or other person so having such writ, may pursue and seize the same in any county in the Territory within five days after the removal thereof.

SEC. 44. Property attached may be released by the owner thereof giving a bond in such amount as the justice of the peace may designate with good and sufficient sureties, or by claiming that the same is exempt; which said exemption shall be tried by a jury of three, called and selected by the constable or other officer serving the process. If the jury so selected shall decide the property exempt, the same shall be released by the officer having custody thereof.

SEC. 45. A justice of the peace shall issue a warrant of arrest in all 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. 46. 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. 47. The warrant shall 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. 48. The officer making the arrest shall immediately

give notice thereof to the plaintiff, his agent or attorney, and indorse on the warrant the time of the arrest, and the time of serving notice on the plaintiff.

SEC. 49. 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. 50. 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. 51. 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.

SEC. 52. 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, who shall be responsible for the costs therein.

SEC. 53. After service and return of 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. 54. The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the notice 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.

PLEADINGS AND ADJOURNMENTS.

SEC. 55. The pleadings in justice's 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. 56. The pleadings in the justice's court shall be:

1. The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

2. 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.

3. When the answer sets up a set-off by way of defense, the reply of the plaintiff.

SEC. 57. The pleadings shall be in writing, when the action is for one of the following causes:

1. For the foreclosure of any mortgage, or the enforcement of any lien on personal property.

2. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions.

3. To recover the occupancy or possession of a mining claim. In all other cases, the pleadings may be oral or in writing.

SEC. 58. 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. 59. 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. 60. 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 not so exhibited, may prohibit its being given in evidence.

SEC. 61. 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. 62. 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. 63. 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. 64. 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. 65. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions 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. 66. To entitle a defendant to any set-off he may have against the plaintiff, he must allege the same in his answer; and the statutes 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 the 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 the plaintiff.

SEC. 67. 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. 68. 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 applicable to continuance in the district court.

CHAPTER V.

TRIAL BY JURY.

SEC. 69. 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 jury: *Provided*, The party demanding the jury, shall first pay to the justice the amount of six dollars as a jury fee, which shall be paid over by the justice to the jury, on the rendition of their verdict in the case, and taxed as costs against the losing party: *And provided also*, That this act shall not apply to a case of forcible entry and detainer, nor to criminal actions.

SEC. 70. 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. 71. 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. 72. 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. 73. 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. 74. 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. 75. When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause.

SEC. 76. 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. 77. 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. 78. 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 VI.

OF JUDGMENT.

SEC. 79. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.
2. When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.
3. 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. 80. When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

1. When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein.
2. 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 exceed the amount specified in the complaint.

SEC. 81. 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. 82. 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. 83. 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 costs then accrued; but if he do not accept such offer before trial, and fail to recover on the trial of the action a sum greater than the offer, such plaintiff shall not recover any cost 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, deduct 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 cost, as above provided.

SEC. 84. 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 dismissal of the action, he shall enter up judgment in favor of the defendant for the amount of such costs.

CHAPTER VII.

OF EXECUTIONS AND PROCEEDINGS THEREON.

SEC. 85. The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party, and for the follow-

ing periods of time, to be calculated from the date of the judgment:

1. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month.
2. If it be for more than twenty-five dollars, two months.

SEC. 86. 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 rendering of the judgment, enter into a bond, before the justice, to the adverse party, in a sufficient sum to secure the payment of the judgment and costs, conditioned to be void upon such payment, at the expiration of the stay.

SEC. 87. 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. 88. 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. 89. After the return of such execution, the bail shall be entitled, 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 the interest at the rate of twelve per cent. per annum.

SEC. 90. If 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.

SEC. 91. 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. 92. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off shall produce before such 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 entry 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. 93. If any justice shall set off one judgment against another, he shall make an entry thereof on 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 judgment 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 transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

SEC. 94. 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 hereinbefore prescribed; but after the lapse of five years from 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. 95. When any judgment shall have been rendered by any justice of the peace, and the same 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 to satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, 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. 97. The execution shall be directed (except when it is otherwise especially 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. 98. 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 indorse thereon the time of the reception of the same.

SEC. 99. 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 indorsement 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 indorsement of renewal shall express the sum due on the execution. Every such indorsement 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. 100. 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. 101. 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. 102. 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. 103. 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. 104. 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 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 proceedings shall be had thereon, before the justice to final judgment, as in the proceedings by attachment.

SEC. 105. 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. 106. 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 three 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 trial to the plaintiff; who may appear and contest the claim before the jury. The jury and 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 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. 107. Nothing contained in the last section 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 VIII.

OF REPLEVIN.

SEC. 108. The plaintiff in an action to recover the possession of personal property may at the time of issuing such summons, or at any time before answer, claim the immediate delivery of such property as provided in this act.

SEC. 109. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1. 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.

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

3. The alleged cause of the detention thereof, according to his best knowledge, information and belief.

4. 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

5. The actual value of the property.

SEC. 110. The justice shall thereupon, by an indorsement 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. 111. 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 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 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 delivering 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, by putting them into the post office, directed to the defendant at the post office nearest to him.

SEC. 112. 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 reclaim the property as provided in the next section.

SEC. 113. 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 chapter.

SEC. 114. 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 shall deliver the property to the plaintiff.

SEC. 115. If the property, or any part thereof, be concealed in a building or inclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or inclosure to be broken open and take the property into his possession.

SEC. 116. When the officer shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 117. 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. 118. 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 IX.

FORCIBLE ENTRY AND DETAINER.

SEC. 119. No person shall make an 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. 120. 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. 121. 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. 122. Upon receiving such 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. 123. The summons shall be served by the officer as

in other cases, 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. 124. 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. 125. 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. 126. If the plaintiff fail to appear 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. 127. 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. 128. 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. 129. The jury shall consist of six persons, unless the parties agree on a less number; and when duly empannelled 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. 130. 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 re-possessed 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. 131. 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 down in the plaintiff’s complaint; if so they shall state it specially in their verdict.

SEC. 132. When the jury find a verdict of “not guilty” 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. 133. 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. 134. The title to land shall in no case be inquired into, on any complaint of forcible entry or detainer.

SEC. 135. 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 the estate therein be ended.

SEC. 136. The person entitled to any premises, may re-

cover possession thereof in the manner hereinbefore provided, in the following cases:

1. 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.

2. When any rent shall have become due on any such lease or agreement, and the tenant or person in whose 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.

3. 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.

4. When any tenant at will, or by sufferance, shall hold over after the determination of his estate, by a notice to quit, as provided by law.

SEC. 137. 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. 138. 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. 139. The justice shall have the same power to continue actions for forcible entry and detainer, as in other cases.

SEC. 140. Neither the judgment nor any thing 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 X.

OF PROCEEDINGS FOR CONTEMPT BEFORE JUSTICES OF THE PEACE.

SEC. 141. In the following cases, and no others, a justice of the peace may punish for contempt:

1. 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.

2. Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice.

3. Persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

SEC. 142. 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. 143. 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. 144. 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. 145. The warrant for contempt may be in the following form:

TERRITORY OF WASHINGTON, }
 _____ County, } ss.

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 a judicial proceeding.

Dated this _____ day of _____ A. D. 18—.

J. P.,
 Justice of the Peace.

SEC. 146. 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, }
 _____ County, } ss.

Whereas, on the _____ day of _____, A. D., 18—, while the undersigned, one of the justices of the peace of said county; was engaged in the 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. 147. 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, a 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 XI.

CERTIORARI AND PROCEEDINGS THEREON.

SEC. 148. If any person shall conceive himself injured by error in any process, proceeding, 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. 149. 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. 150. 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 immediately recall the same.

SEC. 151. 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. 152. 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. 153. 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. 154. 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. 155. 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 XII.

OF APPEAL TO THE DISTRICT COURT.

SEC. 156. 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. 157. Such appeals 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. 158. No appeal shall be allowed in any case unless a bond shall be executed on the part of the appellant with 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. 159. 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 the 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. 160. 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 an appeal has been allowed.

SEC. 161. 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. 162. On or before the first day of the term of the court, next after the appeal has been taken, the justice 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. 163. The issue before the justice shall be tried in the district court without other or new pleadings, unless otherwise directed by the court.

SEC. 164. 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. 165. 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 have accrued by reason of such defect.

SEC. 166. 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 XIII.

TITLE TO LAND.

SEC. 167. 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, 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 cost shall abide the event of the suit.

CHAPTER XIV.

OF WITNESSES AND DEPOSITIONS.

SEC. 168. A subpœna issued by a justice of the peace shall be valid to compel the attendance of a witness in the justice's court, if such witness be within twenty miles of the place of trial.

SEC. 169. 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 at his usual place of abode.

SEC. 170. 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. 171. 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. 172. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, 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, if demanded by him at the time of the service.

SEC. 173. 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. 174. The examination of a party thus taken, may be rebutted by adverse testimony.

SEC. 175. 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. 176. 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. 177. 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. 178. 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. 179. The justice shall allow every deposition to be 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:

1. Is dead, or resides more than twenty miles from the place of trial; or,
2. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity.
3. That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party offering the deposition.

SEC. 180. Change of venue may be allowed for the same causes for which they are allowed in the district court.

CHAPTER XV.

AN ACTION TO RECOVER POSSESSION OF A MINING CLAIM.

SEC. 181. 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. 182. Upon filing such complaint, the same proceeding shall be had before the justice as in actions for forcible entry and detainer, and if the 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. 183. 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 customs, and regulations, when not in conflict with the laws of the United States or this Territory, shall govern the decision of the action.

CHAPTER XVI.

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:

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, or his agent or attorney; and have you there and then this writ.

Given under my hand this _____ day of _____, 18 ____.

J. P.,
 Justice of the Peace.

FORM OF SUBPENA.

TERRITORY OF WASHINGTON, }
 County of _____; } ss.
 To _____:

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 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 _____ 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, interests and costs.

Given under my hand this _____ day of _____,
 A. D. 18 ____.

J. P.,

Justice of the Peace.

FORM OF A VENIRE FOR A JURY.

TERRITORY OF WASHINGTON, }
 _____ County, } 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 lawful 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, } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C. D. for the sum of — dollars, and 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, }
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 whereas, on the _____ day _____, 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, }
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 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, }
 County of _____, } ss.

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 costs 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 proceeding 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, }
 County of _____, } ss.

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 the said county, a complaint against C. D., for a forcible entry and detainer of

the following premises, to-wit: ——— You are hereby commanded to summon 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 upon this writ make due return with your doings thereon.

Given under my hand this ——— day of ———, 18—.

J. P.,

Justice of the Peace.

FORM OF WRIT OF RESTITUTION IN FORCIBLE ENTRY AND
DETAINER.

TERRITORY OF WASHINGTON, }
County of ———, } ss.

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 your own fees, and make return of this writ within thirty days next after the date hereof.

Given under my hand this _____ day of _____, 18—.

J. P.,

Justice of the Peace.

FORM OF UNDERTAKING FOR 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 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 awarded to the defendant, and all damages which he may sustain by reason of the said attachment, and 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 pro-

perty,] 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 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.

CHAPTER XVII.

CRIMINAL PRACTICE AND JURISDICTION.

SEC. 184. The jurisdiction of justices of the peace in criminal prosecutions, shall be co-extensive with their respective counties, and they shall have con-current jurisdiction with the

district court, in affrays, assaults and battery, violation of estray laws, obstruction 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 in cases of petit larceny and public nuisance, and on conviction, shall have power to fine the person so offending, in any sum not exceeding one hundred dollars.

SEC. 185. Any justice shall, on complaint 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 be brought forthwith before him for trial.

SEC. 186. When 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. 187. 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 beailable 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 law may justify.

SEC. 188. The prisoner or the Territory may demand a jury, which may be empannelled and sworn as in civil cases, or he may be tried by the justice.

SEC. 189. 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 court, having jurisdiction thereof, and shall also recognize the witnesses, and proceed as provided by the act regulating criminal proceedings in like cases.

SEC. 190. The defendant may plead guilty to any offense charged.

SEC. 191. No justice shall assess a fine or enter a 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. 192. 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. 193. 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 cost of such continuance shall abide the event of the prosecution in all cases and the justice shall recognize the defendant and the witness to appear from time to time, in the same manner as is provided in other criminal examinations before him.

SEC. 194. 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 to be placed at hard labor 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.

SEC. 195. 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. 196. 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 to abide the sentence of the court thereon, and in the mean time to keep the peace, and be of good behavior.

SEC. 197. The justice shall also recognize the witnesses, or if they are not present, indorse their names on the copy of proceeding. 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 subpoena for the witnesses, if they are not under recognizance.

SEC. 198. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same, but if convicted in the appellate 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 the 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. 199. 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 XVIII.

FORMS OF PROCEEDINGS IN CRIMINAL CASES.

SEC. 200. 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 any 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 A SEARCH WARRANT.

TERRITORY OF WASHINGTON, }
 County of ——, } ss.

To the sheriff or any 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 been within — days past, or were on the —— day of ——, by some person or persons unknown, 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, [describe 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 IN THE CASE.

TERRITORY OF WASHINGTON, }
 County of _____, } ss.

To any constable, and the keeper of the 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 A WARRANT TO KEEP THE PEACE.

TERRITORY OF WASHINGTON, }
 _____ County, } ss.

To the sheriff or any 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 he has just cause to fear, and does fear 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.

UNITED STATES OF AMERICA, }
Territory of Washington. }

To any constable, and the keeper of the county 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 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 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.

Dated 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—, in said county committed, (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.)

CHAPTER XIX.

MISCELLANEOUS PROVISIONS.

PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

SEC. 201. 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, or for their good behavior, or both, in the manner herein provided.

SEC. 202. 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 the same to be subscribed by the complainant.

SEC. 203. 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. 204. If, upon the 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. 205. The magistrate before whom any person is brought upon charge 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 recognizance with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of the 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. 206. 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. 207. 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. 208. 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 good 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. 209. All appeals in criminal complaints from a justice of the peace, shall be had and taken to the district court when sitting for the transaction of criminal business.

SEC. 210. The magistrate from whom 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. 211. 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 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. 212. 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 also shall stand as security for costs which shall be ordered, by the court appealed to be paid by the appellant.

SEC. 213. 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. 214. 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 of record by the clerk.

SEC. 215. Every person who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any judge of a 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 pro-

cess 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. 216. 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 of any defendant, as the circumstances of the case shall render just and reasonable.

SEC. 217. Any surety in 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.

SEC. 218. Any word used in this act in the singular or plural number shall, whenever it is necessary to give effect and force to the same according to the true intent thereof, be taken and construed to mean either.

CHAPTER XX.

OF EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

SEC. 219. Upon complaint being made to any justice of the peace, or judge of the district court, in open court, or in vacation, that a criminal offense had 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. 220. 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 of 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. 221. 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 court having cognizance of the offense.

SEC. 222. 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. 223. 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 probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint.

SEC. 224. 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 one hundred 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. 225. If it appear that a bailable offense has been committed, the magistrate shall order the defendant to enter into recognizance, with sufficient sureties, for his appearance at the next term of the district court, and if he shall not do so, or the offense be not bailable, he shall commit him to jail.

SEC. 226. No justice of the peace shall take a recognizance from any defendant charged with murder in the second degree, manslaughter, kidnapping, arson, rape, 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 in any amount they may think fit, with sufficient sureties.

SEC. 227. 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. 228. 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. 229. 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. 230. 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. 231. All witnesses required to recognize 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. 232. 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. 233. 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 clerk of the district court, on or before the first day of the next term thereof, and if such magistrate shall neglect 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. 234. 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 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 supersede the commitment by an order under his hand and may also discharge all recognizance and supersede the commitment of all witnesses in the case.

SEC. 235. When any person under recognizance in any criminal prosecution, either to appear and answer before a justice, or to testify in any court, shall fail to perform the condition of any recognizance, his default shall be recorded; and it shall be the duty of the prosecuting attorney to proceed at once by action against the person bound by recognizance, or such of them as he may elect.

SEC. 236. In all cases where any magistrate shall order a defendant to recognize for his appearance 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.

SEC. 237. All acts and part of acts heretofore enacted upon the subject matter herein contained, be and the same are hereby repealed; and the foregoing shall be the code of practice and procedure in all the justice's courts in this Territory.

SEC. 238. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

TO PROVIDE FOR THE FORMATION OF CORPORATIONS.

CHAPTER I.

GENERAL INCORPORATIONS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That corporations for manufacturing, mining, milling, wharfing and docking, mechanical, mercantile, building, and farming purposes, or for the purpose of building, equipping, and running railroads, or engaging in any other species of trade or business, may be formed according to the provisions of this act; such corporations, and the members thereof, being subject to all the conditions and liabilities herein imposed, and to none others.

SEC. 2. Any two or more persons, who may desire to form a company for any one or more of the purposes specified in the preceding section, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgments of deeds, and file one of such articles in the office of the secretary of the Territory, and another in the office of the county auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation. Said articles shall state the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for such length of time (not less than

two or more than six months,) as may be designated in such certificate, and the name of the city, town or locality and county in which the principal place of business of the company is to be located. Amendments may be made to the articles of incorporation, by supplemental articles, executed and filed the same as the original articles.

SEC. 3. A copy of any certificate of incorporation, filed in pursuance of this act, and certified by the auditor of the county in which it is filed, or his deputy, or by the secretary of the Territory, shall be received in all the courts and places as *prima facie* evidence of the facts therein stated.

SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and power:

1. To sue and be sued in any court having competent jurisdiction.

2. To make and use a common seal and to alter the same at pleasure.

3. To purchase, hold, mortgage, sell and convey real and personal property.

4. To appoint such officers, agents, and servants as the business of the corporation shall require; to define their powers, prescribe their duties, and fix their compensation.

5. To require of them such security as may be thought proper for the fulfilment of their duties, and to remove them at will, except that no trustee shall be removed from office, unless by a vote of two-thirds of the stockholders as hereinafter provided.

6. To make by-laws not inconsistent with the organic act of of this Territory, and the laws of the Congress of the United States, and of this Territory.

7. The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in the articles of incorporation.

SEC. 5. The corporate powers of the corporation shall be exercised by a board of not less than two trustees, who shall be stockholders in the company, and a majority of them citizens of the United States and residents of this Territory, who shall before entering upon the duties of their office, respectively take and subscribe to an oath, as prescribed by the laws of this Territory, and who shall after the expiration of the term of the trustees first elected, be actually elected by the stockholders, at such time and place, within the Territory, and upon such notice and in such manner as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he may own or represent by proxy shares of stock, and the person or persons receiving the greatest number of votes shall be trustee or trustees: *Provided*, That nothing herein contained shall prevent any corporation by their by-laws limiting such *bona fide* share-holder to a single vote, or one vote for every full share of paid up stock, or its equivalent in assessable stock, disregarding the number of shares of stock he may own. It shall be competent at any time for two-thirds of the stock-holders of any corporation organized under this act to expel any trustee from office and to elect another to succeed him. In all cases where a meeting of the stockholders is called for the purpose of expelling a trustee and electing his successor, such notice shall be given of the meeting as the by-laws of the company may require. Whenever any vacancy shall happen among the trustees by death, resignation, or otherwise, except by removal and the election of his successor as herein provided, it shall be filled by appointment of the board of trustees.

SEC. 6. If it shall happen at any time, that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved; but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding upon the company until their successors are elected and qualified.

SEC. 7. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

SEC. 8. The first meeting of the trustees shall be called by a notice signed by one or more persons named as trustees in the certificate, setting forth the time and place of the meeting, which notice shall be either delivered personally to each trustee or published at least twenty days in some newspaper in the county in which is the principal place of business of the corporation, or if no newspaper is published in the county, then in some newspaper nearest thereto in the Territory.

SEC. 9. The stock of the company shall be deemed personal estate, and shall be transferrable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid except between the parties thereto, until the same shall have been entered upon the books of the company, so as to show the names of the parties, by and to whom transferred, the numbers and designation of the shares and the date of the transfer.

SEC. 10. The stockholders of any corporation formed under this act may in the by-laws of the company prescribe the times, manner and amounts in which payments of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the trustees shall have the power to demand and call in from the stockholders the sums by them subscribed, at such time and in such manner, payments or installments, as they may deem proper. In all cases notice of each assessment shall be given to the stock holders personally, or by publication in some newspaper published in the county in which the principal place of business of the company is located; and if none be published in such county, then in the newspaper nearest to said principal place of business in the Territory. If after such notice has been given any stockholders shall make default in the payment of assessments upon the shares held by him, so many of said shares may be sold as will be necessary for

the payment of the assessment upon all the shares held by him, her or them. The sale of said shares shall be made as prescribed in the by-laws of the company, but shall in no case be made at the office of the company. No sale shall be made except at public auction, to the highest bidder, after a notice of four weeks, published as above directed in this section, and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale for the smallest number of shares or portion of a share as the case may be, shall be deemed the highest bidder.

SEC. 11. Whenever any stock is held by a person as executor, administrator, guardian or trustee, he shall represent such stock at all the meetings of the company and may vote accordingly as a stockholder.

SEC. 12. Any stockholder may pledge his stock by a delivery of the certificates or other evidence of his interest, but may, nevertheless, represent the same at all meetings and vote as a stockholder.

SEC. 13. It shall not be lawful for the trustees to make any dividend, except from the net profits arising from the business of the corporation, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock of the company unless in the manner prescribed in this act, or the articles of incorporation or by-laws; and in case of any violation of the provisions of this section, the trustees, under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual or private capacities, be jointly or severally liable to the corporation and the creditors thereof in the event of its dissolution, to the full amount so divided, or reduced, or paid out: *Provided*, That this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain

after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

SEC. 14. No corporation organized under this act shall by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidences of debt for circulation as money, except bonds by railroad companies, which shall at no time exceed double the amount of paid up stock issued by said company. And each and every stockholder shall be personally liable to the creditors of the company to the amount of what remains unpaid upon his subscription to the capital stock and not otherwise.

SEC. 15. No persons holding stock as executor, administrator, guardian or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder, and the estate and funds in the hands of the executor, administrator or guardian or trustee shall be liable in like manner and to the same extent as the testator, or intestate, or the ward or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her own name.

SEC. 16. It shall be the duty of the trustees of every company incorporated under this act, to keep a book containing the names of all persons, alphabetically arranged, who are or shall be stockholders of the corporation and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares, which book, during the usual business hours of the day, on every day excepting Sunday and the legal holidays, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stock holder or creditor of the company shall have the right to make extract from such book, or to demand and receive from the clerk or other officer having the charge of such book, a certified copy of any entry therein, or to demand and receive from any clerk or officer a certified copy

of any paper placed on file in the office of the company, and such book and certified copy shall be presumptive evidence of the fact therein stated in any action or proceeding against the company or any one or more of the stockholders.

SEC. 17. If at any time the clerk or other officer having charge of such book shall make any false entry or neglect to make any proper entry therein, or having the charge of any papers of the company shall refuse or neglect to exhibit the same or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the injured party a penalty of not less than one hundred dollars nor more than one thousand dollars and all damages resulting therefrom, to be recovered in any action of debt in any court having competent jurisdiction; and for neglecting to keep such book for inspection as aforesaid, the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect, to be sued for and recovered in the name of the people, in the district or probate court of the county in which the principal place of business of the corporation is located.

SEC. 18. Any company incorporated under this act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital.

SEC. 19. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by a notice signed by at least a majority of the trustees, and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located; or if no newspaper is published in the county,

then the newspaper nearest thereto in the Territory, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of stock shall be necessary to increase or diminish the amount of capital stock.

SEC. 20. If at a meeting so called a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out and signed and verified by the affidavit of the chairman and secretary of the meeting certified to by a majority of the trustees, and filed as required by the second section of this act, and when so filed the capital stock of the corporation, shall be increased or diminished to the amount specified in the certificate.

SEC. 21. Upon the dissolution of any corporation formed under the provisions of this act, the trustees at the time of the dissolution shall be trustees of the creditors and stock holders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation by the name of the trustees of such corporation, collect and pay the outstanding debts, settle all its affairs and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

SEC. 22. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the district judge of the judicial district in which the office of the company is located, a petition to that effect, accompanied by a certificate of its proper officers and setting forth that at a meeting of the stockholders called for the purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the appli-

cation, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the Territory. At the time and place appointed, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken the necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

SEC. 23. All corporations now existing or hereafter formed under the laws of other States and Territories for the conducting and transactions of marine, life, or fire insurance business, with an authorized agent residing in and having an office in this Territory, shall have ample power to do and transact such insurance business within this Territory, not inconsistent with the organic act of this Territory, with ample power by their corporate name and style to enjoy all such rights not inconsistent with the organic act as aforesaid, and to maintain and defend the same in any court or place within this Territory as fully as though said companies were domestic corporations, incorporated by and in accordance with the laws of this Territory.

SEC. 24. Any corporation desiring at any time to remove its principal place of business into some other county in the Territory, shall file in the office of the county auditor a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest to the city, town or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of no corporation hereafter formed under this act shall be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation: *Provided,*

That within three months from the passage of this act, such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest the city, town, or locality, and where the principal place of business of such corporation has been in fact located, designating the city, town, or locality and county where its principal place of business shall be located. On compliance with the provisions of this section in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established, or removed at or to any designated city, town or locality, and county in the Territory.

SEC. 25. All persons who have organized themselves as a corporation under the provisions of this act for purposes other than those enumerated in section first, are hereby declared incorporate bodies, with all the powers the same as they would enjoy had they been incorporated for the purposes set forth in said section first.

SEC. 26. In incorporations already formed, or which may hereafter be formed under this act, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this Territory, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its by-laws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust or other instrument vest, or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall

not have been subscribed as provided in this section: *Provided*, That the greater portion of said amount of capital stock shall have been so subscribed: *And provided further*, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or express contract.

SEC. 27. The provisions of this act shall extend to and apply to all associations already formed under any law of this Territory, or hereafter to be formed under the provisions of this act, for the purpose of supplying any cities or towns in this Territory, or the inhabitants thereof, with pure and fresh water.

SEC. 28. Such water companies incorporated for the purposes specified in the preceding section shall have the right to purchase or take possession of and use and hold such lands and waters for the purposes of the company, lying without the limits of the city or town intended to be supplied with water upon making compensation therefor. The mode of proceeding to obtain possession of such lands for the use of the company, right of way for laying pipes and aqueducts for the use of the company, when the parties cannot agree shall so far as the same be applicable be as prescribed in chapters three and four of this act.

SEC. 29. Water companies hereafter incorporating under the provisions of this act, must first obtain from the corporate authorities of a city or town intended to be supplied with water, the right or privilege so to do; but nothing herein contained shall affect parties now acting under legislative grants or franchises.

CHAPTER II.

THE INCORPORATION OF COLLEGES, SEMINARIES, CHURCHES, LYCEUMS, LIBRARIES AND OTHER SOCIETIES FOR BENEVOLENT, TEMPERANCE, CHARITABLE AND SCIENTIFIC PURPOSES.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any two or more persons desirous of forming a corporation for a college, seminary, church, library, or any benevolent, temperance, charitable or scientific society, shall adopt articles certifying:

1. The names of the persons concerned, and their having associated to form a body politic.
2. The corporate name and location and chief place of business.
3. If a joint stock company, the amount of capital stock and the amount constituting a share; if not a joint stock company, then the terms of admission to membership.
4. A full and specific statement of their object and purpose.
5. What officers the society and company will have; by what officers business will be conducted, and when they are to be elected, or if appointed, when and by whom such appointments are to be made; and also the number of trustees to manage the affairs of said society, and the names of the trustees for the first year of its existence, which articles shall be subscribed and sworn to by them, or by their president or secretary and a majority of such associates, before some officer authorized to administer oaths, and filed and recorded in the office of the auditor of the county, where such corporation or its chief place of business shall exist, and a copy thereof certified to by the auditor shall be filed in the office of the secretary of the Territory.

SEC. 2. When such articles shall have been filed as afore-

said, the persons who shall have signed and verified the same, and their successors, shall be a body politic and corporate, with perpetual succession; they shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered in all the courts of the Territory; they may have a common seal, alter and change the same at pleasure; acquire and sell property, personal and real, for the purpose of carrying out the specified objects of the corporation, and no other; make by-laws, rules and regulations as they may deem proper and best for the welfare and the good order of the corporation: *Provided*, That such by-laws, rules and regulations be not contrary to the constitution and laws of the United States and the existing laws of the Territory.

SEC. 3. Any lodge of Free and Accepted Masons, Odd Fellows, Good Templars or other charitable or beneficial society desiring hereafter to incorporate, may avail themselves of the provisions of this chapter by filing in the office of the secretary of the Territory of Washington and in the office of the county auditor of the county wherein such lodge or other society holds its meetings of business or communications a certificate or article embodying:

1. The name of such lodge or other society and place of holding its meetings.
2. What elective officers the lodge or society will have and when such officers shall be elected, how and by whom the business of the lodge or society shall be conducted or managed, and what officers shall join in the execution of any contract by such lodge or society; such articles shall be subscribed by the master or other chief officer of said lodge or society, with the title accorded to him by usage of such lodge or society, attested by the secretary, with the seal of such lodge or society.
3. A copy of the by-laws of such lodge or society shall also be filed in the said office of the secretary of the Territory and county auditor of the proper county.
4. The names of all such officers at the time of filing the

application and the time for which they may be respectively elected. When such articles shall be filed such lodge or society shall be a body politic and corporate, with all the incidents of a corporation, subject, *nevertheless*, to the laws and parts of laws now in force or hereafter to be passed regulating corporations.

SEC. 4. That any college or seminary hereafter incorporated by the provisions of this act shall have power, and is hereby invested with authority to confer the degrees usually conferred by such institutions.

SEC. 5. Any corporation desiring its dissolution may, by a three-fourths vote of all its members at some regular meeting, execute a surrender of all its corporate powers, and upon the filing of duplicate surrenders with the said auditor and Territorial secretary, the said corporation shall be dissolved to all intents and purposes.

CHAPTER III.

CORPORATIONS WHEN AUTHORIZED TO APPROPRIATE LAND FOR CORPORATE PURPOSES.

SECTION 1. A corporation organized for the construction of any railroad, macadamized road, plank road, clay road, canal or bridge, shall have a right to enter upon any land between the termini thereof, for the purpose of examining, locating, and surveying the line of such road or canal, or the site of such bridge, doing no unnecessary damage thereby.

SEC. 2. Such corporation may appropriate so much of said land as may be necessary for the line of such road or canal, or the site of such bridge, not exceeding two hundred feet in width, besides, a sufficient quantity thereof for toll-houses, work-shops, materials for construction, a right of way over adjacent lands to enable such corporation to construct and repair its road, canal,

or bridge, and to make proper drains; and in the case of a railroad, to appropriate sufficient quantity of such lands, in addition to that before specified in this section, for the necessary side tracks, depots, and water stations, and the right to conduct water thereto by aqueduct; compensation therefor to be made to the owner thereof, irrespective of any increased value thereof by reason of the proposed improvement by such corporation, in the manner hereinafter provided. *And Provided Further*, That if such corporation locate the bed of such railroad, or canal upon any portion of the tract, now occupied by any established Territorial, or county road, said corporation shall be responsible to the county commissioners of said county or counties in which said Territorial, or county road so appropriated is located for all expenses incurred by said county or counties in re-locating and opening the portion of said road so appropriated.

SEC. 3. Any corporation may change the grade or location of its road, or canal, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes, and for the accomplishment of such change, shall have the same right to enter upon, examine, survey, and appropriate the necessary lands and materials, as in the original location and construction of such road or canal.

SEC. 4. When it shall be necessary or convenient in the location of any road herein mentioned to appropriate any part of any public road, street or alley, or public grounds, the county court of the county wherein such road, street, alley or public grounds may be, unless the same be within the corporate limits of a municipal corporation, is authorized to agree with the corporation constructing the road, upon the extent, terms and conditions upon which the same may be appropriated or used, and occupied by such corporation, and if such parties shall be unable to agree thereon, such corporation may appropriate so much thereof as may be necessary and convenient, in the location and construction of said road.

SEC. 5. Whenever a private corporation is authorized to appropriate any public highway or grounds, as mentioned in the last section, if the same be within the limits of any town, whether incorporated or not, such corporation shall not locate their road upon such particular road, street or alley, or public grounds, within such town, as the local authorities mentioned in the last section and having charge thereof, shall designate; but if such local authorities shall fail or refuse to make such designation within a reasonable time, when requested, such corporation may make such appropriation without reference thereto.

SEC. 6. Whenever such public highway or grounds is taken by a private corporation by agreement with the local authorities mentioned in section four, such corporation may place such gates thereon, and charge and receive such tolls thereat as such local authorities may consent to by such agreement, and none other; but when the same is appropriated without such agreement, as provided in section five, such corporation shall not place any gate or other obstruction upon the public highway, or grounds appropriated, nor charge or receive any toll from any person passing over or along the same.

SEC. 7. Any road other than a railroad, constructed by a corporation formed under this act, shall be cleared of standing timber for thirty feet in width of said road, and shall have a track in the centre not less than sixteen feet wide, finished and kept in good traveling condition, except when the cutting on said road is six feet or more deep on either side, in which case such track need not be more than ten feet wide, with turnouts of sixteen feet in width for every quarter of a mile of such narrow track.

SEC. 8. All streams or other waters upon the line of such roads, shall be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams or other waters; or if such stream or other water form the boundary between two counties, then the county court of either of said counties may authorize the corporation to place a ferry boat upon such stream or other water, to be kept

and run for such toll as the county court may prescribe, and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court may authorize such corporation to connect their road with a ferry now or hereafter established over such stream or other water under the general statute in relation to ferries.

SEC. 9. Whenever a road of any kind herein mentioned, other than a railroad, is completed, or any particular section of it, fit for public travel, the corporation shall give notice thereof, by publication in some newspaper of general circulation, along the line of such road or section, or by posting notices along the line of such road or section, or by posting notices along such line in some conspicuous places, not less than five miles apart; and thereafter such road or section thereof is a common highway, so that every person with his stock and vehicles of every description may travel thereon upon the payment of the tolls prescribed by the corporation, subject to the power of the corporation, by giving notice thereof in like manner, to suspend such right of travel upon all or any portion of such road, for a reasonable time, to enable it to make any necessary repairs or improvements thereon.

SEC. 10. A corporation other than railroad shall only collect and receive toll on its road at a gate established thereon, and such shall be plainly and specifically printed or written upon a signboard, posted at such gate, in plain view of the travel on the road; but such corporation shall not establish any gate within the limits of any town, whether incorporated or not, or within one-half mile of the limits of such town, except as specially provided in section six; but no person, traveling on foot, or going in any manner or within any property, from one part of his farm to another part, or going to or from church, funerals or elections, is liable to pay for traveling upon such roads.

SEC. 11. Any person traveling upon any road herein mentioned, who shall pass through a gate thereon without paying the toll legally chargeable thereat, or who shall go round such

gate with the intent to avoid the payment of such toll, shall be liable to the corporation for three times the amount thereof, and any corporation, which by its agents or servants, or in any manner, shall illegally collect any toll from any person traveling on such road, shall be liable to such person for three times the amount thereof.

SEC. 12. Any bridge constructed by a corporation formed under this act, when completed and fit for public travel, and notice thereof is posted in some conspicuous place on such bridge, or by publication in some newspaper, as in the case of a road, is a common highway, within the meaning and subject to the conditions specified in section nine, as to roads, and subject to the further power of the corporation to prescribe, by advertisement in some conspicuous place on such bridge, the rate of speed any one may travel on such bridge.

SEC. 13. A corporation may collect and receive such tolls for crossing its bridge, as may be plainly written or printed upon a signboard, posted in some conspicuous place on such bridge, but no person not liable to pay toll on a road, as provided in section ten, is liable to pay toll for crossing such bridge; and any person who shall pass over such bridge without paying the toll legally chargeable thereat, or any corporation which shall illegally collect any toll from any person crossing such bridge, shall be respectively liable to each other for three times the amount of such toll, as provided in section eleven, in case of roads.

SEC. 14. Every corporation formed under this act, for the construction of a railroad, as to such road shall be deemed common carriers, and shall have power to collect and receive such tolls or freights for transportation of persons or property thereon as it may prescribe.

SEC. 15. It shall be the duty of every incorporation organized for the construction of any macadamized road, plank road, clay road, or bridge, to keep an accurate statement on account of the moneys expended by said corporation, in the construction of any such road or bridge and keeping the same in repair, including

any sums paid for lands, appropriated as necessary for said corporation, which statement or account shall be verified at the time of the annual meeting held for the election of directors, by the president of the said corporation, or one of the directors thereof, to the effect that he believes the said account to be just and correct, and a copy of such verified account shall, within ten days after such annual election be deposited with the auditor of the county with whom the articles of incorporation are filed. Said corporation shall also keep an accurate account of the tolls received for traveling upon said road or bridge, or of other profits accruing to said corporation, which accounts shall be verified in like manner, and a copy thereof deposited with said county auditor within ten days after such annual election.

SEC. 16. At any time after the expiration of ten years from the time of taking tolls on any macadamized road, plank road, clay road, or bridge, it shall be lawful for the county court of any county through which any such road, or part thereof, shall pass or in which such bridge may be situated, to pay to such corporation the amount of money expended by it in the construction of such road or bridge, and keeping the same in repair, and all other other necessary expenses, including any sums paid for lands appropriated by such corporation together with interest on said account, and sums of money, at the rate of twenty per centum per annum, after deducting from said amount the tolls and other profits annually received by said corporation, and after the payment of the amounts expended in constructing and keeping in repairs said road or bridge, and other necessary expenses incurred in and about the same and interest thereon, less the amount received by such corporation, the said road or bridge shall become free for public travel.

SEC. 17. The foregoing section shall not be construed so as to prohibit said county court, at any time before the expiration of said period of ten years, from purchasing said road or bridge, for any sum that may be agreed upon by said county court and corporation.

CHAPTER IV.

MODE OF PROCEEDING TO APPROPRIATE LANDS BY PRIVATE CORPORATIONS.

SECTION. 1. Whenever any corporation, authorized by the provisions of this act to appropriate lands for the right of way, is unable to agree with the owner thereof as to the compensation to be paid therefor, either such corporation or the owner of such land may by petition in which the land sought to be appropriated shall be described with reasonable certainty, apply to a justice of the peace in and for the county where said land lies, who shall thereupon summon three disinterested house-holders of such county to appear before him upon a certain day, not less than five nor more than fifteen days from the date of the filing of such petition, which said summons shall be served upon said house-holders and the opposite party as other processes before justices of the peace, at least three days before the return day thereof, and the house-holders so summoned, after being sworn faithfully and impartially to examine the ground which shall be pointed out to them by such corporation or person, or both, and described in the petition, shall assess the damages which they believe such owner or owners will sustain over and above the additional value which the owners of adjoining land will derive from the construction of such road, canal, or other work; and make two written reports, signed by at least a majority of them, one of which shall be delivered to the corporation or person presenting such petition, and the other to the justice of the peace.

SEC. 2. Upon the payment, to such justice for the use of the owners, or to the owners of such lands, of the damages assessed by said householders or a majority thereof, said corporation shall have the right to appropriate the land in question to

its own use for corporate purposes, subject to the action of the district court in regard to damages as hereinafter provided: *Provided*, That nothing herein contained shall be construed to prevent such corporation from going upon such lands for the purpose of preliminary surveys and explorations, and laying out the road or work.

SEC. 3. That said justice shall within twenty days after the filing of such report of said householders, make out a certified copy thereof and file the same with the clerk of the district court of the district or sub district in which the land lies, who shall put the case upon the trial docket of the next term. The petitioner to be plaintiff and the other party defendant, and thereupon, if no objection is made within ten days by either party the same shall stand confirmed, and judgment be entered accordingly; but either or both parties may elect to have said cause tried, and the parties then shall be at liberty to file the ordinary pleadings in a civil action, or such special pleadings as the court may allow; and the issues thus formed shall be tried as in other civil cases, the costs to be taxed against the corporation only when the verdict and judgment is for a larger amount than was awarded by the householders, or the cause has been tried at the instance of such corporation for the purpose of reducing the amount of damages, and the damages are not so reduced; otherwise the costs shall be taxed against the owner of the land.

SEC. 4. Either party may appeal to the supreme court of the Territory as in other cases: *Provided*, That if the owner of the land accepts the sum awarded by the householders he shall be deemed thereby to conclusively waive a trial in the district court and appeal to the supreme court, and final judgment by default may be rendered in the district court as in other cases.

SEC. 5. The district court at the time of rendering judgment for damages, whether upon default or trial shall also enter up a judgment or decree of appropriation of the land or right

of way in question, thereby vesting the legal title to the same in the corporation for corporate purposes.

SEC. 6. All acts and parts of acts heretofore passed upon this subject are hereby repealed.

SEC. 7. This act to be in force and take effect from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

ESTABLISHING A COMMON SCHOOL SYSTEM FOR THE TERRITORY
OF WASHINGTON.

CHAPTER I.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Legislature shall, in joint convention during its present session, and every two years hereafter elect a territorial superintendent of common schools, who shall hold his office for two years and until his successor is duly elected and qualified.

SEC. 2. It shall be the duty of said territorial superintendent to disseminate intelligence in relation to the method and value of education.

SEC. 3. He may examine all who apply to him for certificates to teach school, and his certificate shall be valid in the whole Territory, and he shall be entitled to receive the same fees for certificates as county superintendents. He may call a teach-

er's convention at such time and place as he shall deem conducive to the educational interests of the Territory. He shall prepare and forward to county superintendents printed blanks, designating the questions he desires answered, on or before October first of each year.

SEC. 4. It shall be the duty of all the county superintendents of schools to forward to the territorial superintendent a copy of their annual report forthwith, and they shall also state what school books would give most general satisfaction in their respective counties.

SEC. 5. It shall be the duty of the territorial superintendent to make out a report from the reports of the county superintendents, and any other means of information he may have, of the condition of the schools in the Territory, and shall state what school books seem to be most popular in the Territory. He shall also recommend some series of school books to be introduced throughout the Territory, and he may make any suggestions he may think best for the promotion of education. He shall publish his Territorial report in some leading newspaper of the Territory, with a request that other papers copy.

SEC. 6. He shall make a report to the legislature at its next regular session and every regular session thereafter, within ten days after convening, embodying all the information mentioned in section 5, and any other information and recommendations he deems advisable.

SEC. 7. The territorial superintendent shall receive as a salary out of the territorial treasury, three hundred dollars annually, which shall include office rent, stationery, printing and all other incidental expenses of his office; and the territorial auditor shall issue an order for said amount, which shall be paid by the treasurer out of any funds not otherwise appropriated.

SEC. 8. The territorial superintendent shall qualify within sixty days after notice of his election, by filing in the office of the secretary of the territory, an oath that he will faithfully discharge the duties of the office according to the best of his

abilities. Whereupon the governor shall issue to him a commission the same as to other territorial officers; and in case of vacancy from any cause the governor may appoint to fill the vacancy until the meeting of the next legislature.

CHAPTER II.

SECTION. 1. That the principal of all moneys accruing to this Territory from the sale of any lands 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 youth in each, between the ages of four and twenty-one years, for the support of common schools in said district, 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 levy an annual tax of not more than four mills on a dollar on all taxable property of the county as shown by the assessment rolls made by the county assessor 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 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 and incidental expenses 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 licenses for the sale of intoxicating liquors, or for the keeping of bowling alleys or billiard saloons, or from any penal laws of this Territory. Such moneys shall be paid into the county treasury and be added to the yearly 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 shall 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 of November of each year, the amount of fines imposed and collected by them for the past year.

CHAPTER III.

COUNTY SUPERINTENDENTS.

SECTION. 1. There shall be elected by the legal voters of the respective counties in Washington Territory, a county superintendent of common schools for each county, who shall be elected at the general election of 1872, and at the regular election held biennially thereafter, who shall hold his office for the term of two years and until his successor is elected or appointed and qualified. And in case of a vacancy occurring in said office by removal, death or otherwise, the county commissioners of each county are authorized to appoint a county school superintendent as in all other cases of vacancies in their respective counties, who shall qualify in the same manner as the elected superintendent,

and perform all the duties of the office according to this law, for the unexpired term for which he was appointed and until his successor is elected and qualified.

SEC. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath to faithfully discharge the duties of his office, and to the best of his ability promote the interests of education within his county, which oath shall be in writing and placed on file in the county auditor'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 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 where 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 hereinafter 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 examining teachers and for the transaction of other business, and he shall

give ten day's public notice of the same by posting up handbills or otherwise. And any person or district applying on different days for the transaction of such business, shall pay the superintendent a reasonable compensation for his trouble, and not exceeding the sum of two dollars, and any teacher examined on a different day shall pay the superintendent the sum of two dollars.

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, arithmetic, defining, penmanship, English composition, English grammar and geography, history of the United States; 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; but in the examination of the teachers he may make a distinction according to qualification, granting a certificate of qualification to teach in any specified district if the applicant therefor be qualified for the school of such district, and not a county certificate, which certificate, so granted, shall only be for six months, and may for good cause be sooner revoked.

SEC. 7. The superintendent shall visit all the schools in his county 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, for which service he shall receive three dollars for each school visited, and the same mileage for going to and returning from said school that sheriffs receive in the county in which they reside, to be paid out of the county treasury of said 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

January of each year, make out from the district reports a statement of the number of scholars in the county, the number of school libraries, the number of school houses, the number of districts, in how many districts the school has been kept 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 superintendents, on or before the first Monday of January and July of each year, 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 each district, which shall be drawn as hereinafter directed, and shall forthwith notify the clerks of the school districts of the amount due their respective districts.

SEC. 10. When the district shall have complied with the law as hereinafter 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 fund 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 their 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 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 maps required by section five.

SEC. 12. The school superintendent of each county shall, in all cases, be a qualified teacher of any school within the county for which he is elected.

CHAPTER IV.

SECTION. 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, chapter two. 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 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 the 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 a va-

cancy, 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 interests 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:

1. To call special meetings of the district whenever they shall deem it necessary, and when a vacancy occurs by death, resignation or otherwise, the directors shall call a special meeting of the district to fill such vacancy.

2. To make out a tax list for their district whenever an assessment has been made, containing the names of all persons liable to pay taxes in the district, and the amount payable by each inhabitant, set opposite his or her name.

3. 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.

4. 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, and such privies and outhouses as decency requires, out of the funds collected and paid to the clerk for such purposes, and to have the custody and safe keeping of the district school-house.

5. To contract with and employ teachers; and they shall require a teacher to get a certificate from under the hands of the territorial or county superintendent. 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.

6. To give orders to the teachers on the district clerk for their wages.

7. To discharge any school teacher for neglect of duty or any cause that, in their opinion, renders his or her service unprofitable as a teacher, by first paying him or her for what time he or she may have 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, uniform system of school books in their districts.

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 a 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 the district:

1. To record the proceedings of his district in a book to be provided for that purpose by the district.
2. To give notice of annual or special meetings.
3. To procure a list of all residents in the district between the ages of four and twenty-one years.
4. 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.

5. It shall be the duty of the clerk of each school district to collect all district taxes which shall be required by the warrant from the directors to collect, and he shall have the same authority as the county collector to enforce the collection of such tax; and he shall return his delinquent tax list at the time specified in said warrant; and thereupon it shall be the duty of the directors to issue a warrant to their respective clerks to collect all taxes, hereafter returned delinquent, by distress, and he shall have the same authority to enforce the collection of such delinquent taxes as he has for the collection of taxes by the original warrant; and he shall be allowed for collecting said delinquent taxes such percentage as the directors may deem proper.

6. 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 after the first Friday in November of each year, a report containing the number, names and ages of all persons in his district over four and under twenty-one years of age, how long a school has been kept in his district by a qualified teacher during 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 refusal so to do the directors shall forthwith bring suit upon his bond.

SEC. 13. District clerks shall be treasurers of their respective districts; and shall receive such compensation for their services as the directors of the districts shall deem reasonable.

SEC. 14. All moneys coming into the hands of the district

clerk shall remain in the hands of the clerk or clerks, subject to the order of the directors, and shall not be paid out in any other way.

TEACHERS.

SEC. 15. 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 or her duty to keep a register of the children attending school, their age and the time when they began, the time they continue and of their daily attendance, and with the same he or she shall give a list of the text books principally used in his or her school, and said register and list of books shall be in duplicate and filed with the clerk of the district, at the close of every term, properly certified to by the teacher, the one copy for the use of the clerk and the other shall, by the clerk, be furnished to the county superintendent with his annual report.

SEC. 16. No books or publication of a sectarian or denominational character shall be used in any district or public school, neither shall any sectarian or denominational doctrine be taught therein, and any school district, the officers of which shall knowingly allow any school to be taught in violation of this section, such officer or officers assenting to the same, shall be liable to a fine of one hundred dollars to be paid into the common school fund of the county.

SEC. 17. Sixty days of school actually taught shall constitute a quarter.

CHAPTER V.

MISCELLANEOUS PROVISIONS.

SECTION 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 director 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 the 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, by a vote of a majority present, to levy a tax upon the property of the district, not exceeding ten mills on a dollar, for the purpose of building and repairing school houses: *Provided*, That no district shall levy more than one special tax in one year.

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, within 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 required in section eleven of the chapter entitled "clerks", in this act, shall not be entitled to an yportion of the school fund for the year: *Provided*, That if the clerk of any school district shall fail to make such report according to law, the superintendent shall notify the directors and they may make the report within twenty days after the time required by law, and the county superintendent shall receive the same as if made by the clerk.

SEC. 6. No district, except those organized less than one

year, 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. 7. 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. 8. 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. 9. Districts having less than fifteen 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 district shall have at least three month's 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. 10. 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 demand for or against their district, and notice shall be served upon one of the directors of any suit brought against the district.

SEC. 11. The directors of any school district may permit scholars, who are not residents, to attend school in their district with or without charge, as they may deem proper.

SEC. 12. Any person desirous of sending any scholar or scholars out of their district to any other school, may do so by first getting a permit in writing from the directors in the district where they reside, 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: *Provided*, That such parent or guardian shall get a certificate from the teacher where such child or children have attended school, showing the number of days of attendance, with the price of such schooling, but in no case shall a parent or guardian draw more money than will be sufficient to pay the schooling of such scholar during their attendance out of their school district.

SEC. 13. Upon the presentation of such certificate to the clerk of the district in which such scholar or scholars reside, the clerk shall pay to such parents or guardian the apportionment due them out of the funds belonging to said district, taking their receipt for the same, which receipt shall be endorsed on said certificates, 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 fund belonging to said district.

SEC. 14. 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 section seven 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 a 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 ten, chapter two.

SEC. 15. 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. 16. In all cases when a tax is to be levied, it shall be stated in the notice given of the meeting for what purpose or purposes the tax is to be levied.

SEC. 17. If a district meeting be held and 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 by the directors of the district.

SEC. 18. The directors may add such 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 when 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 fourth clause of section ten, of chapter three, the per centage shall be deducted, but in all other cases it shall be collected.

SEC. 19. There shall be an annual meeting held in each district upon the first Friday in November, and notice 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 ten days previous to holding such meeting.

SEC. 20. Every inhabitant, who is a tax payer, 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, and in the selection of a site for a school house, for raising a tax no person shall be allowed to vote except persons liable to pay a school tax.

SEC. 21. Any school meeting shall have power to adjourn from day to day as occasion may require.

SEC. 22. The 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. 23. No person shall be disqualified for the office of county superintendent, district director or clerk, on account of holding any other office within the Territory at the same time.

SEC. 24. It shall be the duty of the directors to appoint a suitable person for librarian when the district shall have procured a library.

SEC. 25. School superintendents, directors and clerks shall be competent to administer oaths or affirmations in any case occurring under the provisions of this act.

SEC. 26. Where, in any county, any of the moneys mentioned in chapter two, section three of this act, are by existing laws set apart to any other fund or for any other purpose, this act shall not be so construed as to affect the disposition of said funds so set apart.

SEC. 27. Failure of a clerk to make out his report in

proper time shall not work a forfeiture of the apportionment to his district, if the report shall reach the superintendent before he apportions the fund.

SEC. 28. No order of the superintendent shall be drawn upon the county treasurer in favor of any district which fails to have or keep up its organization, and any district having been for three years recognized as an organized district by the inhabitants of the same and by the superintendent, shall, so long as it complies with the forms of law, be to all intents, for the purposes of this act, a legal district.

SEC. 29. Any person or persons asking any action of the superintendent which shall affect the boundaries of any district, shall notify the clerk of said district, in writing, of his intention to ask for the same, stating what action is or will be asked, and the time (not less than ten days) when the same will be heard, and shall file a certified copy of the said writing with the superintendent.

SEC. 30. When satisfied such notice has been given, the superintendent shall proceed to examine the case, unless for good cause further time is asked by either party, or in the absence of either party he may consider substantial justice cannot be done, in which case he must set some future time for its consideration.

SEC. 31. All acts or parts of acts heretofore passed in relation to common schools in the Territory of Washington be and the same are hereby repealed.

SEC. 32. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

IN RELATION TO LICENSES.

CHAPTER I.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That if any person shall hereafter sell any goods, wares or merchandise at auction or public outcry, or shall sell or barter such goods, wares or merchandise from traveling boats, wagons, carts or vehicles of any kind, without first having obtained a license therefor from the board of county commissioners of the county in which such goods are sold or bartered, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than fifty dollars, and stand committed to the county jail of the county in which such conviction may be had, until such fine and costs of prosecution shall be paid, or they may be discharged by due course of law: *Provided,* That this act shall not be so construed as to apply to sea-going crafts; or to administrators or executors selling property of deceased persons, or to private individuals selling their household property or furniture or farming tools, implements, or live stock, or any produce grown or raised by such person, either at public auction or private sale.

SEC. 2. If any person shall sell or dispose of any spirituous, malt, or fermented liquors or wines, in any quantity less than one gallon, without first obtaining a license therefor as hereinafter provided, such person shall, for each and every such offense, be liable to a fine of not less than five nor more than fifty dollars, with costs of prosecution.

SEC. 3. The county commissioners of the several counties in this Territory, shall have power to grant a license, or by order of their board to direct the county auditor to issue a license to any person to do any business designated in the first section of this act for such sum not exceeding twenty-five dollars per annum as they may deem proper and expedient.

SEC. 4. Said county commissioners, in their respective counties, shall have the power to grant license to persons to keep drinking houses or saloons therein, at which spirituous, malt, or fermented liquors and wines may be sold [in] less quantities than one gallon; and such license shall be called a retail license upon the payment, by the person applying for such license, of the sum of three hundred dollars a year into the county treasury, and the execution of a good and sufficient bond, executed to such county in the sum of one thousand dollars, to be approved by such county commissioners or the county auditor of the county in which such license is granted, conditioned that he will keep such drinking saloon or house in a quiet, peaceable, and orderly manner: *Provided*, The foregoing shall not be so construed as to prevent the county commissioners of any county from granting licenses to drinking saloons or houses therein, when there is but little business doing, for less than three hundred dollars, but in no case for less than one hundred dollars per annum.

SEC. 5. Said county commissioners in their respective counties shall also have power to grant licenses to sell spirituous liquors and wines therein in greater quantities than one gallon, to be called a wholesale license upon payment of the sum of not to exceed one hundred dollars per annum into the county treasury by such person so desiring such license; also, upon payment of not to exceed a like sum into the county treasury by any person desiring a grocery license to sell lager beer to grant such person such license to sell for the period of one year. Also, upon the payment of such sum as the county commissioners may establish and fix, by order duly entered in the record of their proceedings, not exceeding twenty-five dollars per annum for

each billiard table, pigeon-hole table, or bowling alley, grant a license to any person applying for the same and giving such bond not exceeding two hundred dollars, as such commissioners may require: *Provided*, No person shall be required to take out any license to sell any wine made from fruit produced by such person's own labor, in this Territory.

SEC. 6. Any person who shall sell spirituous liquors or wines in greater quantities than one gallon, or shall retail lager beer, or keep a billiard table or tables, or bowling alley or alleys for hire, in any county in this Territory, without first taking out a license therefor, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars nor less than five dollars, and shall be committed to the county jail of the county where such offense may be committed, and be placed at hard labor until such fine and cost shall be paid or they may otherwise be discharged by due course of law.

SEC. 7. Any person desiring a license to do any business provided by this act that a license shall be taken out for doing, shall have the same granted by paying to the county treasurer of the county where he wishes to carry on such business the maximum sum that the county commissioners are by this act authorized to fix therefor, and executing such bond, to be approved by the county auditor, as is provided in this act, shall be given before license shall issue for carrying on such business.

SEC. 8. The licenses authorized to be granted by this act shall at the option of the person applying for the same, be granted for six, nine, or twelve months, and the person holding such license may transact the business thereby authorized at any place in the county where such license is granted: *Provided*, that such business shall not be transacted in but one place in the county at a time.

SEC. 9. Upon presentation to the county auditor of any county of the certificate of the county treasurer that any person has paid into the county treasury the amount provided by this act,

to be paid for the transaction of any business that a license may be granted to transact, and for the time provided in this act, and upon the execution and delivery to such auditor of the bond hereinbefore required, it shall be the duty of such county auditor to issue such license to such person so presenting such certificate, executing and delivering such bond and making application therefor, for the period of time that the money as shown by the treasurer's certificate would entitle the person so presenting the same to have a license issued for.

SEC. 10. Any person who shall keep a billiard table or tables, pigeon-hole, Jenny Lind, and all other gaming tables, or bowling alley or bowling alleys in a drinking saloon or house or in a room or building adjoining or attached thereto, and shall allow the same to be used by two or more persons to determine by play thereon which of the persons so playing shall pay for drinks, cigars, or other articles for sale in such saloon or drinking house, shall, within the meaning of this act, be deemed to be keeping the same for hire.

SEC. 11. None of the provisions of this act shall be held to apply to the sale by apothecaries or druggists of spirituous, malt, or fermented liquors or wines for medicinal purposes, upon the prescription of a practicing physician.

SEC. 12. All fines and forfeitures collected under this act, and all moneys paid into the treasury of any county for licenses as aforesaid, shall be applied to school or county purposes as the local laws of such county may direct: *Provided*, That this act shall not affect or apply to any private or local laws upon the subject of license in any county in this Territory except King county, and no license shall be construed to mean more than the house or saloon kept by the same party or parties: *Provided, further*, That no part of this act shall in any way apply to the county of Island: *And Provided, further*, That all moneys for licenses within the corporate limits of the town of Olympia shall be paid directly into the town treasury of said town as a municipal fund for the use of said town.

SEC. 13. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

RELATING TO LIEN OF MECHANICS AND MATERIALMEN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That any person who may take or accept a collateral security or other evidence of personal obligation and liability in discharge of a contract for work and labor done or material furnished shall not be entitled to a lien upon the building, improvement or fixture, and land upon which the same is erected for said labor or material.

SEC. 2. Every mechanic or other person who shall do any labor upon, or furnish any material, machinery or fixture for any building, structure, erection or other improvement upon or attached to land, including those engaged in the construction or repair of any wharf, bridge, railway, or other work of internal improvement by virtue of any contract with the owner, his agent, trustee, contractor or sub-contractor, upon complying with the provisions of this act, shall for his labor done or materials, machinery or fixtures furnished, shall have a lien upon such building, erection, wharf, or other improvement, and upon the land belonging to such owner, to the extent of the interest of said owner in said land on which the same is erected or situated, to secure the payment for such labor done, or materials, machinery or fixtures furnished. And any person who shall cut or assist in

the manufacture of saw logs, spars, piles or other lumber, or perform labor upon the same shall be entitled to the lien secured by this act, to be enforced in the same manner against the boom, raft and logs, spars, piles and other lumber.

SEC. 3. Any person wishing to acquire such lien, whether his claim be due or not, shall file in the county auditor's office of the county in which such building, structure or improvement 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, structure or improvement, for the amount due, or to become due, specifically setting forth such amount, and containing a description of the building, structure or improvement 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. 4. Any sub-contractor, journeyman or laborer employed in the construction or repair, or furnishing materials for any building, structure or improvement, may give 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 claims, but not to exceed the amount due from him to the employer at the time of notice.

SEC. 5. Every railway owner, company or contractor, and sub-contractor upon any railway shall be deemed to have the notice provided by the preceding section (4) for a period of sixty days from the last day of the month in which such labor was performed or material furnished, during which period any person who has performed such labor or furnished such material, may file a notice of lien with the county auditor of the proper county, as provided in preceding section, which lien shall be binding upon the erection, excavation, embankment, bridge, road-bed, or right of way, and upon all land upon which the same may be situated, to the full value of such labor or material in the county in which the lien is filed. In case the lien is sought to be en-

forced against the owner, the liability shall not be greater than his liability would have been to the contractor at the time the labor was performed or material furnished.

SEC. 6. 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 the completion of the work, or furnishing materials; or, if a credit be given, from the expiration of the credit.

SEC. 7. 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 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 made 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 on such 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. 8. 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. 9. 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. 10. 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 and 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-contractor, journeyman or laborer shall recover any such claim from the owner of the building, structure or improvement, 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.

APPROVED, Nov. 14, 1873.

AN ACT

IN RELATION TO QUARTZ MINING CLAIMS.

WHEREAS, The Congress of the United States did by act, approved May 10, 1872, provide that all mineral lands, both surveyed and unsurveyed, should thereafter be free and open to exploration and purchase by citizens of the United States, and those who had duly declared their intentions to become such, and did by said act recognize the local customs and rules of the miners in different mining districts of the United States and its Territories; and did make certain other provisions and regulations in reference to mineral lands, that local laws may regulate and make operative, therefore,

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That all mining claims upon veins or lodes of quartz or other rock in place bearing gold, or other valuable mineral deposits heretofore located, shall be governed as to length along the vein or lode, by the customs, regulations and laws in force on the date of their location. A mining claim located after the passage of this act, whether located by one or more persons, may equal, but not exceed one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet of surface on each side of the middle of the vein or the surface, except where adverse rights existing on the 10th day of May, 1872, shall render such limitation necessary. The end lines of each claim shall be parallel to each other.

SEC. 2. The locators of all mining locations heretofore made on any mineral vein, lode or ledge on the public domain, and their heirs and assigns, so long as they comply with United States, territorial and local laws, shall have exclusive right of possession, and enjoyment of all surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, to the top or apex of which lies inside of such surface lines extending downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside of the vertical side-line of said surface locations: *Provided*, That nothing in this section shall be construed to extend the claim of any locator of a mining claim into the claim owned or possessed by any other person.

SEC. 3. The miners of each mining district may make rules and regulations, governing the location, manner of recording and amount of work necessary to hold possession of a mining claim subject to the requirements of the act of Congress approved May 10, 1872, entitled "An act to promote the development of the

mining resources of the United States," which are as follows:

"The location must be distinctly marked on the ground so that its boundaries may be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location and such a description of the claim or claims, located by reference to some natural objects or permanent monument as will identify the claim. On each claim located after the passage of this act, and until a patent shall issue therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, and upon a failure to comply with these conditions, the claim upon which such failure occurred shall be open to re-location in the same manner as if no location of the same had ever been made."

Provided, That all mining claims shall be recorded in the office of the county auditor of the county where the same is situated, until regulations for the recording thereof shall be duly made by the miners of the mining district in which the claim is situated: *And provided further*, That such record with the county auditor before such regulations may have been made by the miners of the district providing for the record of such location, shall be all the record of the same that shall be required in the mining districts of this Territory.

SEC. 4. All acts and part of acts in conflict herewith are hereby repealed.

SEC. 5. This act to take effect and be in force from and after its passage.

APPROVED Nov. 13, 1873.

AN ACT

CONCERNING FENCES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the following shall be considered lawful fences in this Territory: Post and rail or plank fences, four and one-half feet high, made of sound posts five inches in diameter, set substantially in the ground, not more than ten feet apart, with six planks not less than one inch thick and six inches wide, securely fastened by nails or otherwise, said planks not more than five inches apart below two feet in height, and no space above two feet in height over nine inches. Post and rail fences, with posts not more than ten feet apart and rails not less than four inches wide (six of them) made in all other respects the same as the first described in this section. Worm fences made in the usual way, of substantial rails or poles, five feet high, including riders with stakes firmly set in the ground and spaces no greater than in posts and plank or rail fences, except the top spaces between riders, which shall not exceed sixteen inches.

SEC. 2. All other fences, which by reliable evidence shall be declared as strong and as well calculated to protect inclosures as either of those described in the preceding section of this act, shall be lawful fences.

SEC. 3. Any person making and maintaining in good repair around his or her inclosure or inclosures, any fence such as is described in sections one and two of this act, may recover in a suit for trespass, before the nearest court having competent jurisdiction, from the owner or owners of any animal or

animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals so trespassing, may be taken and held as security for the payment of such damages and costs: *Provided*, That such person shall have such fences examined and the damages assessed by three reliable disinterested persons and practical farmers, within five days next after the trespass has been committed: *And provided further*, That if before trial, the owner of such trespassing animal or animals, shall have tendered the persons injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded.

SEC. 4. When any fence has been or shall hereafter be erected by any person on the boundary line of his land, and the person owning the land adjoining thereto shall make or cause to be made an inclosure, so that such fence may also answer the purpose of inclosing his ground, he shall pay the owner of such fence already erected, one-half the value of so much thereof as serves for a partition fence between them.

SEC. 5. When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the interest of one party, said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land.

SEC. 6. If, after notice has been given by either party and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected, the one half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party.

SEC. 7. The respective owners of adjoining inclosures shall keep and maintain in good repair, all partition fences between such inclosures, in equal shares, so long as they shall continue to occupy or improve the same.

SEC. 8. When any person shall unwittingly or by mistake, erect any fence on the land of another, and when by a line legally determined that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: *Provided*, That when the fence to be removed forms any part of a fence enclosing a field of the other party having a crop thereon, said person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run.

SEC. 9. When any party shall wish to lay open his inclosure, he shall notify any person owning adjoining inclosure, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such inclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in section eight of this act.

SEC. 10. In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in section four of this act.

SEC. 11. Upon the trial of any cause occurring under the provisions of this act, the defendant may impeach any such assessment, and in that case the court or the jury shall determine the damages.

SEC. 12. The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if, after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he shall allow such animal to run at large, he shall be liable for all damages

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sed by such animal, and any and all other animals, that may be in company with such animal.

SEC. 13. In case of action for damages under this act, it shall be sufficient to prove that the fence was lawful when the break was made.

SEC. 14. None of the provisions of this act shall apply to the counties of Walla Walla, Stevens, Yakima, Klickitat and Whitman.

APPROVED, Nov. 10, 1873.

AN ACT.

DEFINING THE RIGHTS OF HUSBAND AND WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all property, both real and personal, of the wife owned by her before marriage, and that acquired afterward by gift, bequest, devise, or descent, shall be her separate property; and all property, both real and personal, owned by the husband before marriage, and that acquired by him afterward, by gift, bequest, devise, or descent, shall be his separate property.

SEC. 2. All property acquired after the marriage by either husband and wife, except such as may be acquired by gift, bequest, devise, or descent, shall be common property.

SEC. 3. A full and complete inventory of the separate

property of the wife, exclusive of money in specie, shall be made out and signed by the wife, acknowledged or proved in the manner required by law for the acknowledgment or proof of a conveyance of land, and recorded in the office of the auditor of the county in which the parties reside, and from time to time thereafter a further or supplemental inventory shall be made out, signed, acknowledged or proved, and recorded in like manner of all other separate property afterward acquired by the wife, excepting money whilst in specie and unconverted, and the rents and profits of her separate property included in the original or any subsequent inventory, if the same be money, so long as it shall remain in specie and unconverted.

SEC. 4. If there be included in any such inventory any real estate lying in other counties, such inventory shall also be recorded in such counties.

SEC. 5. The filing of any such inventory in the auditor's office shall be notice of the title of the wife, and all property belonging to her included in the inventory, as well as all money in specie not so included, shall be exempt from seizure on execution for the debts of her husband; and she shall be deemed to have waived the exemption from such seizure on execution of all property belonging to her not included in any such inventory, other than money in specie.

SEC. 6. The husband shall have the management and control of the separate property of the wife during the continuance of the marriage; but no alienation, sale or conveyance of the real property of the wife, or any part thereof, or any right, title, or interest therein, and no contract for the alienation, sale or conveyance of the same, or any part thereof, and no lien or incumbrance created thereon, shall be valid for any purpose unless the same be made by an instrument in writing, executed by the husband and wife, and acknowledged by her as provided for in the acts concerning conveyances in case of the conveyance of her separate real estate. The separate personal property of the wife excepting money in specie, shall not be sold, assigned, or trans-

ferred, unless both husband and wife join in the sale, assignment or transfer thereof.

SEC. 7. When any sale shall be made by the wife of any of her separate property for the benefit of her husband, or when he shall have used the proceeds of such sale, with her consent in writing, it shall be deemed a gift, and neither she nor those claiming under her shall have any right to recover the same.

SEC. 8. If the wife has just cause to apprehend that her husband has mismanaged or wasted, or will mismanage or waste her separate property, she, or any other person in her behalf, may apply to the district court for the appointment of a trustee to take charge of and manage her separate estate; such trustee may, for good cause shown, be from time to time removed by the court and another appointed in his place. Before entering upon the discharge of his trust he shall execute a bond, with sufficient surety or sureties, to be approved by the court, for the proper performance of his duties. In case of the appointment of a trustee for the wife, he shall account for and pay over to the husband and wife, or either of them, the income and profits of the wife's estate, in such manner and proportion as the court may direct.

SEC. 9. The husband shall have the entire management and control of the common property, with the like absolute power of disposition as of his own separate estate. When it shall be provided by the terms of the instrument whereby any property may have been bequeathed, devised, or given to the wife, that the rents and profits thereof shall be applied to her sole and separate use, the entire management and control of the rents and profits of such property shall belong to the wife.

SEC. 10. The separate property of the husband shall not be liable for the debts of the wife contracted before the marriage, but the separate property of the wife shall be and continue liable for all such debts.

SEC. 11. In every marriage hereafter contracted in this Territory, the rights of husband and wife shall be governed by

this act, unless there is a marriage contract containing stipulations contrary thereto.

SEC. 12. The rights of husband and wife married in this Territory prior to the passage of this act, or married out of this Territory, but who shall reside and acquire property herein, shall also be determined by the provisions of this act, with respect to such property as shall be hereafter acquired, unless so far as such provision may be in conflict with the stipulations of any marriage contract.

SEC. 13. All marriage contracts shall be in writing, and executed and acknowledged or proved in like manner as a conveyance of land is required to be executed and acknowledged or proved.

SEC. 14. When a marriage contract shall be acknowledged or proved, it shall be recorded in the office of the auditor of the county in which the parties reside, and also in the office of the auditor of every county in which any real estate may be situated which is conveyed or affected by such marriage contract.

SEC. 15. When any marriage contract is deposited in the auditor's office for record, it shall, as to all property affected thereby in the county where the same is deposited, impart full notice to all persons of the contents thereof.

SEC. 16. No marriage contract shall be valid, or affect any property, except between the parties thereto, until it shall be deposited for record with the auditor of the county where the parties reside; and if it relates to real estate in other counties, with the auditor of the county where the parties reside; and if it relates to real estate in other counties, with the auditor of the county wherein such property is situated.

SEC. 17. A minor capable of contracting matrimony may enter into a marriage contract, and the same shall be valid as if he were of full age, provided it be assented to in writing by the person or persons whose consent is necessary to his marriage.

SEC. 18. A marriage contract may be altered at any time before the celebration of marriage, but not afterward.

SEC. 19. The parties to any marriage contract shall enter into no agreement the object of which shall be to alter the legal order of descent, either with respect to themselves in what concerns the inheritance of their children or posterity, or with respect to their children between themselves, nor deteriorate from the rights given by law to the husband as the head of the family, or to the surviving husband or wife as the guardian of their children.

SEC. 20. No stipulation of any marriage contract shall be valid which shall derogate from the rights given by law to the husband over the persons of his wife and children, or which belong to the husband as the head of the family, or to the surviving husband or wife as the guardian of their children.

SEC. 21. A married woman may make and execute powers of attorney for the sale, conveyance, or incumbrance, of her real or personal estate, provided her husband joins in the execution of the instrument, and the same be acknowledged and certified in the manner provided by the law for the conveyance of her real estate.

SEC. 22. Any conveyance executed under and by virtue of such power of attorney shall be executed, acknowledged and certified in the same manner as if the persons making such powers of attorney were unmarried.

SEC. 23. A married woman shall have the right to revoke such power of attorney by any revocation thereof made and executed by her, and acknowledged and certified in the manner that conveyances by married women are required to be acknowledged and certified, and it shall not be necessary for the validity of such revocation that her husband shall join in the execution thereof.

SEC. 24. All powers of attorney heretofore made and executed by any married woman with her husband, and acknowledged and certified in the manner provided in section twenty-four of this act, and all conveyances heretofore and hereafter executed under and by virtue of such powers of attorney, and acknowledged

and certified in the manner provided in section twenty-two of this act, shall be valid and binding: *Provided*, That no rights already vested in third persons shall be affected by anything in this section contained.

SEC. 25. This act to take effect and to be in force from and after its passage.

APPROVED NOV. 14. 1873.

AN ACT

TO PREVENT EXTORTION AND UNJUST DISCRIMINATION IN THE RATES CHARGED FOR THE TRANSPORTATION OF PASSENGERS AND FREIGHTS ON RAILROADS IN THIS TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, If any railroad corporation; organized or doing business in this Territory, under any act of incorporation or general law of this Territory now in force, or which may hereafter be enacted, or any railroad corporation organized or which may hereafter be organized under the laws of any other State, or of the United States, and doing business in this Territory, shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its track, or any of the branches thereof, or upon any railroad within this Territory which it has the right, license or permission to use, operate or control, the same shall be deemed guilty of extortion,

and upon conviction thereof shall be dealt with as hereinafter provided.

SEC. 2. If any such railroad corporation aforesaid shall make any unjust discrimination in its rates or charges of toll, or compensation, for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its said road, or upon any of the branches thereof, or upon any railroad connected therewith, which it has the right, license or permission to operate, control or use within this Territory, the same shall be deemed guilty of having violated the provisions of this act, and upon conviction thereof shall be dealt with as hereinafter provided.

SEC. 3. If any such railroad corporation shall charge, collect or receive for the transportation of any passenger, or freight of any description, upon its railroad, for any distance within this Territory, the same or a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation in the same direction of any passenger, or like quantity of freight of the same class, over a greater distance of the same railroad; or if it shall charge, collect or receive at any point upon its railroad a higher rate of toll or compensation for receiving, handling or delivering freight of the same class and quantity than it shall at the same time charge, collect or receive at any other point upon the same railroad; or if it shall charge, collect or receive for the transportation of any passenger or freight of any description over its railroad a greater amount as toll or compensation than shall at the same time be charged, collected or received by it for the transportation of any passenger or like quantity of freight of the same class being transported in the same direction over any portion of the same railroad of equal distance; or if it shall charge, collect, or receive from any person or persons a higher or a greater amount of toll or compensation than it shall at the same time, charge, collect or receive from any other person or persons for receiving, handling or delivering freight of the same class and like quantity at the same point upon its railroad; or if it shall charge.

collect or receive from any person or persons for the transportation of any freight upon its railroad a higher or greater rate of toll or compensation than it shall at the same time charge, collect or receive from any other person or persons for the transportation of the like quantity of freight of the same class being transported from the same point, in the same direction, over equal distances of the same railroad; or if it shall charge, collect or receive from any person or persons for the use and transportation of any railroad car or cars upon its railroad, for any distance, the same or a greater amount of toll or compensation than is at the same time charged, collected or received from any other person or persons for the use and transportation of any railroad car of the same class or number, for a like purpose, being transported in the same direction, over a greater distance of the same railroad; or if it shall charge, collect or receive from any person or persons for the use and transportation of any railroad car or cars upon its railroad a higher or greater rate of toll or compensation than it shall at the same time charge, collect or receive from any other person or persons for the use and transportation of any railroad car or cars of the same class or number, for a like purpose, being transported from the same point, in the same direction, over an equal distance of the same railroad; all such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, drawback or other shift or evasion, shall be deemed and taken against such railroad corporation as *prima facie* evidence of the unjust discriminations prohibited by the provisions of this act, and it shall not be deemed a sufficient excuse or justification of such discriminations on the part of such railroad corporation that the railway station or point at which it shall charge, collect or receive the same or less rates of toll or compensation for the transportation of such passenger or freight or for the use and transportation of such railroad car the greater distance than for the shorter distance is a railway station or point at which there exists competition with any other railroad or means of transportation. This section shall not be construed so as to exclude other evidence tending to show any unjust dis-

crimination in freight and passenger rates. The provisions of this section shall extend and apply to any railroad, the branches thereof and any roads or road which any railroad corporation has the right, license or permission to use, operate or control, wholly or in part within this Territory: *Provided, however,* That nothing herein contained shall be so construed as to prevent railroad corporations from issuing commutation, excursion or thousand mile tickets, as the same are now issued by such corporations.

SEC. 4. Any such railroad corporation guilty of extortion or of making any unjust discrimination as to passenger or freight rates, or the rates for the use and transportation of railroad cars, or in receiving, handling, or delivering freights, shall, upon conviction thereof, be fined in any sum not less than one thousand dollars (\$1,000), nor more than two thousand dollars (\$2,000), for the first offense; and for the second offense not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000), and for the third offense not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000); and for every subsequent offense and conviction thereof, shall be liable to a fine of fifteen thousand dollars (\$15,000): *Provided,* That in all cases under this act either party shall have the right of trial by jury.

SEC. 5. The fines hereinbefore provided for may be recovered in a civil action in the name of the Territory of Washington, and there may be several counts joined in the same declaration as to extortion and unjust discrimination, and as to passenger and freight rates, and rates for the use and transportation of railroad cars, and for receiving, handling or delivering freights.

SEC. 6. If any such railroad corporation shall, in violation of any of the provisions of this act, ask, demand, charge or receive of any person or corporation any extortionate charge or charges for the transportation of any passengers, goods, merchandise or property, or for receiving, handling, or delivering freights, or shall make any unjust discrimination against any

person or corporation in charges therefor, the person or corporation so offended against may, for each offense, recover of such railroad corporation, in any form of action, three times the amount of the damages sustained by the party aggrieved, together with cost of suit and a reasonable attorney's fee, to be fixed by the court where the same is heard, on appeal or otherwise, and taxed as a part of the costs of the case.

SEC. 7. All railroad corporations operating railroads or doing business in this Territory shall, on or before the 10th of March, 1874, prepare a schedule of reasonable rates of charges for the transportation of passengers, freights, and cars on each of said railroads, so operated and cause a copy of said schedule to be posted in each car belonging to said company or used by them and belonging to any other company, and at each station upon said railroads. Said corporations may from time to time, and as often as circumstances may require, change and revise said schedules. When any schedules shall have been made or revised as aforesaid it shall be the duty of said corporations to cause publication thereof to be made for three successive weeks in some public newspaper published along the line of such railroad so operated. All such schedules, purporting to be printed and published as aforesaid, shall be received and held, in all such actions, as *prima facie* the schedules of rates chargeable without further proof than the production of the papers in which they were published, together with the certificate of the publisher of said paper that the schedule therein contained is a true copy of the schedule furnished for publication and that it has been published the above specified time; and any such paper, purporting to have been published in the limits aforesaid and to be a public newspaper, shall be presumed to have been so published, at the date thereof and to be a public newspaper. Every railroad corporation doing business in this Territory to be liable for a fine of fifty dollars for each day's omission to prepare and publish a schedule as provided for in this act, to be recovered in an action brought by any citizen of this Territory, in any county traversed by such railroad and to be paid into the county treasury of the county where the suit is brought.

SEC. 8. In all cases under the provisions of this act the rules of evidence shall be the same as in other civil actions, except as hereinbefore otherwise provided. All fines recovered under the provisions of this act shall be paid into the county treasury of the county in which the offense is committed by the person collecting the same in behalf of the county, to be used for county purposes. The remedies hereby given shall be regarded as cumulative to the remedies against railroad corporations, and this act shall not be construed as repealing any statute giving such remedies. Actions commenced under the provisions of this act shall have precedence over all other business except criminal business.

SEC. 9. The term "railroad corporation" contained in this act, shall be deemed and taken to mean, all corporations, companies, or individuals, now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this Territory; and the provisions of this act shall apply to all persons, firms and companies, and to all associations of persons—whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railways in this Territory.

SEC. 10. This act shall take effect and be in force from and after the 1st day of March, A. D. 1874.

APPROVED, Nov. 14, 1873.

AN ACT

TO CREATE AND ORGANIZE THE COUNTY OF SAN JUAN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That all the islands forming the De Haro Archipelago, and hitherto known as the disputed islands and which are at present included within Whatcom county be and the same are hereby organized and established as a county, to be known as San Juan county, and shall be bounded as follows: Commencing in the Gulf of Georgia at the place where the boundary line between the United States and the British possessions deflects from the 49th parallel of north latitude, thence following said boundary line through the Gulf of Georgia and Canal De Haro to the middle of the straits of Fuca, thence easterly through Fuca straits until opposite the middle of the entrance to Rosario straits, thence northerly through the middle of Rosario straits and through the Gulf of Georgia to the place of beginning.

SEC. 2. The county seat of San Juan county is hereby located at the old landing of the Hudson Bay company on San Juan Island, where the postoffice is now kept, until the next general election.

SEC. 3. At the next general election the legal voters of San Juan county, shall designate on their ballots the name of the place where they wish the county seat to be established, and the place receiving the highest number of votes shall thereafter be the county seat of said county.

SEC. 4. Charles McCoy, Samuel Trueworthy and Joseph A. Merrill be and the same are appointed county commissioners for said county until the next general election, and until their successors are elected and qualified, and shall before entering

upon the discharge of the duties of their office, qualify in the manner prescribed by law.

SEC. 5. The county commissioners of said county shall hold a term of court on the third Monday of next November and shall at said term appoint all other county officers required by law, and shall at the same time divide the county into suitable election precincts, and road districts and appoint officers for the same, and all officers appointed by said commissioners shall hold their offices until the next general election, and until their successors are elected and qualified, and shall, before entering upon the discharge of the duties of their respective offices, qualify in the manner required by law.

SEC. 6. It shall be the duty of the county auditor of Whatcom county to make out and deliver to the treasurer of San Juan county on or before the first Monday of next December, a copy of the assessment roll and tax list of Whatcom county for 1873, so far as it relates to that portion of Whatcom county now established as San Juan county, and shall receive for so doing the same fees as are allowed by law for similar services, to be paid upon the approval of the county commissioners of San Juan county by an order drawn by them on the county treasurer.

SEC. 7. The county auditor of Whatcom county shall, on or before the 1st day of January, A. D. 1874, transmit to the territorial auditor a certified statement of the amount of territorial tax on the tax list transmitted by him to the treasurer of San Juan county, and the territorial auditor shall credit Whatcom county with that amount and charge the same to San Juan county.

SEC. 8. Said county of San Juan hereby created shall pay as its allotted portion of the outstanding indebtedness of Whatcom county the sum of one thousand (1,000) dollars either in current funds of the United States, or in the redemption of county warrants of said county of Whatcom and all poll-taxes levied for the year 1873 upon residents of the said islands included in said San Juan county which may have been collected by the

sheriff of Whatcom county shall be credited on account of the said one thousand (1,000) dollars due by said San Juan county to said Whatcom county.

SEC. 9. All taxes now due within the boundaries of San Juan County, shall be paid to the county treasurer of San Juan County.

SEC. 10. San Juan county shall be attached to the counties of Whatcom, Island, Jefferson and Clalm for judicial purposes.

SEC. 11. This act to take effect and be in force from and after its passage.

APPROVED, October 31, 1873.

AN ACT

TO ENCOURAGE THE CULTIVATION OF OYSTERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That any person being a citizen of this Territory, who has planted, or who may hereafter plant oysters in any bay or arm of the sea, where there are no natural beds of oysters, within or bordering upon this Territory, may acquire, by conforming to the requirements of this act, an exclusive right for such a purpose to that portion of such bay or arm of the sea as he shall so occupy, not exceeding for any one person an area of ten acres: *Provided,* That in the waters of Shoalwater Bay, in Pacific County, any person may hold twenty, instead of ten acres: *Provided, further,* That no person or persons shall locate or cause to be located oyster beds in any way interfering with the free use and privilege of any person or persons cutting timber or logging or conveying said logs to market.

SEC. 2. The person desiring the benefits of the preceding section, shall cause the place or portion he desires to claim, to be marked so far as is practicable with stakes or other artificial marks at the corners, with bearings to adjacent natural objects, and shall make before some officer qualified to administer oaths, an affidavit that he has taken the premises so described, for the purpose of planting oysters, and that he has planted, or is about to plant oysters thereon, that said premises are not upon and do not include any natural bed of oysters, and that the same are unoccupied except by himself, and if said premises shall have heretofore been taken and oysters planted thereon, then within three months after the passage of this act and if they shall hereafter be taken, then within one month after taking the same, the person having taken or taking the premises, shall cause his claim, with a description thereof, and affidavit as above required to be recorded by the county recorder of the county in which they may be situated.

SEC. 3. The premises so taken shall, for the purposes aforesaid, belong to the person taking them, his heirs and assigns, so long as he or they shall so occupy them and no longer.

SEC. 4. The same person may claim and occupy more than one place provided the premises so claimed by him do not in all occupy an area greater than ten acres: *Provided*, That in Shoalwater Bay the several places may occupy an area of twenty acres: *And provided further*, That in those places used and occupied for the purpose of bedding marketable oysters, no one person shall occupy an area greater than one hundred by two hundred feet, or twenty thousand feet of superficial area.

SEC. 5. Any person may transfer his right to any other person qualified to hold, by signing the transfer upon record in the presence of the auditor, or by a written transfer, witnessed and acknowledged in the same as is or may be required for deeds.

SEC. 6. It shall be the duty of the county recorder of any county where claims and transfers, made under the provisions of this act, are presented to him for record or entry to receive and

record the same in a separate book provided for this purpose, upon being paid the same fees as are allowed in similar cases.

SEC. 7. This act to take effect and be in force from and after its passage.

APPROVED Nov. 5, 1873.

AN ACT

RELATING TO DEEDS.

SECTION 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 some person authorized by the laws of this Territory to take the acknowledgment of deeds.

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 coercion 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* purchasers, from the date of their filing or recording in said office; and when so filed or recorded shall be notice to all the world.

SEC. 5. Acknowledgments of deeds and mortgages may be taken within the Territory, before a judge of the supreme court, a judge of the probate court, a justice of the peace, a county auditor, a clerk of the district or supreme court, the register of a United States land office or a notary public, duly qualified according to law.

SEC. 6. Deeds or conveyances of lands or of any estate or interest therein situated in this Territory, may be executed or acknowledged in any other state or territory of the United States in the form prescribed for executing and acknowledging deeds within this Territory, and the execution thereof may be acknowledged before any person authorized to take acknowledgments of deeds by the laws of the state or territory, wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this Territory for such purpose.

SEC. 7. In the cases provided for in the preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this Territory for that purpose, such deed shall have attached thereto, a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment, was at the date thereof such officer as he is therein represented to be; that he is authorized by law to take acknowledgments of deeds, and that he believes the signature of the person subscribed thereto to be genuine.

SEC. 8. All deeds heretofore acknowledged according to the provisions of this act, are hereby declared legal, except in cases where third parties have subsequently acquired a valid interest in the land.

SEC. 9. A scroll at the end of the signature of a party to

a deed, shall within the meaning of this act be considered as equivalent to a seal.

SEC. 10. All acts and parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

SEC. 11. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

CREATING THE OFFICE OF NOTARY PUBLIC AND PRESCRIBING
THE DUTIES, POWERS AND EMOLUMENTS THEREOF.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That the Governor shall hereafter appoint and commission as many notaries public, as he shall deem expedient and he may at any time revoke any appointment.

SEC. 2. Every notary public shall hold his office for three years from the date of his commission unless his appointment is sooner revoked.

SEC. 3. Before any commission is delivered to the person appointed, he shall procure a seal, on which shall be engraved the words "Notarial seal" and Washington Territory, with his surname at length and at least the initials of his christian name: *Provided*, That any seal of any notary public which has been duly approved by the governor prior to the passage of this act, shall be lawful during the continuance in office of such notary public. He shall also take and subscribe the oath of office required of all territorial officers and file the same, together with

a distinct impression of his official seal in the office of the secretary of the Territory.

SEC. 4. When the secretary of the Territory is satisfied that the requirements of the foregoing section have been fully complied with, he shall deliver the commission to the person appointed, and who shall thereupon be authorized to enter upon the duties of his office.

SEC. 5. No money shall hereafter be paid out of the territorial treasury for any expense connected with the appointment of notaries public, but every applicant shall pay to the secretary five dollars prior to the delivery of his commission, out of which amounts the secretary shall pay the expenses of printing blank commissions, blank oaths of office, postage and other incidental expenses connected therewith, and the secretary shall also cause to be printed out of the fees so received a sufficient number of copies of this act and he shall deliver to each notary public hereafter appointed a copy of the same.

SEC. 6. Every notary public is authorized within the Territory of Washington:

1. To transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and law of merchants.

2. To take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law.

3. To take depositions and affidavits and administer all oaths, required by law to be administered, and every attorney at law, being a notary public, may administer any oath to his client and no pleading or affidavit shall on that account be held by any court to be improperly verified.

4. To exercise all other powers and perform all other duties, heretofore, conferred upon him by law.

SEC. 7. It shall be sufficient for any person acting as notary public to certify an oath to be used in this Territory, in any of the courts or in any manner whatsoever, to say simply in addi-

tion to his name, "Notary public", and all the courts of this Territory, shall consider an oath or affidavit, otherwise properly certified by an acting notary public, without the impression of his seal, or other or further addition.

SEC. 8. Every notary public is required to keep a true record of all notices of protests given or sent by him, with the time and manner, in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served and of the notice itself.

SEC. 9. On the death, resignation or removal from office, and at the expiration of his term of office, of any notary public, his records with all his official papers, shall within three months therefrom be deposited in the office of the auditor of the county in which such notary shall have kept his office, and if any notary, on his resignation or removal from office, shall for the space of three months neglect to so deposit his records, he shall forfeit a sum not exceeding one thousand dollars, to be recovered in a civil action by any person injured by such neglect, and it shall also be the duty of the executor or administrator of the estate of any notary public deceased, to deposit the records and official papers of such notary with the said auditor and within three months after his appointment under like penalty.

SEC. 10. Every notary public is entitled to demand and receive the fees herein enumerated:

For every protest of a bill of exchange or promissory note.....	\$ 1 00
Attesting any instrument of writing under seal.....	1 00
Noting a bill of exchange or promissory note for non-acceptance or non-payment.....	1 00
Taking acknowledgment of any legal instrument.....	1 00
Registering protest of bill of exchange or promissory note.....	75
Certifying an affidavit, and all other certificates under seal.....	1 00
Each oath or affirmation without seal.....	25
Being present at demand, tender, or deposit, and noting the same, besides mileage.....	50
For any instrument of writing drawn by a notary public, for each one hundred words.....	25

SEC. 11. All acts and parts of acts in any manner conflicting with any of the provisions of this act be and the same are hereby repealed.

SEC. 12. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 14. 1873.

AN ACT

SUBMITTING TO THE VOTERS OF WASHINGTON TERRITORY, AT THE NEXT GENERAL ELECTION, A PROPOSITION FOR CALLING A CONVENTION TO FORM A STATE CONSTITUTION AND APPLY FOR ADMISSION OF THE STATE OF WASHINGTON INTO THE UNION.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the next general election that may be held in this Territory, there shall be submitted to the voters thereof a proposition for calling a convention to form a state constitution, and for the admission of the proposed state into the union.

SEC. 2. The manner of voting on said proposition shall be "For Convention," and "Against Convention;" and all tickets on which shall be written or printed, "For Convention" shall be counted in favor of the same, and all on which shall be written or printed "Against Convention," shall be counted against the the same.

SEC. 3. The votes so cast shall be counted, canvassed and returned to the secretary of the Territory in the manner now re-

- quired in the returns of votes in the elections of delegate of the Territory.

SEC. 4. If it shall appear that at such general election a majority of the votes cast are in favor of a convention, it shall be the duty of the next legislature that may assemble after such general election, to provide for the calling of a convention, and to do all other acts proper and necessary to give effect to the popular will.

SEC. 5. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 10, 1873.

AN ACT

TO FIX THE TIME OF HOLDING THE SUPREME AND DISTRICT COURTS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the district court in the several judicial districts shall be held at the following times and places, to-wit:

At Steilacoom on the second Monday in August and second Monday in January in each year.

At Seattle on the fourth Monday in August and first Monday in February in each year.

At Port Townsend on the fourth Monday in February and second Monday in September in each year.

At Olympia on the third Monday in March and fourth Monday in November in each year.

At Oysterville on the third Monday in June in each year.

At Vancouver on the second Monday in April and first Monday in November in each year.

At Walla Walla city on the second Monday in May and third Monday in November in each year.

At Fort Colville on the second Monday in June in each year. *Provided*, That in case Colville valley shall be set apart as an Indian reservation by congress, thereafter, said court shall be held at the county seat of Stevens county.

At Yakima City on the first Monday in October in each year

SEC. 2. And be it further enacted that the supreme court of the Territory shall be held at Olympia the seat of Government on the second Monday in July in each year.

SEC. 3. All acts and parts of acts so far as they fix times or durations of courts in this Territory are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after Januray 1, 1874 : *Provided*, That the same shall not be construed to prevent the session of the supreme court authorized by law in December 1873, from continuing so long as may be necessary to complete the business of the term.

APPROVED, Nov. 11, 1873.

AN ACT

THE BETTER TO PROVIDE FOR THE PROMPT AND CONVENIENT DISPATCH OF BUSINESS IN THE DISTRICT COURTS OF THIS TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all jury trials and all hearings of cases upon their merits in the several district courts of said

Territory shall be had within the three weeks next following the first day of each term of court.

SEC. 2. That the district courts shall be deemed always open for the rendition of judgments and for the transaction of all other business except trials by jury and the hearing of causes upon their merits: *Provided, always,* That by consent of parties, or after the entry of default, the judge may at any time hear and determine any matter which does not require the intervention of a jury, or where the parties have consented of record to waive a trial by jury.

SEC. 3. That the district judge in each district may attend at each place of holding the district court in his district at least four times in each year, inclusive of the time or times of holding court at such place for the purpose of transacting such judicial business as may require his presence: *Provided,* That this section shall not require attendance at Yakima city, Fort Colville, or at Oysterville save at the stated times of holding court.

SEC. 4. The district judge shall, by rules from time to time, fix the times intermediate between the stated times of holding court at which he will attend at each place of holding court in his district for the transaction of judicial business and all process may be made returnable on such days.

SEC. 5. In case of the absence from the Territory or disability of any district judge, any other district judge may in his place or stead hold the terms of court and fulfill all the duties of district judge within the district of such absent or disabled judge.

SEC. 6. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

TO APPORTION THE REPRESENTATIVES OF THE LEGISLATIVE
ASSEMBLY OF THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the apportionment of the Legislative Assembly shall be as follows:

IN THE COUNCIL.

The county of Walla Walla shall be entitled to elect one (1.)

The counties of Walla Walla, Whitman and Stevens shall elect one (1.)

The counties of Clarke, Skamania, Klickitat and Yakima shall elect one (1.)

The counties of Cowlitz, Wahkiakum and Pacific shall elect one (1.)

The counties of Thurston and Lewis shall elect one (1.)

The counties of Pierce, Mason and Chehalis shall elect one (1.)

The county of King shall elect one (1.)

The counties of Kitsap, Snohomish and Whatcom shall elect one (1.)

The counties of Jefferson, Clallam, Island and San Juan shall elect one (1.)

The apportionment of representatives shall be as follows:

IN THE HOUSE.

The county of Stevens shall elect one (1.)

The county of Whitman shall elect one (1.)

The county of Walla Walla shall elect six (6.)

The county of Yakima shall elect one (1.)

The county of Clarke shall elect two (2.)

The counties of Clarke, Skamania and Klickitat shall elect one (1.)

The county of Cowlitz shall elect one (1.)

The counties of Cowlitz and Wahkiakum shall elect one (1.)

The county of Lewis shall elect one (1.)

The county of Thurston shall elect three (3.)

The counties of Pacific and Chehalis shall elect one (1.)

The county of Pierce shall elect one (1.)

The counties of Pierce and Mason shall elect one (1.)

The county of King shall elect two (2.)

The county of Snohomish shall elect one (1.)

The county of Kitsap shall elect one (1.)

The county of Jefferson shall elect one (1.)

The counties of Jefferson and Kitsap shall elect one (1.)

The county of Whatcom shall elect one (1.)

The counties of Challam and San Juan shall elect one (1.)

The county of Island shall elect one (1.)

SEC. 2. All acts and parts of acts inconsistent to 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.

APPROVED, Nov. 14, 1873.

AN ACT

TO ENABLE THE U.S. LAND OFFICERS TO SECURE THE ATTENDANCE
OF WITNESSES IN MATTERS OF CONTEST.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the register and receiver of the different United States district land offices within this Territory

when sitting for the purpose of deciding matters of contest arising under the pre-emption, homestead or other land laws of the United States, are hereby authorized and empowered to issue summons or notice for parties to appear, and subpoenas for witnesses, with like power and effect as similar process issued by the courts of this Territory, and with like power to punish for contempt or neglect or refusal to obey such process, and the practice and procedure governing in the district court so far as the same shall be applicable, shall govern such district land offices, in such matters of contest and in the procuring the appearance of parties, and attendance of witnesses.

SEC. 2. Such summons or subpoena shall be directed to the sheriff of the county in which the party or witness is supposed to reside, and shall be served in like manner as similar writs issued out of the district courts. Before a writ of attachment can be issued to compel the attendance of a witness, he shall have been tendered his fees, to an amount equal to one day's attendance and mileage to and from his residence to the proper land office hearing said contest. Fees to sheriffs and witnesses, shall be the same as prescribed for the same service in the district court.

SEC. 3. Parties at whose instance the performance of the service is required or who desire the attendance of said witness, must deposit sufficient to pay for the service in accordance with preceding sections, which may be taxed as costs in the case, and the register and receiver shall in accordance with the instructions of the department of the interior and general land office, and according to the usage of said land office shall make an order in regard to the payment thereof.

SEC. 4. This act to take effect from and after its passage.

APPROVED Nov. 14. 1873.

AN ACT

TO PROVIDE FOR THE APPOINTMENT OF COMMISSIONERS OF DEEDS AND TO LEGALIZE THEIR ACTS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the governor may appoint in each of the United States and the Territories thereof, one or more commissioners, under the seal of this Territory, to continue in office for the term of four years, who shall have power to administer oaths, and to take depositions and affidavits to be used in this Territory; and also to take the acknowledgment of any deed or other instrument, to be used or recorded in the Territory.

SEC. 2. Before any commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before any Justice of the Peace, or other officer authorized to administer oaths in the state or territory for which such commissioner is appointed, that he will faithfully discharge all the duties of his office; a certificate of which shall be filed in the office of the secretary of the Territory.

SEC. 3. All commissions heretofore issued to persons in other states and territories, as commissioners of deeds, if issued four years previous to November 29th, 1871, are declared to have expired on the first day of January 1872, and all other commissions issued previous to said November 29th, 1871, shall expire four years from the date of the issue of said commissions. And it is hereby made the duty of the secretary of the Territory to give notice to all parties who have qualified under such appointments, of the passage and provisions of this act.

SEC. 4. All acknowledgments of deeds or other instru-

ments for the conveyance of lands situated in Washington Territory, which may have been taken between January 1st, 1872, and January 1st, 1873, inclusive, before any commissioner of deeds, residing in another state or territory, and duly appointed and qualified under the laws of this Territory, be and the same are hereby legalized and declared valid, notwithstanding the commission of the commissioner of deeds taking such acknowledgment may have expired under the provisions of the act entitled "An act to amend an act entitled an act to provide for the appointment of commissioners of deeds," approved November 29th, 1871.

SEC. 5. All acts and parts of acts in any manner conflicting with any of the provisions of this act, be and the same are hereby repealed.

SEC. 6. This act to be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

REGULATING THE PUBLICATION OF LEGAL NOTICES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That in all counties where two or more newspapers are published it shall be the duty of the county commissioners to let the public printing to the lowest bidder.

SEC. 2. They shall at their meeting in May advertise for proposals for all the public printing for the term of one year.

SEC. 3. It shall be the duty of all county officers where the printing is contracted for in accordance with the provisions of this act, to cause all legal notices, and delinquent tax lists, to

be advertised in the paper designated by the county commissioners.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO ENCOURAGE THE CONSTRUCTION OF RAILROADS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person, firm or corporate company who may hereafter commence the construction of a railroad, wholly within this Territory, shall during and until the actual construction of such railroad, or a portion thereof sufficient for and in actual operation, be exempt from the payment of taxes upon their property, material and line of road until a portion or section thereof shall be actually engaged in the transportation of freight or passengers for hire; then that road or so much thereof as shall be used in transporting for hire, freight or passengers. shall be subject to taxation, anything herein contained to the contrary notwithstanding: *Provided,* That when any section of fifteen miles or more of road is completed, the same tax shall be levied as in all other cases made and provided upon such section as completed.

SEC. 2. All acts or parts of acts in any manner conflicting with this act or any of its provisions, be and the same are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

Passed the house of Representatives November 12, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 7, 1873.

WILLIAM McLANE,

President of the Council.

Returned November 14th, 1873, by the Governor, with his reasons for not approving the same, to the Council, in which the bill originated; the Council at the same date proceeding to reconsider the same, said bill passed the said Council, notwithstanding the Governor's objections, by the vote of yeas 8, noes 1.

ATTEST:

BERIAH BROWN,

Chief Clerk.

And now, November 14th, 1873, said bill and the message of the Governor, disapproving the same having been reported to the House of Representatives, the House proceeded to reconsider the same, and the said bill passed the House of Representatives notwithstanding the Governor's objections, by the vote of nineteen (19) ayes, noes eight (8.)

ATTEST:

CHARLES W. FRUSH,

Chief Clerk.

Filed in my office for record November 15, 1873.

HENRY G. STRUVE,

Secretary of Washington Territory.

AN ACT

CURING DEFECTIVE ACKNOWLEDGMENTS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all those deeds or other instruments in writing which are required to be acknowledged by the laws of this Territory heretofore made or which shall hereafter be made containing omissions in the certificate of acknowledgment of the officer before whom the deed or other instrument in writing aforesaid was executed and all other defects of like character in such certificate, shall not be deemed to invalidate such deed or instrument in any particular, but shall be deemed to convey all the right, title and interest of the party or parties executing the same in good faith, to their grantee as perfectly and effectually to all intents and purposes as if such defect or omission had not occurred in such certificate of acknowledgment: *Provided,* That this curative provision shall in nowise interfere with the vested rights of innocent third parties, and that nothing herein contained shall be so construed as to interfere in any manner whatever with any proceeding in equity in cases of mistake or fraud.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 10, 1873.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO PREVENT THE SPREAD OF CONTAGIOUS OR INFECTIOUS DISEASES AMONG DOMESTIC ANIMALS," APPROVED NOVEMBER 26, 1869.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section two of said act be

amended to read as follows: Any person or company of persons now or hereafter having ownership of or in any such animal or animals mentioned in section one of the act to which this act is amendatory affected by contagious or infectious diseases shall keep such animals within an inclosure or in a district secure from contact with other animals. Any person or persons wilfully or knowingly violating the provisions of this section shall be liable to the same penalty as provided for in section one of the act to which this act is amendatory, and shall be further liable to any person aggrieved thereby for damages to be recovered in a civil suit before any court having competent jurisdiction.

SEC. 2. All acts or parts of acts in conflict with this act be and the same are hereby repealed.

APPROVED, October 21, 1873.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT DEFINING COUNTY LINES IN THE TERRITORY OF WASHINGTON," APPROVED DECEMBER 2, 1869.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington.* That the county line between the counties of Thurston and Chehalis be so changed as to run as follows: "To commence at the Northwest corner of section two, of township eighteen north, range four west; thence west on the township line to the northwest corner of section four; thence south to the southern boundary line of said township; thence east along the township line to the present county line.

SEC. 2. All acts and parts of acts in any manner conflicting with any of the provisions of this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED, November 10, 1873.

AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT REGULATING TAXES ON RAILROADS."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act in relation to regulating taxes on railroads, approved Nov. 29, 1871. be and the same is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 3, 1873.

AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT TO ALLOW BOUNTY FOR KILLING CERTAIN ANIMALS."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act entitled "an act to

allow bounty for killing certain animals," approved, November 29, 1871, be and the same is hereby repealed.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 10. 1873.

AN ACT

IN RELATION TO DISCHARGING BALLAST.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That every master, mate, or other officers or other person belonging to or in 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 fifteen fathoms deep, shall on conviction thereof be fined in any sum not exceeding one hundred (100) 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 plats included within the boundary of any town site, or extension thereof: *And Provided, further,* That in Shoal Water Bay the depth of water shall only be required to be ten fathoms.

SEC. 2. All acts and parts of acts heretofore passed in relation to ballast are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 11, 1873.

AN ACT

FIXING THE RATE TO BE PAID FOR PUBLIC PRINTING AND PROVIDING FOR THE AUDITING OF THE ACCOUNTS OF PUBLIC PRINTER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the compensation for incidental printing of the Assembly shall be as follows, viz: For composition, seventy-five cents per 1,000 ems; for presswork, seventy cents per token; for paper, actual cost.

SEC. 2. That A. A. Phillips, N. S. Porter and the territorial auditor be and they are hereby appointed and constituted a board to audit the accounts of E. T. Gunn, for incidental printing.

SEC. 3. That the territorial auditor shall draw his warrant on the territorial treasurer in favor of E. T. Gunn, for the amount certified to be due said E. T. Gunn, for incidental printing, by said board or a majority thereof, which amount shall be paid out of any money in the treasury not otherwise appropriated.

SEC. 4. That A. A. Phillips and N. S. Porter be and they are hereby allowed for their services the sum of five dollars per diem each, for the time actually occupied upon said board, to be audited and paid in the same manner that other accounts against the Territory are audited and paid.

APPROVED, Nov. 14, 1873.

AN ACT

TO REPEAL AN ACT ENTITLED AN ACT DEFINING THE RIGHTS OF PERSONS AND PROPERTY AS AFFECTED BY MARRIAGE PASSED AT THE LAST SESSION OF THE LEGISLATIVE ASSEMBLY, AND APPROVED BY THE GOVERNOR NOVEMBER 29, 1871.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act entitled an act defining the rights of persons and property as affected by marriage passed by the House of Representatives November 22, 1871, by the Council November 28, 1871, and approved by the governor November 29, 1871, be and the same is hereby repealed.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 5, 1873.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT PROVIDING FOR THE HOLDING OF JOINT CONVENTION TO ELECT TERRITORIAL OFFICERS," APPROVED Nov. 27, 1869.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section 1 of the act to which this act is amendatory be amended to read as follows, "that a joint convention consisting of the members of each House of

the legislative assembly, shall be held on the fourth Monday of the session, at each biennial session of said Assembly.

SEC. 2. All acts or parts of acts in conflict herewith be and the same are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED, Oct. 20, 1873.

AN ACT

RELATING TO THE GREAT SEAL OF THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the secretary of the Territory be and he is hereby declared the lawful custodian of the great seal of the Territory.

SEC. 2. The great seal shall be used in the authentication of all acts of the executive requiring authentication, and also in attesting and authenticating all certificates and other documents properly issued by said secretary.

SEC. 3. All acts and parts of acts in any manner conflicting herewith, be and the same are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 10, 1873.

LOCAL AND PRIVATE LAWS.

LOCAL AND PRIVATE ACTS
OF THE
LEGISLATIVE ASSEMBLY
OF
WASHINGTON TERRITORY FOR 1873.

AN ACT

AMENDATORY OF AN ACT ENTITLED "AN ACT TO INCORPORATE
THE CITY OF STEILACOOM," PASSED THE FIRST SESSION OF
THE LEGISLATURE OF W. T.

ARTICLE I.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act of which this is amendatory shall be amended to read as follows, to-wit:

That the city of Steilacoom shall include within its limits all that portion of land known and designated upon the surveys of the United States in the county of Pierce and Territory of Washington as the donation land claims of John M. Chapman, Lafayette Balch, and Lemuel Bills. The same being bounded and described as follows, to-wit: Commencing at a point 10 ch.

41 links N. of the S. E. corner of section 1, of township 19 north, range 1 E.; thence W. 17 ch. 94 links; thence N. 17 deg. 30 min. E. 1 ch. 50 links; thence N. 5 deg. E. 18 ch.; thence N. 27 deg. 15 min. E. 5 ch.; thence N. 4 deg. W. 8 ch.; thence N. 8 deg. 30 min. E. 12 ch.; thence N. 19 deg. E. 17 ch.; thence N. 24 deg. 15 min. E. 3 ch. 80 links; thence N. 68 deg. E. 5 ch.; thence N. 40 deg. E. 5 ch. 10 links; thence N. 45 deg. E. 2 ch. 49 links; thence N. 45 deg. E. 2 ch. 80 links; thence N. 76 deg. E. 6 ch.; thence S. 79 deg. 30 min. E. 6 ch. 80 links; thence N. 37 deg. 45 min. E. 5 ch.; thence N. 47 deg. 30 min. E. 5 ch. 40 links; thence N. 72 deg. 30 min. E. 6 ch. 91 links; thence N. 60 deg. 30 min. E. 6 ch. 50 links; thence N. 46 deg. 45 min. E. 7 ch. 50 links; thence N. 45 deg. 30 min. E. 6 ch.; thence N. 59 deg. E. 5 ch. 50 links; thence N. 68 deg. E. 7 ch.; thence N. 81 deg. E. 4 ch.; thence N. 85 deg. 30 min. E. 4 ch. 90 links; thence E. 43 ch.; thence S. 80 ch.; thence W. 40 ch.; thence S. 9 ch. 80 links; thence W. 38 ch. 20 links; thence S. 12 ch. 85 links; thence W. 29 ch. 32 links to the place of beginning, lying and being in Sections 31 and 32, Township 20 North, Range 2 East, Sections 5 and 6, Township 19 North, Range 2 East, Section 1, Township 19, North, Range 1 East, and Sec. 36, Township 20 North, Range 1 East.

SEC. 2. The inhabitants of the city of Steilacoom within the limits above described, shall be and they are hereby constituted a body politic and corporate, in fact and in law, by the name and style of the city of Steilacoom, and by that name and style they and their successors shall be known in law, have perpetual succession, sue and be sued, plead and be impleaded, defend and be defended in all courts of law and equity, and in all suits and actions whatsoever; may purchase, acquire, receive and hold property, real, personal and mixed, for the use of said city; may lease, sell and dispose of the same for the benefit of the city; may purchase, acquire, receive and hold real property beyond the limits of the city to be used for burial purposes; also for the establishment of a hospital for the reception of persons affected with contagious or other diseases; also for workhouses

or houses of correction; also for the erection of water works to supply the city with water; and may sell, lease or dispose of the same for the benefit of the city; and they shall have and use a common seal, and may alter and amend the same, and make a new one at pleasure

ARTICLE II.

OF THE GOVERNMENT OF THE CITY.

SECTION 1. The government of said city shall be vested in a mayor, and a common council consisting of five members, who shall be elected by the qualified voters of said city, and shall hold their offices until ten days after the next annual election and until their successors shall be elected and qualified.

SEC. 2. There shall also be a city recorder, city marshal, city assessor, city treasurer, city clerk, to be elected by the qualified voters of said city.

ARTICLE III.

OF THE DUTIES OF OFFICERS.

SEC. 3. It shall be the duty of the mayor to communicate to the council at least once a year, and oftener if he shall deem it advisable, a general statement of the condition of the city as to its finances, government and property, and to recommend the adoption of such means as he may think advisable to promote its interests and advance its prosperity; to be vigilant and active in causing the laws and ordinances of the city to be enforced; to exercise a constant supervision over the conduct of all subordinate officers; to receive and examine into all complaints which may be made or preferred upon the oaths of a respectable party against any of them for a violation or neglect of duty, and certify the same to the common council, who shall act upon the same, and if they find the complaint to be true and the cause sufficient, shall have power to declare the office of the person so complained against to be vacant, and the same shall

be filled as is hereinafter provided; and the mayor shall generally perform all such duties as may be prescribed to him by the charter and city ordinances, and the laws of the United States and this Territory.

SEC. 4. The recorder shall, within the limits of the city, have all the powers of a justice of the peace; he shall also have jurisdiction over all violations of city ordinances, hold to bail, fine or commit persons found guilty of any violation thereof.

SEC. 5. The marshal shall attend upon the meetings of the city council, upon the recorder's court and execute and return all mesne and final process issuing from the recorder. He shall arrest all persons guilty of a breach of the peace or of a violation of any city ordinance, and bring them before the recorder for trial, and shall exercise control over the peace and quiet of the city. He shall also discharge such other duties as may be by ordinance prescribed; he shall collect city taxes; he may appoint as many deputies as he shall see fit, each appointment to be approved by the mayor.

SEC. 6. The assessor shall within such time as shall by ordinance be provided, make out and return to the common council a correct list of all the taxable property within the limits of the city, with the valuation thereof and the names of the persons liable to be taxed therefor. The mode of making out said list, ascertaining the value of the property and collecting the taxes shall, as nearly as may be practicable, be the same as that prescribed by law for assessing and collecting Territorial and county taxes. The assessor shall also discharge such other duties as may by ordinance be prescribed.

SEC. 7. The city treasurer shall receive and carefully keep all moneys belonging to the city, and shall pay out the same only on warrants duly authorized under the laws and ordinances of the city. He shall keep full and correct accounts of his receipts and disbursements, showing the source from which the moneys came and the person to whom it was paid, with reference

to vouchers or warrants upon which it was paid out, which vouchers he shall preserve. His accounts shall at all times be open to the inspection of the mayor and the common council or a committee thereof, who may also examine his books and vouchers and money. He shall at the end of each fiscal year and as much oftener as the council shall require, make out and present to the council a full and correct statement of the receipts and expenditures of the preceding year, or of the time since the last preceding account or statement was made. He shall also perform such other duties as may by ordinance be prescribed.

SEC. 8. The clerk shall be the custodian of the records and seal of the city, and shall authenticate its public acts. He shall attend the meetings of the common council and keep a correct journal of the proceedings thereof, and shall generally do and perform such duties as may by ordinance be provided.

SEC. 9. If any person elected to or holding any city office shall, without leave of the common council, absent himself from the city for more than thirty days, or if he shall remove from the city or fail to qualify within ten days after he shall have been elected, his office shall be deemed vacant and a resolution of the council declaring such office vacant shall be final and conclusive.

SEC. 10. The common council shall by ordinance define the duties of all officers not herein prescribed.

ARTICLE IV.

OF THE ELECTION OF OFFICERS AND FILLING OF VACANCIES.

SECTION. 1. A general election for all the officers of this corporation required by this act to be elected, shall be held on the first Monday in April in each year.

SEC. 2. All elections shall be by ballot, at such places as may be designated by ordinance.

SEC. 3. It shall be the duty of the common council to order all subsequent elections, to designate the place or places of

holding the same, to give at least ten day's notice thereof, and to appoint inspectors of elections, and clerks. The elections shall be conducted in the same manner that general elections are conducted in the Territory. If any inspector or clerk shall fail to attend, the electors present may choose another in his stead. The returns of all elections shall be made to the city clerk who shall present them to the common council at its next meeting after the election, which meeting shall be held on the second Monday in May, when the vote shall be publicly examined and the board of trustees shall declare the result; the city clerk shall thereupon give certificates of election to the persons having a plurality of votes. In case of a tie between two candidates for the same office, the choice shall be determined by the council by lot.

SEC. 4. All vacancies shall be filled by the common council by appointment. In case of a vacancy, the member or members remaining, whether a quorum or not, may fill the vacancy.

SEC. 5. Elections for city officers shall continue but one day, and the polls shall be open from nine o'clock in the morning until four o'clock in the evening. The polls may be closed from 12 until 1 o'clock, at the option of the judges.

ARTICLE V.

OF QUALIFICATION OF MAYOR AND COUNCILMEN, AND ORGANIZATION OF COUNCIL.

SECTION 1. The mayor and common councilmen, and all other officers elected or appointed under this act, shall be qualified within ten days after their election and appointment and shall enter upon the discharge of their duties; the term of office of the mayor and councilmen to commence ten days after the election.

SEC. 2. The members of the common council elected under this act, shall assemble ten days after their election and chose one of their number as presiding officer. In case of the absence of the president they may elect a president *pro tem*-

pore, who shall have the power and perform all the duties of president. They shall fix the time and place of holding their stated meetings and may be convened by the mayor at any time. A majority of the members shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as the council may have previously prescribed. They shall judge of the qualifications, elections and returns of their own members, and of the other officers elected or appointed under this act, and determine contested elections. They may establish rules for their own proceedings, punish any member or other person for disorderly conduct in their presence at any meeting of the council, and with the concurrence of two-thirds of all the members elect may, for good cause, expel a member. They shall keep a journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken on any question and entered on the journal, and all their proceedings shall be public.

ARTICLE VI.

OF THE GENERAL POWERS OF THE MAYOR AND COMMON COUNCIL.

SECTION 1. The mayor and common council shall have power within the city:

1. To make by-laws and ordinances not repugnant to the laws of the United States or of this Territory.

2. To levy and collect taxes not exceeding one-fourth of one per cent. per annum upon all property made taxable by law for county and Territorial purposes: *Provided*, That if any person at any time after the annual assessment, shall commence the sale or barter of goods, wares or merchandise within said city, such person shall be assessed and pay a tax on said goods, wares and merchandise for the balance of the year after he shall so commence, proportioned to the amount levied or assessed for city purposes for the year. *And provided further*, That no tax shall be

levied on the value of articles, the growth and produce of the Territory, which are brought into said city and sold.

3. To make regulations and restrictions to prevent the introduction of contagious or other diseases into the city.

4. To establish hospitals and make regulations for the government of the same, and to secure the general health of the inhabitants.

5. To prevent and remove nuisances

6. To erect water works either within or beyond the limits of the city, and provide the city with water for the extinguishment of fires and the use of the inhabitants.

7. To provide for the prevention and extinguishment of fires and to organize and establish a fire department.

8. To appoint fire wardens and prescribe their duties, and to compel any person or persons present to aid in extinguishing fires or in the preservation of property exposed to danger in time of fire, and by ordinance to provide whatever other regulations may be necessary on such occasions.

9. To establish and regulate a police.

10. To impose a fine, forfeiture and penalty for the breach of any ordinance: *Provided*, No fine shall exceed one hundred dollars, and no term of imprisonment shall exceed sixty days: *Provided, further*, That in case of inability or refusal to pay a fine, ten days imprisonment may be imposed for each two dollars of the fine and costs: *And provided further*, That prisoners may be required to labor under such regulations and restrictions as may by ordinance be prescribed.

11. To erect a workhouse or house of correction, and provide for the government and regulation thereof.

12. To remove all obstructions from streets, alleys, side and cross walks, and to provide for the construction, cleaning and repair of the same, as well as all sewers, gutters, water courses and underground drainage, and to require parties owning or occupying premises to clean and remove obstructions from streets, alleys, cross and sidewalk adjoining their property or the premises occupied by them, and to levy a discriminating tax on per-

sons and property particularly benefitted by the construction and repair of streets, side and cross works, sewers, gutters and drains, either with or without a general tax for general benefit of such works.

13. To provide for lighting the streets of the city with gas or otherwise.

14. To establish and regulate a night watch and patrol, and to provide a city jail.

15. To appropriate and provide for any item of city expenditure and for the payment of the debts of the city: *Provided*, That when the city indebtedness shall amount to the sum of five hundred dollars, no further debt shall be created; and debts created in violation of this provision shall be void.

16. To regulate the storage of gunpowder, saltpetre, pitch, tar, resin, petroleum, kerosine and all other combustible materials; and the use of candles, lamps, fire, or other lights in shops, stables and other dangerous places; to prevent, remove or secure any fire place, stove pipe, chimney, oven, boiler or other apparatus which may be dangerous in causing fire.

17. To prescribe the manner of building party walls and fences.

18. To prevent or restrain any riot, disturbance or disorderly assemblage, or any indecent conduct in any street, house or place in the city.

19. All moneys received for fines and taxes shall be paid into the city and constitute its general funds.

SEC. 2. Any ordinance which shall have been passed by the common council shall, before it becomes valid, be presented to the mayor for his approbation; if he approves it he shall sign it, if not, he shall return it with his objections in writing, to the council, who shall cause the same to be entered in their journal. They shall then reconsider the same. If, on such reconsideration, three members of the council shall vote for the same, it shall become an ordinance. In all such cases the yeas and nays shall be taken and entered upon the journal. If the mayor shall fail to return an ordinance within seven days, Sundays excepted, after it shall have been presented to him for his approval, it shall become effective as if the mayor had signed it.

SEC. 3. All demands against the city shall be audited by the council and shall be paid by the treasurer on the warrant of the president of the council, countersigned by the mayor.

SEC. 4. The president of the council shall exercise the duties of mayor whenever said office shall be vacant, or the mayor be absent from the city, or from any cause unable to attend to the duties of his office.

SEC. 5. The style of city ordinances shall be as follows: "The people of the city of Steilacoom do ordain as follows:"

ARTICLE VII.

OF SALARIES OF OFFICERS.

SEC. 6. Neither the mayor nor members of the council shall receive any salary for their services. The recorder shall receive the same fees for his services as justices of the peace are entitled to by law for similar services, but no part of the same shall be paid by the city.

SEC. 7. All other officers provided for in this act, or to be created, shall receive such compensation as shall be provided for by ordinance.

ARTICLE VIII.

MISCELLANEOUS PROVISIONS.

SECTION 1. Upon the passage of all ordinances the yeas and nays shall be called and entered upon the journal.

SEC. 2. All resolutions or ordinances calling for appropriations of any money shall lie over for seven days.

SEC. 3. The mayor may at any time call a special session of the common council by proclamation or special notice to the councilmen, and he shall state to them when assembled, the cause for which they have been convened.

SEC. 4. No member of the council shall, during the period

for which he shall have been elected, be interested in any contract the expenses of which are paid out of the city treasury.

SEC. 5. The fiscal year of the city shall terminate on the last day of February in each year, and the city council shall, at least one week before the annual election, cause to be published a complete and full detailed statement of all moneys received and expended by the corporation during the preceding year, and on what account expended, classifying each receipt and expenditure under its appropriate head.

SEC. 6. The city council may, when in their judgment the same is not incompatible with the public interests, appoint a single person to hold and discharge the duties of two or more offices.

SEC. 7. This act may be amended or repealed at the pleasure of the Legislature.

ARTICLE IX.

SECTION 1. To carry into effect the provisions of this act, until officers can be duly elected at the first election day herein above provided for; the several persons who may be in office by reason of an election under the provisions of the act of which this is amendatory are hereby appointed to the several offices to which they may have been elected under said act of said first session of the Legislative Assembly and are hereby authorized to hold their said offices until said election herein provided for, and until the several officers hereby authorized to be elected shall be elected and qualified.

SEC. 2. Appeals shall be allowed from any order, decision or judgment of the common council or city recorder to the district court, which shall be taken in the same manner as appeals from justices of the peace, to the district court.

SEC. 3. All acts and parts of acts in any manner conflicting with any of the provisions of this act be and the same are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE CITY OF WALLA WALLA," PASSED JANUARY ELEVENTH, 1862. AMENDED.

ARTICLE I.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the city of Walla Walla shall be bounded as follows, to-wit: commencing at the north-west corner of the south half of the north-east quarter of section nineteen, township seven north, of range thirty-six east; thence east one and one-half miles to the section line between sections twenty and twenty-one; thence south along said section line between twenty, and twenty-one, and twenty-eight, and twenty-nine, one and one-half miles to quarter post between sections twenty-eight and twenty-nine; thence west one and one-fourth miles to the United States Military Reservation, to its intersection with the west line of lot four, section thirty, township seven north, of range thirty-six east; thence north to the place of beginning, including the south half of the north-east quarter, and south-east quarter of section nineteen, township seven north, of range thirty-six east; and south half of the north-west quarter, and south half of the north-east quarter, and south-west quarter, and south-east quarter of section twenty; and north-east quarter and north-west quarter of section twenty-nine, and

the north-east quarter of the north-east quarter, and lots three and four, of section thirty, township seven north, of range thirty-six east.

SEC. 2. The inhabitants of the city of Walla Walla, within the limits described in section one of this act shall be, and they are hereby constituted a body politic and corporate in fact and in law, by the name and style of the city of Walla Walla. And by that name and style they and their successors shall be known in law, have perpetual succession, sue and be sued, plead and be impleaded, defend and be defended in all courts of law, and in all actions whatsoever. May purchase, hold and receive property, real and personal, within said city, for public buildings, parks, and city improvements; may lease, sell, and dispose of the same for the benefit of the city; may purchase, hold, and receive property, real and personal, beyond the limits of the city to be used for burial purposes, also for the establishment of a hospital for the reception of persons affected with contagious or other diseases; also, for work houses or houses of correction; also, for the erection of water works to supply the city with water. And may sell, lease and dispose of the same for the benefit of the city, and they shall have and use a common seal, and may alter and amend the same, and make a new one at pleasure.

ARTICLE II.

SECTION 1. The government of the city shall be vested in a mayor, a common council consisting of four members, and a city recorder, who shall severally hold their offices for one year and until their successors are elected and qualified; there shall also be elected at the same time a city marshal, city assessor, city treasurer and city surveyor, who shall hold their offices for one year and until their successors are elected and qualified, and the common council may appoint a city attorney who shall hold his office during the pleasure of the council.

SEC. 2. The mayor of said city shall be *ex officio* a member of and president of the common council.

ARTICLE III

SECTION 1. It shall be the duty of the mayor to communicate to the council at least once in each year, and oftener if he shall deem it expedient, a general statement of the condition and situation of the city in relation to its general finances and improvements, to recommend to the common council the adoption of all such measures connected with the police, security of the public health, cleanliness and ornament of the city, and such other improvements of the government, and finances as he shall deem expedient; to be vigilant and active in causing the laws and ordinances of the city government to be executed and enforced; to exercise a constant supervision and control over the conduct of all subordinate officers; to receive and examine into all such complaints as may be preferred against any of them for neglect of duty, and certify the same to the common council. And the mayor shall generally perform all such duties as may be prescribed to him by the charter and city ordinances, and the laws of the Territory, and the United States.

SEC. 2. The recorder shall have jurisdiction over all violations of city ordinances, hold to bail, fine, or commit to jail all persons found guilty of any violation thereof; and for that purpose shall be *ex officio* a justice of the peace. Appeals from the decision, order or judgment of the city recorder shall be allowed and taken to the district court in the same manner as appeals from justices' courts are taken.

SEC. 3. It shall be the duty of the city marshal in addition to the duties prescribed to him by the city council, or by any ordinance, to execute and return all processes issued by the recorder, or directed to him by any legal authority, and attend regularly upon the recorder's court and the meetings of the city council; he may appoint one or more deputies who shall possess the same authority as the marshal; he shall arrest all persons guilty of a breach of the peace, and of a violation of any of the

city ordinances, and bring them before the recorder for trial, and possess superintending control over the peace and quiet of the city.

SEC. 4. It shall be the duty of the assessor in addition to the duties that may be prescribed to him by the common council to make out, within such time as the common council shall order, a correct list of all the property taxable by law, within the limits of said city, with the valuation thereof; which shall be certified to by him, and shall be returned by him to the common council; the mode of making out said list and ascertaining the value of said property shall be the same as that prescribed by law for assessing the Territorial and county taxes.

SEC. 5. It shall be the duty of the city treasurer to receive all moneys that shall come to said city either by taxation or otherwise, and to pay the same out as provided for by this act; to direct and to do and perform all such other acts as shall be prescribed to him by the common council; he shall, on the last day of September, December, March and June of each year, make out and present to the common council a full and complete statement of the receipts and expenditures of the preceding three months, which shall be published in such manner as the council may prescribe by law.

SEC. 6. It shall be the duty of the city attorney to attend to all suits, matters and things in which the city may be legally interested; to give his advice and opinion, in writing, whenever required by the mayor or common council, and to do and perform all such things touching his office as the common council may require of him.

SEC. 7. If any person elected to any office shall remove from the city, or absent himself therefrom for more than thirty days, without leave from the common council, or shall fail to qualify within ten days after he is notified of his election, his office shall be deemed vacant.

SEC. 8. The common council shall define the duties of all officers which are not herein prescribed, and fill all vacancies

which may occur in any of the city offices by death, resignation or otherwise, by appointment; and the person so appointed shall serve until the next general election and until his successor is qualified.

SEC. 9. A general election for all officers of the corporation required to be elected by this act or any ordinance of the city, shall be held on the second Monday in July in each year.

SEC. 10. It shall be the duty of the common council to order all elections, to designate the place of holding the same, to give at least ten days' notice thereof, and to appoint the inspectors, judges and clerks of the same. The elections shall be conducted in the same manner and according to the provisions of the laws of the Territory regulating general elections. If any inspector, judge or clerk shall fail to attend, the electors present may appoint another in his stead. The returns of all elections shall be made to the common council, who shall publicly examine and declare the result thereof, and give certificates of election to the persons having a plurality of votes.

SEC. 11. All elections for city officers shall continue but one day, and during that day from nine o'clock A. M. to six o'clock P. M. The polls may be closed one hour at noon, at the option of the judges of election.

ARTICLE IV.

SECTION 1. The mayor, common councilmen, and all other officers elected or appointed under this act shall qualify within ten days after the official announcement of their election or appointment, and shall enter upon the discharge of their duties, and shall hold their office for one year, and until their successors are elected and qualified.

SEC. 2. The members of the common council, elected under this act, shall assemble ten days after their election, and choose some suitable person as their clerk, whose official title shall be city auditor and clerk, and in case of the absence of the president they may elect one of their number president, *pro tempore*, who

shall have the power and perform all the duties of president; they shall fix the time and place of their stated meetings, and may be convened by the mayor at anytime; a majority of the members shall constitute a quorum for the transaction of any business except the final passage of any ordinance which shall require a majority of all the members; but a smaller number may adjourn from time to time, and compel the attendance of absent members in such manner and under such penalties as the council previously prescribed; they shall judge of the qualifications, election, and returns of their own members, and the other officers qualified under this act, and determine contested elections; they may make rules for their own proceedings; punish any member or other person for disorderly conduct at any meeting of the council, and with the concurrence of two-thirds of all the members may expel any member; and when any charges against any city officer is made by the mayor as provided in section first of article third of this act, if they find the complaint true shall have power to declare the office vacant; they shall keep a correct journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken on any question, and entered on their journal and their proceedings shall be public.

SEC. 3. The mayor and common council shall have power within the city:

1. To make by-laws and ordinances not repugnant to the laws of the United States or the laws of the Territory.

2. To levy and collect taxes, not to exceed one-half of one per cent. per annum, upon all property made taxable by law for county and territorial purposes: *Provided*, That said city council shall not pass any by-laws whatever that will in anywise preclude any person from bringing into said city and selling any article of produce raised in the Territory.

3. To make regulations to prevent the introduction of contagious and other diseases into the city.

4. To establish hospitals and make regulations for the government of the same, and to secure the general health of the inhabitants.

5. To prevent and remove nuisances.
6. To erect water works either within or beyond the limits of the city, and provide the city with good and wholesome water.
7. To license, tax, and regulate auctioneers, town-criers, ordinaries, hawkers, peddlers, brokers, pawnbrokers, money-changers, and any and all other business or businesses maintained or carried on within the corporate limits of said city: *Provided*, That carpenters or house-joiners, wagon-makers or wheelwrights, blacksmiths, boot and shoe makers, cabinet makers, barbers or milliners, shall not be required to take out any license to carry on such trade or trades within the corporate limits of said city of Walla Walla.
8. To license and regulate porters, and fix the rates of portage.
9. To tax, license and regulate hackney carriages, wagons, carts, drays and omnibuses, and fix the rate to be charged for the carriage of persons or property.
10. To license, tax, regulate and restrain bar-rooms, theatricals, and other shows, amusements, billiard tables, and tipping houses: *Provided*, That no keeper of any bar-room shall be required to pay any greater sum than one hundred dollars per annum: *And provided further*, That no license shall issue for a shorter period than is prescribed for by the laws of the Territory of Washington in and for Walla Walla county.
11. To restrain and prohibit gambling and gaming houses, and houses of ill-fame.
12. To erect market houses, establish markets and market places, and to provide for the government and regulation thereof.
13. To provide for the prevention and extinguishment of fires and to organize and establish fire companies.
14. To appoint fire wardens, and prescribe their duties, and property guards, and to compel any person or persons present to aid in extinguishing fire or for the preservation of property

exposed to danger in time of fire, and by ordinance to prescribe such other powers as may be necessary on such occasions.

15. To establish and regulate a police, night watch and patrol.

16. To erect a work-house or house of correction, and to provide for the government and regulation thereof.

17. To remove all obstructions from the side or cross walks, and provide for the construction, cleaning and repairs of the same, as well as all gutters, sewers, water courses and underground drainage.

18. To appropriate money for any item of city expenditure, and to provide for the payment of the debt and expenses of the city.

19. To grade, pave and plank or otherwise improve, clean and keep in repair, streets and alleys, and they shall have power to assess the cost of grading, paving or planking of any street against the owners of the lots or land fronting on said street in proportion to the amount of ground fronting on said street: *Provided*, That they shall not grade, pave or plank any street at the expense of the property owners unless two-thirds of the persons owning lots or land on said street shall petition the council in writing therefor.

20. To regulate the storage of gunpowder, pitch, tar, rosin and all other combustible materials, and the use of candles, lamps or other lights in shops, stables or other places; to prevent, remove or secure any fire place, stove, oven, chimney, boiler or other apparatus which may be dangerous in causing fire.

21. To regulate and prescribe the manner of building partition walls and fences.

22. To prevent and restrain any riot, noise, disturbance or disorderly assemblage in any street, house or place in the city.

23. To impose appropriate fines, forfeiture and penalty for the breach of any ordinance, and provide for the punishment of all violations of any city ordinance; but no fine shall be imposed for more than one hundred dollars; also, to provide for working all city prisoners on the streets in payment of any fine or punishment for the violation of any ordinance.

24. To provide for the protection and removal of all obstructions in Mill creek, or any other stream or ditch within the city limits of said city, and for compelling persons who have caused, or permitted to be caused, obstructions therein, to remove the same; to provide bridges over the same, and such improvements in the channel of said stream as may be deemed necessary or expedient.

SEC. 4. Any ordinance which shall have been passed by the common council shall, before it becomes effective, be presented to the mayor for his approval; if he approves the same he shall sign it, if not, he shall return it with his objections in writing to the common council, who shall cause the same to be entered on their journal, and shall proceed to reconsider the same; if after such reconsideration two-thirds of the members of the common council shall agree to pass the same it shall become a law. In all such cases the vote shall be by yeas and nays, and the names of the members voting for or against the same shall be entered in the journal. If any ordinance shall not be returned by the mayor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become effective as if the mayor had signed it.

SEC. 5. All demands and accounts against the city shall be audited by the council, and shall be paid by the treasurer on the warrant of the president of the council countersigned by the clerk and auditor.

SEC. 6. The president, *pro tempore*, of the council shall exercise the duties of mayor whenever said office shall be vacant, or the mayor be absent from the city, or from any cause unable to attend to the duties of the office.

SEC. 7. The style of the city ordinances shall be as follows: "The people of the city of Walla Walla do ordain as follows:"

ARTICLE V.

SECTION 1. The mayor and members of the common coun-

cil shall receive no salary for their services until the city shall contain two thousand inhabitants.

SEC. 2. The recorder shall receive the same fees for his services as justices of the peace are entitled to by law for similar services.

SEC. 3. All other officers provided for by this act, or to be created, shall receive such compensation as may be established by ordinance.

ARTICLE VI.

SECTION 1. For the purposes of municipal representation, the city of Walla Walla shall be divided into four wards, and each ward shall be entitled to one member of the council, who shall be a resident of the ward for which he was elected or appointed.

SEC. 2. It shall be the duty of the council, at their first meeting in June, 1874, to divide the city into four wards in accordance with section one of this article and they may from time to time change the boundaries thereof if the public good requires it.

SEC. 3. Fifty per centum of all road taxes collected within the corporate limits of the city of Walla Walla shall be paid into the city treasury of the city by the person collecting the same on the first Monday in January and July of each year to be expended by the municipal authorities of said city in the improvements of streets and bridges in said city.

SEC. 4. The common council at any general election of said city, may submit to the qualified electors of said city the proposition to levy a special tax of two and one-half mills on a dollar on all the taxable property of the city, and if a majority of the electors vote for said tax the common council shall have power to levy the same and the money so raised shall be used for opening and widening the streets of said city and for no other purpose whatever.

SEC. 5. Upon the passage of ordinances appropriating money, imposing taxes, increasing or reducing or establishing licenses, the yeas and nays shall be entered on the journal.

SEC. 6. The mayor may call a special session of the common council at any time and he shall state to them when assembled the cause for which they have been convened.

SEC. 7. When two or more persons have an equal and the highest number of votes for any office the common council shall decide the election.

SEC. 8. All resolutions and ordinances calling for appropriations of money shall lie over for seven days.

SEC. 9. No member of the common council shall, during the period for which he is elected, be interested in any contract, the expenses of which are paid out of the city treasury.

SEC. 10. The fiscal year shall terminate on the thirtieth day of June in each year.

SEC. 11. The city council shall cause to be published at the close of each fiscal year in some newspaper published in said city, a full, complete and detailed statement of all moneys received and expended by the corporation during the preceding year, and on what account received and expended, classifying each receipt and expenditure under its appropriate head.

ARTICLE VII.

SECTION 1. The city council shall have power to lay off, widen, straighten, narrow, vacate, extend and establish streets, public grounds and market places, and to provide for the condemnation of such real estate as may be necessary therefor.

SEC. 2. Whenever it shall be deemed necessary by the city council to enter upon or take private property for any of the purposes specified in section one of this article an application in writing shall be made to the district court, which application shall describe as accurately as may be the property to be taken, the object proposed, and the owner of the property, and each lot

or parcel thereof, and notice of the filing thereof shall be given to the several owners by summons as is required to be served to commence a civil action in said court. After such notice shall have been given, the court shall proceed to determine the compensation to be paid for the taking of such property, shall empanel a jury and the mode of procedure shall be the same as in actions at law. The assessment shall be made so that the amount payable to each owner, may be ascertained by allotting it to each owner by name, and the inquiry and assessment shall in other respects be made by the jury under such instructions as shall be given by the court.

SEC. 3. When the amount of compensation due to any of the owners of the property to be taken shall be ascertained and the city council shall have caused to be delivered or tendered to such owner or owners the amount of such compensation the city authorities shall have the right to enter upon and take possession of such property for the purpose for which it was condemned, and the court may, if necessary enforce an order giving possession.

SEC. 4. Any of the parties to the action and proceedings, either plaintiff or defendant, may appeal from the judgment and order of the district court to the supreme court as in actions at law.

SEC. 5. The city shall pay all costs in all actions for the condemnation: *Provided*, That if any owner of property shall appeal to the supreme court, and shall fail to get the judgment of the district court reversed, or the amount of award increased, the party taking the appeal shall pay all the costs and expenses of said appeal.

MISCELLANEOUS PROVISIONS.

SECTION 1. No person shall be eligible to any office in the municipal corporation who at the time of his election or appointment is not a resident of the city, and entitled to the privilege of an elector under the laws of the Territory.

SEC. 2. All officers of said city, elected in July, 1873, shall

hold their offices until the election in 1874, and until their successors are elected and qualified.

SEC. 3. The common council shall have power to designate some justice of the peace in said city to perform the duties of city recorder whenever the recorder is absent from the city, or from any cause unable to act, who shall have all the power of city recorder, in all city cases, and shall perform the duties of said officer during such disability.

SEC. 4. All acts or parts of acts heretofore passed in relation to the subject matter herein contained be and the same are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

TO INCORPORATE THE TOWN OF PORT TOWNSEND.

ARTICLE I.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the town of Port Townsend shall be bounded as follows, to wit: Commencing at half tide mark at Point Hudson at the south-east corner of A. A. Plummer's donation claim; thence along the meandering of Port Townsend Bay south 59 deg. west to the center of what is known on the plat of the town of Port Townsend as Van Buren street; thence along the center of said street north 31 deg. west till it reaches the center of Laurence street; thence along

center of Laurence street north 59 deg. east until it reaches half tide on Admiralty Inlet; thence along the meandering of the beach to the place of beginning.

SEC. 2. The inhabitants of said town of Port Townsend, shall be and are hereby constituted a body politic and corporate, by the name and style of the town 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 work, and city improvements, and may dispose of same in any way for the benefit of the city, and have power to grant privileges to erect wharves and piers at the termination of any street on the water front, and to regulate the rate of wharfage to be collected on said wharves, and the manner in which said wharves are to be built; for the erection of water works to supply the town with water, and may sell, lease or dispose of the same for the benefit of the town; may purchase, acquire, receive and hold real property beyond the limits of the town to be used for burial purposes, and for the establishment of a hospital for the reception of persons infected with contagious diseases.

ARTICLE II.

SECTION 1. For the government of said town of Port Townsend, there shall be annually elected in the manner herein-after provided, the following officers: A board of trustees, consisting of three members, who shall hold their offices for one year, or until their successors be duly elected and qualified. And there shall be appointed annually, at their first regular meeting after election by the board of town trustees, one town clerk, and one town marshal.

ARTICLE III.

SECTION 1. That a general election for trustees of the

town shall be held on the first Monday in December of each year.

SEC. 2. No person shall be entitled to vote at any town election who shall not be an elector for territorial officers, and who shall not have resided in this town 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 town.

SEC. 3. At^f all elections for town offices, 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 town 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 presentation of the same to the board of trustees he shall be sworn into office.

SEC. 7. All persons elected to any office must qualify within ten days after the day of election.

ARTICLE IV.

SECTION 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 the stated meetings, and may be convened by the president of the board 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, 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 to make all needful by-laws, ordinances and town regulations, relating to roads, streets, alleys, by-ways, wharves, piers, and for security against fire, not repugnant to the constitution or the laws of the United States, or the laws of the Territory.

SEC. 5. To prohibit and prevent the introduction of contagious diseases into said town limits and to make such regulations as shall promote the security of health, peace, cleanliness, and good order in said town, and to restrain drunkenness and disorderly conduct.

SEC. 6. To appoint a committing magistrate, who shall be one of the justices of the peace residing within said town, whose duty it shall be to hear all complaints of violations of said ordinances, and to examine all parties arrested by the town marshal.

SEC. 7. The roads, streets and alleys within said town limits, shall be under the exclusive control of said board of trustees, who shall make all rules in regard to the improvement, repair, grading, clearing, &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 town marshal, and laid out and expended by him as directed.

ARTICLE V.

SECTION 1. The boundaries named in this act as the boundaries of the town of Port Townsend, shall constitute and be acknowledged and recognized by the superintendent of public schools of Jefferson county, W. T., as the boundaries of school district, No. 1.

SEC 2. The treasurer of Jefferson county, W. T., shall pay over to the clerk of said school district, No. 1, twenty-five per-

cent. of all moneys received by him after the passage of this act for licenses, which by existing or subsequent laws are or may be required to be paid for the selling at retail of any spirituous, malt, or fermented liquors within the corporate limits of the town of Port Townsend.

SEC. 3. All moneys so received shall be added to the regular school tax belonging to said district, and applied only for the purpose of paying the salary of teachers.

ARTICLE VI.

SECTION 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 VII.

SECTION 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 marshal to execute and return all processes issued by the committing magistrate, and perform such other duties as may be regulated by any ordinance passed by board of trustees.

SEC. 3. It shall be the duty of the town treasurer to receive all moneys which shall come to said town by taxation or otherwise, and pay 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 VIII.

SECTION 1. All officers required to be elected or appointed 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 and execute such bond as may be regulated by ordinance.

SEC. 2. All resolutions and ordinances calling for an appropriation for any sum exceeding one hundred dollars shall lie over two meetings.

ARTICLE IX.

SECTION 1. The present board of trustees of Port Townsend is hereby empowered and authorized to appoint two judges and one clerk to hold election on first Monday in December, A. D. 1873, for the board of trustees provided for in this act, who shall qualify as other judges and clerks of election.

SEC. 2. For all further elections after December, A. D. 1873, the board of trustees shall appoint the judges and clerks of election.

SEC. 3. That all laws and parts of laws heretofore passed, in any manner relating to the incorporation of the town or city of Port Townsend be and the same are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after the first Monday in December, A. D. 1873.

APPROVED, Nov. 5, 1873.

AN ACT

REGULATING IRRIGATION AND WATER RIGHTS IN THE COUNTY OF
YAKIMA, WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person or persons, corporation or company who may have or hold a title or possessory right or title to any agricultural lands within the limits of Yakima county, Washington Territory, shall be entitled to the use and enjoyment of the waters of the streams or creeks in said county for the purposes of irrigation and making said land available for agricultural purposes to the full extent of the soil thereof.

SEC. 2. That when any person or persons, corporation or company owning or holding land as provided in section one of this act shall have no available water facilities upon the same, or when it may be necessary to raise the water of said streams or creeks to a sufficient height to so irrigate said land or whenever such lands are too far removed from said stream or creek to so use the waters thereof as aforesaid, such person or persons, corporation or company shall have the right of way through and over any tract or piece of land for the purposes of conducting and conveying said water by means of ditches, dykes, flumes or canals for the purpose aforesaid.

SEC. 3. That such right to so dig and construct ditches, dykes, flumes and canals over and across the lands of another, shall only extend to so much digging, cutting or excavations as may be necessary for the purposes required.

SEC. 4. That in all controversies respecting the right to water under the provisions of this act, the same shall be determined by the date of the appropriation as respectively made by the parties.

SEC. 5. That the waters of the streams or creeks of the county may be made available to the full extent of the capacity thereof for irrigating purposes, so that the same do not materially affect or impair the rights of the prior appropriator, but in no case shall the same be diverted or turned from the natural channel, ditches or canals of such appropriator, so as to render the same unavailable.

SEC. 6. That any person or persons, corporation or company, damaging the lands or possessions of another by reason of cutting or digging ditches or canals, or erecting flumes as provided by section two of this act, the party so committing such injury or damage shall be liable to the party so injured therefor.

SEC. 7. That this act shall not be so construed as to impair or in any way or manner interfere with the rights of parties to the use of the waters of such streams or creeks acquired before its passage.

SEC. 8. That this shall not be so construed as to prevent or exclude the appropriators of the waters of said streams or creeks for mining, manufacturing or other beneficial purposes, and the right also to appropriate the same is hereby equally recognized and declared.

SEC. 9. That any person or persons, corporation or company, who may dig and construct, or who have heretofore dug and constructed ditches, dykes, flumes or canals, over or across any public or private roads or highways, or who use the waters of such ditches, dykes, flumes or canals, shall be required to keep the same in good repair at such crossings or other places where the water from any such ditches, dykes, flumes or canals may flow over or in anywise injure any roads or highways, either by bridging or otherwise.

SEC. 10. Any person or persons offending against section nine of this act, on conviction thereof, shall forfeit and pay for every such offense a penalty of not more than one hundred dollars, to be recovered with costs of suit in civil action in the name of the Territory of Washington, before any justice of the peace

having jurisdiction; one-half of the fine so collected shall be paid into the county treasury for the benefit of common schools in said Yakima county, and the other half shall be paid to the person or persons informing the nearest justice of the peace that such offense has been committed. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may, by order of the court, be confined in the county jail until such fine and costs shall have been paid.

SEC. 11. That in all controversies respecting the right to water in the county of Yakima whether for mining, manufacturing, agriculture or other useful purposes, the rights of the parties shall be determined by the dates of appropriation respectively.

SEC. 12. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

FOR THE RELIEF OF WILLIAM LEWIS, SHERIFF OF YAKIMA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of one hundred and seventy-five dollars be and the same is hereby appropriated to reimburse William Lewis, sheriff of Yakima county, for moneys expended by him in transporting Indian Dick, a Territorial prisoner, from Yakima City to Steilacoom.

SEC. 2. The territorial auditor is hereby required to draw his warrant in favor of William Lewis for said sum, and the

territorial treasurer is hereby required to pay the same out of any moneys in his hands not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO PAY FOR PRINTING.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington.* That the territorial auditor be and he is hereby directed to draw warrants on the territorial treasurer for the following sums of money to the following named persons:

To J. H. Munson for publishing two election proclamations, thirty dollars.

To Brown & Sons for publishing two election proclamations, thirty dollars.

To J. M. Murphy, for publishing two election proclamations, thirty dollars.

To R. M. Smith & Co. for publishing one election proclamation, fifteen dollars.

To E. T. Gunn, for publishing two election proclamations and printing notary public certificates, forty-five dollars.

To S. L. Maxwell for publishing two election proclamations and proposals to clothe insane, thirty-four dollars.

To B. M. Washburn for publishing two election proclamations, thirty dollars.

To A. B. Pettygrove for publishing two election proclamations, thirty dollars.

To Bagley & Harned for publishing auditor's quarterly reports, ending June and September, 1873, thirty-three dollars.

To Chas. Prosch & Sons for publishing two election proclamations, thirty dollars.

SEC. 2. The territorial auditor is hereby authorized to issue warrants for election proclamations, but in no case to allow more than fifteen dollars for one election.

SEC. 3. The territorial treasurer is hereby authorized pay the same out of any money in the treasury not otherwise appropriated.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 14. 1873.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT AMENDATORY OF AN ACT ENTITLED AN ACT AMENDATORY OF AN ACT ENTITLED AN ACT TO INCORPORATE THE TOWN OF OLYMPIA," APPROVED NOV. 29, 1871.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section one of article three of said act be and the same is hereby amended, to read as follows, viz: For the government of said town of Olympia there shall be annually elected in the manner hereinafter provided, a mayor, six trustees and two justices of the peace, who shall hold their office for one year or until their successors shall be duly elected and qualified.

SEC. 2. That section two of article three of said act be

and the same is hereby amended as follows, viz: The mayor and justices of the peace shall be elected by the whole town, and each ward shall elect two trustees.

SEC. 3. That section five of article three of said act be and the same is hereby amended by adding the following proviso thereto, viz: *Provided*, That this section shall not be construed to require a voter who has once registered to register again, unless he shall have lost his residence, or changed his ward.

SEC. 4. That section one of article four of said act be and the same is hereby amended so that the same shall read as follows, viz: That a general election for two trustees in each ward shall be held on the first Monday in April of each year. Each ward shall also vote for a mayor and two justices of the peace for the whole town, and the mayor and justices of the peace must be qualified voters in the town.

SEC. 5. That section three of article four of said act be and the same is hereby amended by striking out the words *trustees and a mayor*, and inserting in lieu thereof the words, "town officers."

SEC. 6. That section five of article four of said act be and the same is hereby amended by inserting after the word "mayor," the words "or justice of the peace."

SEC. 7. That section six of article four of said act be and the same is hereby amended by inserting after the word *mayor* the words "and justices of the peace;" and by changing the word "candidate" in said section to the word "candidates."

SEC. 8. That section ten of article four of said act be and the same is hereby amended by striking out all after the number of said section and inserting the following in place thereof, viz: The clerk of the town board shall be *ex officio* town assessor. He shall perform the duties of his office in such manner as may be prescribed by ordinance.

SEC. 9. That sub-division four, of section fourteen, of article four of said act be and the same is hereby amended to read

as follows, viz: The justices of the peace residing within said town shall be committing magistrates. They shall hear all complaints of the violation of town ordinances, and examine all parties arrested by the town marshal.

SEC. 10. That article four of said act be and the same is hereby further amended by adding the following as sections thirteen and fourteen, viz: "Section 13. One-half of all moneys hereafter paid into the town treasury, excepting only the road fund, and funds raised by a special tax, shall be reserved and set apart each year, as a special fund to be applied in payment of the debt of the town of Olympia. And the town treasurer shall apply the special fund reserved and set apart as aforesaid, in payment of said debt in such order as may be prescribed by ordinance, until the same is extinguished. After the payment in full of said indebtedness said special fund shall become a part of the municipal fund." "SEC. 14. Said board of trustees shall also have power to license persons to keep drinking houses or saloons within the corporate limits of the town of Olympia in conformity with the requirements of the general laws regulating the issue of such license; and the board of trustees is hereby vested with the same power, within such limits as is conferred by the general law upon the county commissioners, and the sum required to be paid by the applicant for such license shall be paid to the town treasurer, instead of the county treasurer."

SEC. 11. That article five of said act be and the same is hereby amended by adding the following, viz: "Section 3. The justices of the peace when acting as committing magistrates, shall receive the same fees that are allowed for similar services under the general laws of the Territory.

SEC. 12. That section one of article six of said act be and the same is hereby amended by striking out the words "committing magistrate is the judicial officer," and inserting in lieu thereof the words "justices of the peace are the judicial officers."

SEC. 13. That section two of article six of said act be and the same is hereby amended by changing the word "magistrate" to the plural,

SEC. 14. That section sixteen of article six of said act be and the same is hereby amended to read as follows, viz: The justices of the peace must keep a proper account of all fines, costs or other moneys received by them, or paid into their courts when acting as committing magistrates, and they must pay to the treasurer monthly, all moneys mentioned in this section, and take duplicate receipts therefor, one of which they must file with the clerk.

APPROVED, Nov. 11, 1873.

AN ACT

TO APPROPRIATE MONEY TO PAY FOR BOOKS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the territorial auditor is hereby authorized to draw a warrant in favor of Governor E. P. Ferry for the sum of thirty dollars to pay for books to distribute to persons seeking information regarding the resources and climate of Washington Territory.

SEC. 2. The territorial treasurer is hereby authorized to pay the same out of any money in the treasury not otherwise appropriated.

SEC. 3. This act shall be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT TO REGULATE FEES AND COSTS
OF SHERIFFS IN THE COUNTIES OF KITSAP AND JEFFERSON,
APPROVED NOV. 29, 1873.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all of section one of the act to which this is amendatory be and the same is hereby repealed, except that part of said section relating to mileage and the enacting clause.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO RE-LOCATE THE COUNTY SEAT OF LEWIS COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That from and after the first day of August, A.D. 1874, the county seat of the said county of Lewis shall be and remain at the town of Sandersville, in said county. And the board of county commissioners are hereby directed to cause all books, archives and other county property which by law is required to be kept at the county seat, to be removed to said town of Sandersville, by or before said first day of August, A. D. 1874.

SEC. 2. Immediately upon the deposit in the office of the county auditor of Lewis county by Mrs. Basey, the proprietress of said town of Sandersville, of a deed in fee simple, with good and sufficient covenants of warrantee, conveying to said Lewis county a block in said town of Sandersville, at least four hundred feet square, upon which county buildings are to be erected, the said county auditor is hereby directed to give notice to the county commissioners of said county, who shall upon receipt of the same hold a special term of said board, for the purpose of taking necessary measures to secure the erection of county buildings and offices upon said block of land, in the town of Sandersville aforesaid.

SEC. 3. The said county commissioners are hereby empowered to adopt the necessary plans and let contracts for the erection of suitable county buildings, and for that purpose may appropriate a sum not to exceed one thousand dollars, payable in the same manner as other county indebtedness is paid. The construction of such buildings and the expenditure of the funds to be used in such construction shall be under the exclusive control and direction of the said board of county commissioners.

SEC. 4. All acts and proceedings necessary to be done and performed at the county seat, which shall or may be done and performed at Claquato, (heretofore the county seat of said county) between the date of the approval of this act and the said first day of August, A. D. 1874, shall be as legal and valid, and have the same binding force and effect, as though this act, or anything herein contained had not passed.

SEC. 5. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 11, 1873.

AN ACT

AUTHORIZING THE PURCHASE OF THE RIGHT TO MAKE AND USE THE RUNQUIST PATENT SHACKLE ON TERRITORIAL CONVICTS AND OTHER PERSONS CONVICTED OF CRIME IN WASHINGTON TERRITORY.

WHEREAS, Peter Runquist, of Washington Territory, did on the 27th day of August, A. D. 1872, have issued to him by the United States Government, letters patent for a new and useful improvement in convict's shackle to run for the period of seventeen years, and, whereas, it is desirable that the Territory have the right to manufacture and use upon Territorial convicts and other prisoners confined in county jails or that may hereafter be confined in the Territorial penitentiary as Territorial prisoners or in county jails as county prisoners the said improved convict shackle, therefore,

SECTION 1. *Be it enacted by the Legislative [Assembly of the Territory of Washington,* That there be and there hereby is appropriated out of the Territorial treasury the sum of five hundred dollars, for the purpose of purchasing from the said Peter Runquist the right to make and use the said improved convict shackle by the Territory of Washington for the purpose stated in the preamble of this act during the remainder of the period for which said patent is granted to the said Peter Runquist.

SEC. 2. If the said Runquist shall within thirty days from the passage of this act make to the Territory of Washington a good, sufficient deed of the right to make and use the said improved convict shackle for the purposes stated in the preamble to this act for the remainder of the time mentioned in said patent granted to said Runquist, to be approved by the governor, then upon the presentation of such certificate of approval by

the governor to the territorial auditor it shall be his duty to draw his warrant on the territorial treasurer in favor of said Peter Runquist, for the sum of five hundred (500) dollars.

SEC. 3. Upon presentation of said warrant to the territorial treasurer, it shall be his duty to pay the same out of any money in the treasury, not otherwise appropriated.

SEC. 4. The deed mentioned in the second section of this act, if made and approved by the governor, shall then be deposited with the secretary of the Territory for safe keeping.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED, NOV. 14, 1873.

AN ACT

TO LOCATE A TERRITORIAL ROAD FROM KALAMA CITY IN COWLITZ COUNTY TO YAKIMA CITY IN YAKIMA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That William Bratton, Sr., and John Timmon of Cowlitz county and E. P. Boyle of Yakima county, are hereby constituted a board of commissioners to view, locate and mark a territorial road from the city of Kalama in Cowlitz county via Lewis river, and thence by the best and most practicable route across the Cascade mountains to Yakima City in Yakima county.

SEC. 2. Said commissioners shall meet on the first Monday in June or as soon thereafter as a majority of the said commissioners shall agree upon and after being duly sworn by an officer authorized to administer oaths faithfully to perform the duties

assigned them, shall proceed to view, locate and mark out a road between said points on the ground best adapted for that purpose.

SEC. 3. Said commissioners shall make a true report of their proceedings and cause a certified copy thereof to be filed with the secretary of the territory and also with the county auditors of the respective counties through which the road will pass within sixty days from the completion of their labors.

SEC. 4. The said commissioners shall receive three dollars per day for the time actually employed in performing the duties assigned them, each to be paid out of the county treasury of each of said counties in proportion to the amount of road in such county.

SEC. 5. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

RELATING TO THE ELECTION AND TERMS OF OFFICE OF JUSTICES
OF THE PEACE IN THE TOWN OF OLYMPIA.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That nothing contained in an act entitled "an act relating to justices of the peace, and to their practice and jurisdiction" shall be construed to apply to the election or appointment of justices of the peace, or their terms of office in the town of Olympia. But that said justices shall be elected and hold their offices in said town in accordance with the provisions of its charter.

SEC. 2. This act to be in force from and after its passage.
APPROVED, Nov. 11, 1873.

AN ACT

FOR THE RELIEF OF REV. P. E. HYLAND AND REV. C. A. HUNTINGTON, CHAPLAINS OF THE ASSEMBLY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of fifty dollars each be and the same is hereby appropriated out of any money in the Territory for the relief of Rev. P. E. Hyland and Rev. C. A. Huntington, Chaplains of the Assembly.

SEC. 2. Upon demand it shall be the duty of the territorial auditor to draw his warrants on the territorial treasurer in favor of the said P. E. Hyland and C. A. Huntington for fifty dollars each, which shall be paid out of any money in the treasury not otherwise appropriated.

APPROVED, Nov. 14, 1873.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE CITY OF KALAMA," APPROVED NOVEMBER 29, 1871.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That sub-division 7, section 1, article 6, of an act, entitled "an act to incorporate the city of Kalama," approved November 29, 1871, be and the same is hereby amended, so as to read as follows: To license, tax and regulate auctioneers, taverns, restaurants, hawkers, peddlers, brokers,

Lawnbrokers, saloons, or places for the retailing of spirituous, malt or fermented liquors, bowling alleys, bar-rooms, billiard tables, theatrical and other exhibitions, shows and amusements, runners for hotels or vessels, porters, and fix the rate of portorage, hacks, carriages, wagons, carts, drays, trucks and omnibuses, and to fix the rates to be charged for the carriage of persons and property, and any person having a license issued by the authority of the mayor and common council of said city of Kalama, to carry on any business mentioned in this section, within the corporate limits of said city, shall not be required to obtain an additional license for such business from the county commissioners or any other authority in the county, it being the intention of this act to vest the right to grant such licenses, the manner of their issuance and the disposal of one-half of the proceeds of the same, exclusively with the said mayor and common council, to be regulated by ordinance, and the remaining one-half of said licenses to be paid into the common-school fund of said county, and all acts and parts of acts in any manner conflicting herewith be and the same are hereby repealed so far as the same apply to the said city of Kalama.

SEC. 2. The city shall constitute one school district, and its boundaries shall not be altered, but in all other respects the said district shall be subject to the provisions of the general school laws of the territory.

SEC. 3. The said city of Kalama shall hereafter constitute one road district and the mayor and common council shall hereafter exercise sole and exclusive jurisdiction over all public highways, roads, streets, alleys and public grounds, within said corporate limits with the same power and jurisdiction over all roads within said district, as is now vested by law in the board of county commissioners, and all road taxes of whatever kind, payable on taxable property, within said corporate limits, (including delinquent taxes) or payable by persons residing within said city limits, shall be assessed and collected in the manner provided by ordinance of the said mayor and common council and be expended by them, in such manner as they may direct, in the lay-

ing out, alteration and improvements of public highways, streets, alleys and public grounds within said city limits, and all road labor due in said district or road labor performed in lieu of the payment of taxes therein, shall be used and expended by the supervisor of said district on the roads, streets, alleys and public grounds in said district under the general supervision of the mayor and common council and the road supervisor of said district shall make all the settlements required by law to be made with the mayor and common council of said city.

SEC. 4. All acts and parts of acts in any manner conflicting with any of the provisions of this act, be and the same are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO PAY CERTAIN EXPENSES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the territorial auditor is hereby authorized to draw a warrant in favor of Governor E. P. Ferry for the sum of "three hundred and fifty-two dollars" to pay H. C. Courtney and J. W. Sullivan superintendent of jail department at Victoria for costs and keeping Jo Nohanno accused of the murder of James and Salina Dwyer.

SEC. 2. The Territorial treasurer is hereby authorized to pay the same out of any money in the treasury not otherwise appropriated.

APPROVED, Nov. 14, 1873.

AN ACT

FOR THE RELIEF OF THE SHERIFF OF THURSTON COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of two hundred and fourteen dollars, be and the same is hereby appropriated out of any money in the treasury, for payment of money expended by William Billings, sheriff of Thurston County, in pursuing and retaking G. T. Ohse, a territorial convict who escaped his place of confinement.

SEC. 2. Upon demand, it shall be the duty of the territorial auditor to draw his warrant on the territorial treasurer in favor of William Billings, for the sum of two hundred and fourteen dollars, which shall be paid out of any money in the treasury not otherwise appropriated.

APPROVED, Nov. 14, 1873.

AN ACT

TO PROVIDE FOR COMPLETING THE RECORDS OF THE PRESENT
LEGISLATIVE ASSEMBLY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Charles W. Frush and Beriah Brown are hereby employed to complete the records of the Legislative Assembly for its present session, after the ad-

jourment of the same; for which they shall be allowed fifty dollars each.

SEC. 2. It shall be the duty of the territorial auditor to draw a warrant for said sums as named in section one of this act, in favor of Charles W. Frush and Beriah Brown severally; and the territorial treasurer is hereby authorized and directed to pay the amount of said warrants out of any money in the treasury.

SEC. 3. This act to take effect from and after its passage.
APPROVED, Nov. 14. 1873.

AN ACT

TO APPROPRIATE MONEY TO PAY FOR SERVICES OF CLERK FOR
JUDICIARY COMMITTEE OF THE HOUSE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the territorial auditor be and is hereby authorized to draw a warrant in favor of A. H. Lowe for one hundred and seventy-five dollars for services as clerk of judiciary committee of the House during the present session.

SEC. 2. The territorial treasurer is hereby authorized to pay the same out of any moneys in the treasury not otherwise appropriated.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO DEFINE THE BOUNDARY LINES OF PACIFIC COUNTY."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act to which this act is amendatory, passed January 13, 1860, be amended by striking out the figures nineteen and thirty and inserting in lieu thereof the figures (7) seven and (18) eighteen consecutively.

APPROVED, Nov. 14, 1873.

AN ACT

PROHIBITING THE OWNERS OF HOGS IN CHEHALIS COUNTY FROM PERMITTING THE SAME TO RUN AT LARGE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the owners of hogs in Chehalis county, be and they are hereby prohibited from permitting the same to run at large with the limits of said county.

SEC. 2. That the owner or owners thereof shall be liable for the actual damages committed by his or their hogs when running at large in said county; said damages to be recovered in an action at law, by the person or persons suffering the same.

SEC. 3. This act shall be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

FOR THE RELIEF OF S. HEMENWAY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of two hundred and fifty dollars be and the same is hereby appropriated out of the territorial treasury in favor of S. Hemenway for one month's medical services rendered at the territorial asylum for the insane, and medicines furnished asylum for the insane and territorial convicts.

SEC. 2. Upon demand, it shall be the duty of the territorial auditor to draw a warrant in favor of S. Hemenway, for the sum of two hundred and fifty dollars, and the territorial treasurer is hereby authorized to pay the same out of any money in the treasury, not otherwise appropriated.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

FOR THE RELIEF OF J. H. MUNSON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of forty (40)

dollars be and the same is hereby appropriated out of the territorial treasury in favor of J. H. Munson, it being money expended by said Munson in providing a seal for the office of the territorial treasurer.

SEC. 2. Upon demand, it shall be the duty of the territorial auditor to draw a warrant for the sum of forty (40) dollars in favor of J. H. Munson, and the territorial treasurer is hereby authorized to pay the same out of the first money in the treasury.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 11, 1873.

AN ACT

FOR THE RELIEF OF WILLIAM R. DOWNEY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of three hundred dollars be and the same is hereby appropriated out of the territorial treasury for the payment of William R. Downey for services and supplies under an act entitled, "An act appropriating money to aid in the construction and repair of certain roads," approved January 27, 1866.

SEC. 2. It shall be the duty of the territorial auditor, on demand, to draw his warrant on the territorial treasury in favor of William R. Downey for the sum of three hundred dollars, and the territorial treasurer shall pay the same out of any money in the treasury not otherwise appropriated.

SEC. 3. That an act entitled, "An act to provide for the payment to William R. Downey for labor and supplies performed and furnished in repairing the military road leading from Fort Steilacoom to Fort Walla Walla, through the Nachess pass," approved January 23, 1868, be and the same is hereby repealed.

SEC. 4. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 8, 1873.

AN ACT

FOR THE PROTECTION OF STOCK RAISERS IN THE COUNTIES OF
CLALM AND JEFFERSON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That hereafter it shall not be lawful for any person owning or keeping a bull over twelve months of age in the counties of Clalm or Jefferson in this Territory, to suffer such animal to run at large, in either of said counties, under a penalty of not less than five nor more than fifty dollars fine, and costs of suit for each offense, to be recovered before any justice of the peace having jurisdiction.

SEC. 2. It shall be lawful for any person finding any animal named in the first section of this act, to notify the owner to take such animal up from running at large, if he is known to the finder. If said owner neglect or refuse to take care of said animal, he shall be liable to be prosecuted for such neglect, and shall forfeit and pay the sum of ten dollars for every such neglect, which may be recovered before any justice of the peace in the county in which the animal was found, or before any justice of the peace of the county in which the owner resides.

SEC. 3. If any animal be running at large where the owner is not known, it shall be lawful for any person to take up and impound said animal in a sufficient field or pasture, and forthwith make a statement to the nearest justice of the peace of the county in which said animal is taken up, under oath, of the taking up of said animal, whereupon the said justice shall appraise the animal and immediately notify the county auditor of the same county, by letter or otherwise, that an animal has been taken up, with marks, natural and artificial, etc., and also order the person taking up said animal to post notices describing said animal, in three public places in the county; and if after the expiration of thirty days no owner appears he shall be sold, upon satisfactory proof being furnished any justice of the peace that the animal has been taken up in accordance with the provisions of this act, who shall thereupon issue an order to any constable to sell the animal at public auction, and pay the expenses of the party taking up said animal, out of the proceeds of the sale, and the remainder, if any, shall be paid to the county treasurer for the use of the owner. If no owner appears within one year, the money so paid shall be applied to the use of common schools: *Provided*, That if at any time previous to the sale, the owner of said animal should appear and prove said animal to be his, he shall be entitled to the same by paying charges, which shall be two dollars for taking up, posting notices, etc., and a reasonable rate for keeping the same.

SEC. 4. All fines and forfeitures arising under this act shall be paid into the school fund of the county where the same shall be recovered.

SEC. 5. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO CHANGE THE NAME OF CHARLES WILSON TO CHARLES HENRY VALPY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the name of Charles Wilson be and same is hereby changed to Charles Henry Valpy.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 10. 1873.

AN ACT

TO AMEND AN ACT ENTITLED, "AN ACT TO INCORPORATE THE CITY OF VANCOUVER," APPROVED JANUARY 29, 1868.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section 19 of chapter 3 of said act be amended so as to read as follows: All officers elected or appointed by this act before entering upon the duties of their offices must take and subscribe to an oath before a justice of the peace or some other officer qualified to administer oaths, which oath shall be filed with the recorder, and to the following effect: I, A. B., do solemnly swear, that I will support the constitution and laws of the United States and laws of this Territory, and that I will to the best of my ability faithfully perform the du-

ties of the office of _____ during my continuance therein; so help me God.

SEC. 2. That section 40 of chapter 7 be amended to read as follows: The recorder has jurisdiction of all crimes defined by any ordinance of the city of Vancouver, and of all actions brought to enforce or recover any forfeiture or penalty declared or given by any such ordinance; he shall also within the limits of said city have all the powers of a justice of the peace, but no other or greater unless he shall be elected a justice of the precinct in which said city of Vancouver is located at the general election for county officers.

SEC. 3. That section 41 of chapter 7 be stricken out.

SEC. 4. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 11, 1873.

AN ACT

TO CHANGE THE NAME OF ALEXANDER BRAID MONRO TO THAT OF EDWARD ELDRIDGE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the name of Alexander Braid Monro be and the same is hereby changed to Edward Eldridge.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED, Oct. 17, 1873.

AN ACT

TO RELOCATE A TERRITORIAL ROAD FROM OLIVER SHEAD'S MILL ON THE SKOOKUMCHUCK RIVER, TO A POINT NEAR THE RESIDENCE OF BENJ. M'ELROY, IN THE COUNTY OF LEWIS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Oliver Shead, William Ogle of Thurston county and William Packwood of Lewis, be and the same are hereby appointed viewers to view out and relocate a territorial road which has been rendered impassable by the North Pacific railroad.

SEC. 2. The said viewers shall meet at the house of Oliver Shead on the Skookumchuck river on the third Monday of November, 1873, or within ten days thereafter, and having taken an oath before some person authorized to administer the same to faithfully discharge their duties under this act, they shall proceed to view and plainly mark out a road from the point on said territorial road near the said mill of Oliver Shead, to intersect the territorial road at a point near the house of Benj. McElroy in the county of Lewis, according to the provisions of this act and to make a report thereof to the county commissioners of Thurston and Lewis counties, on or before the first Monday in January, 1874, and if such report is favorable the county commissioners of the said counties of Thurston and Lewis shall declare the same a territorial road.

SEC. 3. The county commissioners of the above named counties, shall cause the said report, together with their action thereon to be recorded in the road book of their respective counties.

SEC. 4. The said viewers shall receive two dollars per day for all necessary time employed in the viewing and making out the said road, to be paid out of the county treasury of the coun-

ties of Thurston and Lewis in proportion to the time employed in either county; if either of the viewers refuse to act the others may choose some person in his stead.

SEC. 5. This act to take effect and be in force from and after its passage.

APPROVED, Oct. 31, 1873.

AN ACT

IN RELATION TO SURVEYS IN THE TOWN OF PORT TOWNSEND.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That A. A. Plummer, Sr., F. W. Pettygrove and J. J. H. VanBokkelen be and are hereby constituted a board of commissioners to locate and establish the corners of the lots and blocks of the original survey of the original town of Port Townsend, as laid out, and platted by A. A. Plummer, Sr., and others, or so many of said corners as they may deem necessary for a correct re-survey of said town of Port Townsend; the corners so established by said board of commissioners to be forever hereafter established points in the survey of said town of Port Townsend, and all surveys shall conform thereto.

SEC. 2. The said commissioners or a majority of them shall meet within three months from the passage of this act, and proceed to locate corners.

SEC. 3. Said commissioners shall make out, or cause to be made a plat of said town with the corners established by them plainly marked; said plat shall be filed with the auditor of Jefferson county, W. T.

SEC. 4. Said commissioners shall receive no compensation for their services, except the actual expense of making such survey.

SEC. 5. The actual expense of making such survey shall be certified to under oath by said board or a majority of them, to the treasurer of the board of trustees of said town of Port Townsend, which is hereby authorized to pay the same out of any money in the treasury.

SEC. 6. This act to take effect and be in force from and after its passage,

APPROVED, NOV. 12, 1873.

AN ACT

DECLARING BLACK RIVER NAVIGABLE AND A PUBLIC HIGHWAY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Black River in Thurston and Chehalis counties be and the same is hereby declared navigable, and a public highway, from its mouth to what is known as Shotwell's Landing.

SEC 2. Any person through whose land said stream may run, that shall feel him or themselves damaged by any of the provisions of this act may make complaint in writing to the board of commissioners in the county in which such land may be located, on or before January 1, A. D. 1875, and when such complaint is made to said commissioners, it shall be their duty to appoint at their next regular term thereafter, three disinterested householders of said county, who after being first duly sworn to faithfully discharge the duties, shall proceed to view,

assess and determine the amount of damages that such person or persons may have sustained by the opening of said stream, and they shall report the same to the county commissioners before their next regular meeting.

SEC. 3. If the county commissioners shall be satisfied that the amount of damages as assessed be just and equitable, they shall order the same to be paid out of the county treasury to the person or persons so damaged.

SEC. 4. Any person who may consider himself aggrieved by the assessment of damages as prescribed in the preceding section, may within twenty days after such report is adopted by the commissioners appeal therefrom to the district court of the proper county. Such appeal shall be taken in the same manner as appeals are taken from justices' courts.

SEC. 5. All persons appointed viewers under the provisions of this act shall receive the same fee for their services, as is allowed to road viewers, which fee shall be paid out of the county treasury.

SEC. 6. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

FOR THE RELIEF OF I. V. MCSSMAN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there be and hereby is appropriated out of any money in the territorial treasury not

otherwise appropriated, the sum of seventy (70) dollars to pay I. V. Mossman, territorial librarian, for money expended by him for stationery, printing, stamps and other incidental expenses of territorial library for the two years ending October 1, 1873, and to pay for 21 days as bailiff for supreme court.

SEC. 2. The territorial auditor is hereby authorized and directed to draw his warrant on the territorial treasurer in favor of I. V. Mossman for the sum of seventy (70) dollars, and the territorial treasurer is hereby directed to pay the same in its regular order.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 11, 1873.

AN ACT

TO ESTABLISH INITIAL AND STANDARD MONUMENTS FOR THE
SURVEY OF THE STREETS OF THE CITY OF SEATTLE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That certain monuments planted by order of the common council of the city of Seattle, at a special meeting held October 23, 1873, and located as follows, to-wit: one at the intersection of the centers of Commercial and Mill streets; one at the intersection of the centers of Commercial and Main streets; one at the intersection of the centers of Mill and Fourth streets; one in the center of James and on the east line of Front streets; one at the intersection of the centers of James and Third streets; and one at the intersection of the centers of Third and Marion streets of the said city of

Seattle, and accurately described in the "notes of the survey of Seattle," bearing date November 1, 1873; copies of which are on file with the clerk and engineer of said city, be and the same are hereby established the initial and standard points for the survey of the streets of the said city of Seattle of King county, W. T.

SEC. 2. This act to be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

TO CHANGE THE NAME OF SAMUEL FARRIS GRASTY TO SAMUEL FARRIS LOVELL, AND MAKE HIM HEIR AT LAW OF ALFRED MOORE LOVELL AND MARTHA LOVELL OF THE CITY AND COUNTY OF WALLA WALLA, WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the name of Samuel Farris Grasty be and the same is hereby changed to that of Samuel Farris Lovell.

SEC. 2. And be it further enacted that the said Samuel Farris Lovell be and he is hereby made the heir at law of Alfred Moore Lovell and Martha Lovell of the city and county of Walla Walla, Washington Territory, by the express consent of said Alfred Moore Lovell and Martha Lovell, hereunto annexed, and by the express consent of Rutlige Milton Grasty, the father of said Samuel Farris.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Oct. 31, 1873.

AN ACT

FOR RELIEF OF JOHN M. IZETT.

SECTION 1. Whereas, John M. Izett settled upon and improved lots numbered three, four, five and six, and the south-west quarter of the north-east quarter and the south-east quarter of the north-west quarter, all in section thirty-six, in township No. thirty-three north, of range No. one east of the Willamette meridian, in Washington Territory, in the month of November, 1857, and prior to the survey, and has resided upon and cultivated said tract continuously until the present time;

SEC. 2. And whereas, by the carelessness of his attorney his declaratory statement was not filed within the time prescribed by the law after survey;

SEC. 3. And whereas, the county commissioners of Island county, in which said land is located, have surrendered all claim to said tract of land as school land enuring to said county, and have selected other land in lieu thereof;

SEC. 4. Therefore, *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all the right, title and interest, present and prospective, of the said Territory of Washington, of, in and to the said lots, three, four, five and six, and the south-west quarter of the north-east quarter, and the south-east quarter of the north-west quarter, all in section thirty-six, in township No. thirty-three north, of range No. one east of the Willamette meridian, be and the same is hereby granted, conveyed and confirmed unto the said John M. Izett, his heirs and assigns forever.

SEC. 5. This act to be in force from and after its passage,
APPROVED, Nov. 10.

AN ACT

FOR THE RELIEF OF JAMES M'AULIFF, LATE SHERIFF OF WALLA WALLA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of one hundred and thirty dollars (\$130) be and the same is hereby appropriated out of the territorial treasury to re-imburse James McAuliff, late sheriff of Walla Walla county, for money expended by him in re-capturing and conveying *John Snelling*, a fugitive from justice, arrested at Salem, Oregon, from place of arrest to Walla Walla city, and for the costs therein.

SEC. 2. The territorial auditor is hereby authorized and directed to draw his warrant in favor of James McAuliff for the sum mentioned in the first section of this act, and the territorial treasurer is directed to pay the same as other warrants are paid by him.

APPROVED, Nov. 8, 1873.

AN ACT

FOR THE RELIEF OF JAMES SEAVY AND WILLIAM HUBBARD.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of thirty-six dollars be and the same is hereby appropriated out of any money in

the territorial treasury to pay James Seavy, clerk of the district court of the third judicial district, holding terms at Port Townsend, his fees and costs as clerk of said court in the case of the Territory against Charles Watts, convicted of murder at the September term, A. D. 1871, of said county.

SEC. 2. That there be and is hereby appropriated out of the territorial treasury the sum of one hundred and seventy-five dollars to William Hubbard for bringing a territorial convict from Yakima county.

SEC. 3. The territorial auditor is hereby instructed to issue to said James Seavy a territorial warrant for the above named sum first appropriated, and to William Hubbard a territorial warrant for the sum named in the second section, and the territorial treasurer is authorized and directed to pay the same out of any money in the treasury not otherwise appropriated.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO ENCOURAGE THE PLANTING AND GROWING OF TIMBER IN THE
COUNTIES OF STEVENS AND WHITMAN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of commissioners of the respective counties of Stevens and Whitman are hereby empowered at their May meeting, A. D. 1874, and at their November meeting in each year thereafter to exempt from taxation, except for territorial purposes, the real or personal property of

each tax payer, who shall within the county within such year, plant and suitably cultivate or having within such year or the preceding year planted, shall suitably cultivate one or more acres of forest trees for timber, to an amount not exceeding three hundred dollars for each acre: *Provided*, That said board may fix the minimum number of trees which shall be grown on each acre.

SEC. 2. Any person claiming the benefit of such exemption may appear before the board of commissioners of the county at any regular meeting, and upon making proof by sworn evidence, showing to the satisfaction of said board that he has complied with the requirements which entitle him to such exemption, he shall receive from the clerk of the board a certificate stating the amount of the exemption, which shall be received by the county treasurer in satisfaction of the taxes exempted.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

ALLOWING A SALARY TO THE COUNTY AUDITOR OF KITSAP COUNTY IN LIEU OF CERTAIN FEES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington.* That on and after the first day of January, A. D. 1874, the county auditor of Kitsap county in said territory, (for all services performed by said officer as clerk of the county commissioner's court, in the making of assessment roll, tax list, and all other clerical services for the said county now imposed by law), shall be paid out of the county treasury an annual salary of five hundred (500) dollars,

in lieu of the fees now allowed for such services, said salary to be paid quarterly on the day ——— of April, July, October and January of each year.

SEC. 2. Nothing in this act contained shall be so construed as to prevent the said county auditor from receiving the fees allowed by law for recording deeds, and other clerical services not performed for the county by virtue of his office as county auditor and *ex officio* clerk of the board of county commissioners.

SEC. 3. This act shall be in force from and after its passage.

APPROVED, Nov. 11, 1873.

AN ACT

TO CHANGE THE NAME OF THOMAS J. HARRINGTON TO THAT OF JOHN M'CALL, AND MAKE HIM THE HEIR AT LAW OF CHARLES M'CALL AND MARION J. M'CALL OF WAHAKIACUM COUNTY, WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the name of Thomas John Harrington, a minor child of the age of two years and six months, now of Wahkiakum county, Washington Territory, be changed to that of John McCall.

SEC. 2. That the said John McCall shall be and is hereby made the heir at law of Charles McCall and Marion J. McCall of said county.

SEC. 3. That this act shall take effect and be in force from and after its passage.

APPROVED, Nov. 3, 1873.

AN ACT

IN RELATION TO ALFRED A. PLUMMER, JUNIOR, OF PORT TOWNSEND, JEFFERSON COUNTY, WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That from and after the passage of this act, Alfred A. Plummer, Junior, of Port Townsend, Jefferson county, Washington Territory, shall be deemed and taken to be of full age for all purposes precisely the same as if he had reached the full age of twenty-one (21) years: *Provided*, That nothing in this act shall be so construed as to give the said Alfred A. Plummer, Junior, the right to vote or hold office.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 12, 1873.

AN ACT

TO AMEND AN ACT ENTITLED, "AN ACT TO INCORPORATE THE CITY OF SEATTLE."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section six, chapter two, "Of the government of the city," be amended to read as follows, to-wit: There shall be elected as hereinafter specified, a recorder, treasurer, marshal, city engineer, and an assessor and collector,

who shall be officers in the municipal corporation. The recorder and marshal shall be elected for one year by the qualified voters of this corporation, as hereinafter provided, and shall hold their offices until their successors are elected and qualified. The treasurer, and the assessor, collector, and city engineer, shall be elected by the common council. The votes of a majority of the members then constituting the council being necessary to elect, and they shall hold their offices until their successors are elected and qualified; liable however to be removed at any time by the council for malfeasance, inattention or incompetency.

SEC. 2. That section ten, (10) chapter (3) three, be amended to read as follows, to-wit: At all elections for city officers the vote shall be by ballot, at the time and places designated by the common council.

SEC. 3. That section eleven, (11) chapter three, (3) be amended to read as follows, to wit: The clerk of the common council, under the direction of the council, shall give ten days' notice by publication in some newspaper published in said city of such general election, or by posting the same in at least seven public places in said city and one of said notices to be posted in each ward of said city (provided said notice is given by posted notices) of the officers to be elected, the places in each ward designated for holding the election, and the names of the judges and clerks appointed to conduct the same in the respective wards.

SEC. 4. That section thirty-two, (32) chapter five, (5) "Of the Organization and Powers of the Council" be amended by adding thereto the following subdivisions: "23. To divide the city into not less than three nor more than seven wards, and to provide for holding elections therein. 24. To extend, locate, open, alter or vacate any street, alley, block, or part of any street, alley or block: *Provided*, That no street shall be extended, located or altered, except upon a petition to the city council, signed by a majority of resident real estate owners in the ward where said street is to be extended, located or altered: *And, Provided further*, That no street, alley or block shall be extended, vacated or altered, until the ques-

tion shall have been submitted to a vote of the resident real estate owners of the said city of Seattle at a general or special election, and shall have received a majority of all the votes of the aforesaid resident real estate owners in favor of such extension, vacation or alteration. 25. To appoint three disinterested house-holders of the city to assess the damages sustained by any person in extending, locating or altering any street; and to provide for the time, place and manner of presenting claims for damages: *Provided*, That any person who may conceive himself or herself aggrieved by the assessment of damages in extending, locating or altering any street, may within (20) twenty days after the assessment is adopted by the city council, appeal therefrom, to the district court; and such appeal shall be taken to the district court, in the same manner as appeals from the justices of the peace courts, and if the appellant shall fail to recover a judgment more favorable than the report appealed from, he or she shall pay all costs of the appeal.

SEC. 5. That section (84) eighty-four, chapter (9) nine of "Miscellaneous provisions," be amended so as to read as follows, to-wit: The corporate limits of the city of Seattle shall constitute one road district, and the common council shall have the same authority that is now conferred by law upon the board of county commissioners of the several counties of this Territory to levy and assess a road poll-tax of not less than three nor more than nine dollars on every male person, between the ages of twenty-one and fifty years within the boundaries of said city; also, to assess not less than two nor more than six mills on every dollar's worth of property as shown by the returns and assessment rolls of the assessor of said city of Seattle, which tax shall be collected and expended in improving the streets and roads in said city, under the direction of the authorities of said city; and when the collector or other person authorized by the city council of said city of Seattle to collect taxes, cannot find sufficient property of a delinquent, out of which to make the amount of his road, poll, and property tax, or any part thereof, he must

collect the same or any part thereof remaining uncollected, by an action in his own name against the delinquent, before the recorder in the recorder's court of the said city of Seattle, and if judgment be given in such action against the defendant, it shall be enforced in the same manner as a judgment for a fine in a criminal action; and the said city council may provide the time and manner of commencing said action, and the length of notice to be given to the delinquent. The road poll tax shall be deemed delinquent after demand having first been made upon the delinquent by the person authorized to collect the same, and payment of said road poll tax refused.

APPROVED, Nov. 12, 1873.

AN ACT

TO LOCATE A TERRITORIAL ROAD FROM THE KCLICKITAT PRAIRIE IN LEWIS COUNTY, VIA THE EDEN PRAIRIE TO A POINT ON THE NORTHERN PACIFIC RAILWAY AT OR NEAR THE TWENTY-FIFTH MILE POST OF SAID ROAD, FROM KALAMA IN COWLITZ COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That William Griffin and Charles Layton of Lewis county and John Plomondain of Cowlitz county be and are hereby appointed viewers to view out and locate a road according to the provisions of this act.

SEC. 2. Said viewers shall meet on Monday the tenth day of November, 1873, or as soon thereafter as practicable, at the house of Charles Layton near Eden prairie, and having taken an oath before some person qualified to administer the same, to faithfully discharge their duties under this act, they shall proceed to view out, locate, and plainly mark out and

survey a road from Klickitat prairie in Lewis county via Eden prairie to intersect the Northern Pacific railroad at or near the twenty-five mile post from Kalama, in Cowlitz county, according to the provisions of this act, and make a report there-of to the county commissioners of Lewis and Cowlitz counties on or before the first day of July, A. D. 1874.

SEC. 3. The county commissioners of the above named counties shall cause the said report together with their action thereon to be recorded in the road book of their respective counties.

SEC. 4. The said viewers shall receive three dollars per day each for all necessary time employed in the viewing and marking out the said road to be paid out of the county treasury of the counties of Pacific and Lewis in proportion to the time employed in either county. If either of the viewers cannot or refuse to act the others may choose some person in his stead.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 8, 1873.

AN ACT

TO CONFIRM THE ESTABLISHMENT OF A TERRITORIAL ROAD.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That, in pursuance of an act approved November 29, 1871, providing for the location of a territorial road from Walla Walla city in Walla Walla county to Fort Colville in Stevens county, said road be confirmed and declared established in accordance with the report of the commissioners appointed to view out and locate said road.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, Oct. 31, 1873.

AN ACT

TO CHANGE THE BOUNDARIES OF CLARKE COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the north boundary line of Clarke county, Washington Territory be so changed as to run as follows: To commence at the Columbia river opposite the mouth of Lewis river, thence up Lewis river to the forks of said river; thence up the north fork of Lewis river to where said north fork of Lewis river intersects the east boundary line of said Clark county.

SEC. 2. That the proportion of the indebtedness of Cowlitz county to Clarke county for which the portion of Cowlitz county so annexed shall be liable, shall be determined in accordance with provisions of sections three, four, five and six of an act entitled "An act in relation to counties," approved January 17, 1868. Also the proportion of the indebtedness of Cowlitz county shall also be determined by the same sections of the same act.

SEC. 3. All acts or parts of acts in conflict with this act be and are hereby repealed.

SEC. 4. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

FIXING THE COMPENSATION OF THE COUNTY AUDITOR OF WALLA
WALLA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county auditor of Walla Walla county shall receive a salary of one thousand eight hundred dollars in lieu of the fees now allowed by law: *Provided,* That the said auditor shall receive the fees now allowed by law in addition to said salary for his services as county recorder: *Provided further,* That the county shall not be liable for the payment of any fees to said recorder.

SEC. 2. The salary of said auditor shall be paid quarterly as other claims against the county are paid.

SEC. 3. All acts or parts of acts in conflict with this act be and the same are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after the 1st day of January, 1874.

APPROVED, Oct. 17, 1873.

AN ACT

TO AUTHORIZE KING AND OTHER COUNTIES TO VOTE AID TO
THE SEATTLE AND WALLA WALLA RAILROAD AND TRANS-
PORTATION COMPANY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners

of the counties of King, Yakima and Walla Walla, or of any other county in said territory, upon being notified in writing by the Seattle and Walla Walla Railroad and Transportation Company through its president or secretary, that the aid of such county is desired in connection with the building of the road of the said company from Seattle to Walla Walla, stating particularly the form and manner in which such aid is desired, may within ten days thereafter call a special election, in the same manner and form as is provided by law for general county and territorial elections, at which said election shall be submitted the question of such county aid in the form of a proposition, and those in favor of such aid shall vote yes, and those opposed shall vote no.

SEC. 2. The returns of such election shall be made, the vote counted and announced, as near as practicable in the same manner as is now provided by law for general county and territorial elections: *Provided*, That a three-fifths vote shall be necessary to authorize a county to render such aid.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 12, 1873.

AN ACT

TO CHANGE THE NAME OF IDA ELNORA VAN BEBBER TO THAT OF IDA ELNORA BOZARTH, AND MAKE HER AN HEIR AT LAW OF C. C. BOZARTH, OF COWLITZ COUNTY, W. T.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the name of Ida Elnora

Van Bebber, step daughter of C. C. Bozarth, of Cowlitz county, Washington Territory, be changed to that of Ida Elnora Bozarth.

SEC. 2. That the said Ida Elnora Bozarth shall be and is hereby made an heir at law of the said C. C. Bozarth.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 10, 1873.

AN ACT

FOR THE RELIEF OF THE SHERIFF OF PIERCE COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of two hundred dollars be and the same is hereby appropriated out of any money in the territorial treasury, for payment of expenses incurred by D. W. C. Davison, sheriff of Pierce county, in pursuing and retaking Matthew Hurly and Thomas Coleman, they being territorial convicts who escaped from the Pierce county jail on the first day of May, 1872.

SEC. 2. Upon demand it shall be the duty of the territorial auditor to draw his warrant on the territorial treasurer in favor of D. W. C. Davison for the sum of two hundred dollars, which shall be paid by the territorial treasurer in the order of its number, date and issue.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 8, 1873.

AN ACT

TO CHANGE THE NAME OF JAMES VALLENTINE, JR., TO JAMES
FARES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the name of James Vallentine, son of Henry and Sarah Vallentine, be and the same is hereby changed to the name of James Fares.

SEC. 2. That the said James Fares, be and is hereby made an heir at law of Joseph and Lucinda Fares of the county of King and Territory of Washington on equal footing with all other heirs of the said Joseph and Lucinda Fares.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED, OCT. 23, 1873.♦

AN ACT

RELATING TO STOCK MARKS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall not be lawful for any person to cut off more than one-third of the ear or ears of any domestic animal such as an ox, cow, bull, calf, sheep, goat or hog, and any person cutting off more than one-third of the ear or ears of any such animals shall be deemed guilty of a misde-

meanor, and upon conviction shall be fined in any sum less than one hundred dollars.

SEC. 2. All acts or 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.

APPROVED, Oct. 21, 1873.

AN ACT

TO PROVIDE MEANS FOR BUILDING A COURT HOUSE AND JAIL IN
KING COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners, of King county be and they are hereby authorized, and empowered to set apart as a special fund, for the purpose of building a court house and jail for said county, all moneys which shall be paid into the county treasury for license until such sum shall amount to twelve thousand (12,000) dollars.

SEC. 2. All license money in King county shall be paid in lawful money of the United States. James McNaught, A. A. Denny and F. Matthias are hereby constituted a board of trustees; who shall receive all such money from the county treasurer, giving their receipt for the same, and it shall be the duty of the aforesaid trustees to loan all such money coming into their hands on good and sufficient security, at not less than one per cent. per month, interest, until such time as the same shall be required for the above named purpose, when it shall be the duty of said trustees to pay out the same on the order of the board of com-

missioners of said county; but before the said trustees shall receive any such money, they shall file with the county auditor a bond payable to the county of King in the sum of fifteen thousand (15,000) dollars, the bond to be approved by the auditor of King county.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT TO RE-LOCATE THE COUNTY SEAT OF LEWIS COUNTY."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section two of the act to which this is a supplement be so amended that the county commissioners of the said Lewis county may receive a deed from William West for a block of land of the same dimensions as described in the said bill, on land of the said West, which land so deeded shall be adjoining the town site, and land of Mrs. Basey; or said commissioners may locate the county buildings on a block on the land of either or both of the said parties. It being the true intent of this supplement to allow the said county commissioners to locate the most eligible site for such buildings as near the Northern Pacific Railroad as practicable, and at, or immediately adjacent to the town of Saundersville, according to the plat of said town on file in the office of the auditor of the said county of Lewis.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

IN RELATION TO ESTRAYS IN THE COUNTY OF WALLA WALLA.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That an act entitled, "An act modifying the law relating to estrays in the county of Walla Walla," approved Nov. 29, 1871, be and the same is hereby repealed.

SEC. 2. That an act entitled, "an act in relation to estrays," approved January 30, 1868, shall apply to and be in force in the county of Walla Walla.

SEC. 3. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, Oct. 21, 1873.

AN ACT

FOR THE RELIEF OF B. W. GRIFFIN, SHERIFF OF WALLA WALLA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of one hundred and two dollars be, and the same is hereby appropriated out of any funds in the territorial treasury not otherwise appropriated, to reimburse B. W. Griffin, sheriff of Walla Walla county, for money expended by him in recapturing Lung Yow, a territorial convict under sentence of death.

SEC. 2. The territorial auditor is hereby authorized and required to draw his warrant on the territorial treasurer in favor of B. W. Griffin, for said sum of one hundred and two (102) dollars, and the territorial treasurer is hereby required to pay the same out of any money in his hands not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 13, 1873.

AN ACT

TO AUTHORIZE THE COUNTY COMMISSIONERS OF CLARKE COUNTY, WASHINGTON TERRITORY, TO USE ANY FUND OF SAID COUNTY TREASURY, NOT OTHERWISE APPROPRIATED, FOR REPAIRING AND BUILDING OF BRIDGES ON COUNTY ROADS AUTHORIZED TO BE REPAIRED OR BUILT BY SAID COUNTY COMMISSIONERS, OR THAT MAY ALREADY HAVE BEEN SO REPAIRED OR BUILT.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners of Clarke county, Washington Territory, be and they are hereby authorized to use any fund in the treasury of said county, not otherwise appropriated for the payment of any repairs or the building of any bridges on county roads of said county, that may have been repaired or built, or may hereafter be repaired or built, by order of said county commissioners.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 3, 1873.

AN ACT

FOR THE RELIEF OF S. L. MASTIC & CO.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of \$63 50 be and the same is hereby appropriated out of any money in the territorial treasury to pay to S. L. Mastic & Co. for lumber furnished to board of health for repairs on hospital for reception of persons infected with contagious diseases.

SEC. 2. The territorial auditor is hereby instructed to issue to said S. L. Mastic & Co. a territorial warrant for the above named sum on the territorial treasurer payable out of any money not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO CHANGE THE NAME OF LAURA LAMB TO LAURA TRIPP, AND TO MAKE HER THE HEIR AT LAW OF ABEL G. TRIPP AND RUTH TRIPP, OF VANCOUVER, WASHINGTON TERRITORY.

WHEREAS, Abel G. Tripp and Ruth Tripp his wife are desirous of adopting one Laura Lamb, an orphan and minor, now residing with them at Vancouver, Washington Territory, and of making her their heir-at-law, therefore

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the name of Laura Lamb, a minor child now residing with Abel G. Tripp and Ruth Tripp, his wife, at Vancouver, Washington Territory, be and the same is hereby changed from Laura Lamb to Laura Tripp, and by the said latter name she shall hereafter be known, called and designated.

SEC. 2. The said Laura Tripp is hereby declared to be the adopted child of the said Abel G. Tripp and Ruth Tripp, and she is hereby made and declared to be the heir at law of the said Abel G. Tripp and Ruth Tripp.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Oct. 21, 1873.

AN ACT

TO CHANGE THE BOUNDARIES OF YAKIMA AND CLICKITAT COUNTIES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the south boundary of Yakima county be amended so as to read: "Commencing at the north-west corner of township number six north, of range number twelve east; thence east along the north boundary of township number six north until said line intersects the Columbia river; thence north up the mid channel of said river to the mouth of the Yakima river.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 14, 1873.

AN ACT

TO AUTHORIZE ARTHUR QUIGLEY TO KEEP A GATE ON A COUNTY ROAD.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Arthur Quigley be and the same is hereby authorized to keep a gate across the county road passing over his land in Clarke county, Washington Territory, and which road connects the county road leading from Vancouver to Union Ridge and Lewis River and the county road leading from Vancouver through the Columbia bottom to Lake river.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, November 14, 1873.

 AN ACT

FIXING THE COMPENSATION OF THE COUNTY TREASURER OF WALLA WALLA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That in lieu of the fees now allowed by law the county treasurer of Walla Walla county shall receive a salary of one thousand five hundred dollars per annum: *Provided,* That the amount of percentage now allowed by law on the school, road and territorial funds to the county treasurer be paid to Walla Walla county.

SEC. 2. The salary of said treasurer shall be audited and paid quarterly as other claims against the county are paid.

SEC. 3. All acts or parts of acts in conflict with this act be and the same are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after the 1st day of January, 1874.

APPROVED, October 17, 1873.

AN ACT

TO AMEND AN ACT "TO LOCATE A TERRITORIAL ROAD FROM THE MOUTH OF MILL CREEK, ON THE WILLOPA RIVER, PACIFIC COUNTY, TO INTERSECT WITH THE MILITARY ROAD RUNNING FROM MONTICELLO TO OLYMPIA," APPROVED NOV. 29, 1871.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Thomas Symons and Robert Prown of Lewis county and Job Ball of Pacific county be and are hereby appointed viewers to view out and locate a territorial road from tide water on the Willopa river at or near the mouth of Mill creek in Pacific county, on the nearest and best route until they strike Lincoln creek in Lewis county, and then follow the county road through the valley of Lincoln creek to the said military road running from Monticello to Olympia.

SEC. 2. The said viewers shall meet at Geisy prairie on the Willopa river on the first Monday in May, 1874, or as soon thereafter as practicable and having taken an oath before some person qualified to administer the same, to faithfully discharge their duties un

der this act they shall proceed to view and plainly mark out a road from Willopa river to intersect the military road in Lewis county, according to the provisions of this act, and to make a report thereof to the county commissioners of Pacific and Lewis counties, on or before the first Monday in January, A. D. 1875; and if such report is favorable the county commissioners of the said counties of Pacific and Lewis shall declare the same a territorial road.

SEC. 3. The county commissioners of the above named counties shall cause the said report together with their action thereon to be recorded in the road books of their respective counties.

SEC. 4. The said viewers shall receive three dollars per day each for all necessary time employed in the viewing and marking out the said road to be paid out of the county treasury of the counties of Pacific and Lewis in proportion to the time employed in either county. If either of the viewers refuse to act the others may choose some person in his stead.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED, Nov. 8, 1873.

AN ACT

CONSTITUTING A. L. PORTER, OF PIERCE COUNTY, THE GUARDIAN OF MARY L. WELLER, A MINOR, AND DECLARING HER HIS HEIR AT LAW.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That A. L. Porter, of Pierce*

county, be and he hereby is declared and made the guardian of Mary L. Weller, now a minor under his protection; and he shall be entitled to her care and custody during her minority.

SEC. 2. The said Mary L. Weller is hereby declared and made the heir at law of the said A. L. Porter.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, Oct. 23, 1873.

AN ACT

DESIGNATING THE NAME OF AN ORPHAN GIRL HERETOFORE ADOPTED BY CYREL WARD AND WIFE, AS ELLA WARD, AND DECLARING HER AN HEIR AT LAW OF CYREL WARD AND SUSAN WARD, AND APPOINTING THEM HER GUARDIANS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the orphan girl heretofore adopted by Cyrel Ward and wife, of Thurston county, and now residing with them, have and take as her name hereafter that of Ella Ward.

SEC. 2. The said Ella Ward is hereby declared and made an heir at law of the said Cyrel Ward and his wife Susan Ward.

SEC. 3. The said Cyrel Ward and wife are hereby declared and made the guardians of the said minor child Ella Ward, and shall be entitled to her care and custody during her minority.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED, Oct. 23, 1873.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO PREVENT HOGS TRESPASSING IN CERTAIN COUNTIES," APPROVED DECEMBER 2, 1869.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section 10 of the act to which this is amendatory be amended by striking out the word Pacific after the word Jefferson.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED, Oct. 20, 1873.

 AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE TOWN OF TUMWATER," APPROVED DEC. 2, 1869.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section two of Article III of the act to which this is amendatory be and the same is hereby amended by striking out from said section, all after the words: "No person shall be entitled to vote at any town election, who shall not be an elector for territorial officers, and a resident of the town thirty days next preceding the day of election."

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED, Nov. 10, 1873.

AN ACT

TO CONFIRM THE TITLE OF THE SEATTLE AND WALLA WALLA RAILROAD AND TRANSPORTATION COMPANY TO THE TIDE LANDS IN AND ABOUT ELLIOTT BAY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the title of the Seattle and Walla Walla Railroad and Transportation Company to the tide lands south of King street, in, under, around and about Elliott bay in King county, Washington Territory, from extreme high to extreme low tide, and to deep water, including all tide lands in, about, under, or bordering upon said Elliott bay, except what is north of King street, derived by deed from the city of Seattle to the said company dated August 19, 1873, be and the same is hereby ratified, and confirmed, and said deed shall be deemed to vest the title of said lands in said Seattle and Walla Walla Railroad and Transportation Company in fee simple, and in every way to operate as an estoppel in law and in equity.

SEC. 2. That the Territory of Washington hereby relinquishes all the right, title, and interest of the said Territory in and to, and hereby grants unto the said Seattle and Walla Walla railroad and Transportation Company, all the tide lands in, under, around, and about Elliott bay, in King county in said Territory, from extreme high to extreme low tide, and to deep water. The meaning and intention of this act being to grant unto the said railroad and transportation company, and vest in them, the legal and equitable title to all the tide and other lands in under, around, and about said Elliott bay as would otherwise belong to and vest in the state, upon the admission of Washington Territory into the Federal Union as a state: *Provided,* that the foregoing grant and confirmation is upon the express condition that the first section of fifteen miles of said road shall be constructed within

three years from the passage of this act: *Provided*, That the release and grant by this act intended to be made, shall be of no validity until the said Seattle and Walla Walla Railroad and Transportation Company shall have commenced a railroad connecting the city of Seattle in King county, with the city of Walla Walla in Walla Walla county via the Snoqualmie pass; *And Provided further*, that the foregoing confirmation and grant shall not include any lots or land embraced within David S. Maynard's plat of the city of Seattle as originally filed which lots are now held by innocent purchasers from said David S. Maynard or his assigns.

APPROVED, Nov. 8, 1873.

MEMORIALS.

MEMORIALS
OF THE
LEGISLATIVE ASSEMBLY
OF
WASHINGTON TERRITORY FOR 1873.

MEMORIAL

FOR RELIEF OF SETTLERS ON RAILROAD LANDS.

*To 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, respectfully ask your honorable bodies to pass an act confirming the titles to all lands granted by the United States government to its citizens, whether in the form of private cash entries, homesteads or pre-emptions, on odd sections, within forty miles of the Northern Pacific Railroad, in Washington Territory, made between the thirteenth of August and the twelfth of October, 1870, which titles and entries have been declared illegal by the Secretary of the Interior, and notice has been given that all titles to such lands are suspended and will be cancelled if within forty miles of the

final location of said road. We ask that the above titles be confirmed by the setting aside of the decision of the Secretary of Interior; or by confirming his decision, and by the United States government buying these lands of the Railroad Company, and by that means being enabled to confirm its grants; or, that an act be passed appointing a commission to ascertain the damages sustained by the individuals above mentioned in consequence of said government breaking its contracts with them, and that an appropriation be made to pay such damages.

We urge your compliance with the prayer of this Memorial for the following reasons:

1. When two parties enter into a contract the one breaking the contract is liable to the other for all damages caused by the breaking of said contract.

2. Many of the claimants in these cases lose, not only their homes, their lands and all their improvements, made after receiving their certificates of homestead, etc., but they also lose all the improvements they made many years before—before the lands were surveyed, and the United States government encouraged settlements on unsurveyed lands, and promised protection to settlers thereon.

3. The decision of the Secretary of the Interior (issued at Department of Justice, office of Assistant Attorney General, Washington, D. C., March 17, 1873, declaring said contracts illegal) does not absolve the United States government from the penalties it is under from its broken contracts, because the homestead claimants, etc., were innocent purchasers and holders of these lands for a period of about two years and from seven to eight months.

4. The incompetency or neglect of an officer or agent to perform his duty and whole duty, does not absolve the government, or principal, from the consequences of such incompetency or negligence. In his remarks in support of the above decision, the Secretary says: "It is true that the power to order a withdrawal, to protect the rights of the road was in the Secretary, independent of any special authorization, and that with-

drawals under this act have been made, but (he says) suppose that the Secretary had declined or omitted to make such withdrawals, would there have been any protection whatever to the grant prior to the definite location of said road."

5. Does not the above language of the honorable Secretary plainly imply that he should have withdrawn the said odd sections from sale immediately after the Railroad Company had filed their preliminary plat at Washington City, and yet they were not withdrawn until sixty-five days after that time.

6. He asks: "What protection the Company would have had?" This decision would give said company not only all the lands they ask for, but said company would come into possession of all the improvements that were on those lands prior to the filing of their preliminary plat; but also all that were made during about thirty months that said lands were in possession of homestead settlers and others under the authority of a direct contract with the United States government.

7. As these lands were omitted to be withdrawn from sale for a period of sixty-five days, and as the United States Government did not notify the purchasers of these lands for a period of two years and from six to eight months. That the said government is clearly responsible for all damages resulting from the issuance of said false or illegal titles. In other words, the United States government sold us lands, and after a lapse of nearly three years it has taken from us these lands and all our improvements thereon, and we the homestead claimants, etc., demand the damages that we have sustained in consequence of the abrogation of said contracts or titles by said government. Townships 13 and 14 North, Range 8 and 9 West, Pacific county, W. T., Oct. 10, 1873.

8. Do not the honorable secretary's words and acts clearly convict him of inconsistency, incompetency, and negligence, if, of nothing more reprehensible. When would he have learned that the sale of these lands to private individuals were illegal or illegally made, if a railroad company had not called his attention to that subject? Why did he not withdraw and prevent the

sale of these lands to innocent purchasers and thereby protect their rights; or, did he infer that they had none?

We, the undersigned, for ourselves and others similarly situated, pray that the Legislative Assembly of the Territory of Washington embody the substance of the above representations in a memorial to Congress and instruct our Delegate to Congress to try to prevail on the United States government to redeem its broken pledges, and to try to save those to whom such pledges were made by said Government from being driven from their homesteads.

James S. Wilson,	George M. Armstrong.
James Hayes,	John Fry.
Charles Barstow,	Thomas Shay.

The above are all homestead claimants of the above mentioned disputed lands. Two of them have resided over twelve years on said claims. Two over ten years and two over six years.

Passed the House of Representatives Nov. 3, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council Nov. 3, 1873.

Wm. McLANE,
President of the Council.

MEMORIAL

FOR RELIEF OF JOHN M. IZETT.

*To the Senate and House of Representatives
of the United State in Congress Assembled:*

That your memorialists, the Legislative Assembly of the Territory of Washington would respectfully represent:

That John M. Izett settled and improved lots No. three, four, five and six, and the south-west quarter of the north-east quarter, and the south-east quarter of the north-west quarter, all in section No. thirty-six, in township No. thirty-three north, of range No. one east of the Willamette meridian, in Washington Territory, in the month of November, 1857, and prior to survey, claiming the same by virtue of the pre-emption law and cultivated said tract continuously until the present time; and

WHEREAS, By the carelessness of his attorney, his declaratory statement was not filed within the time prescribed by law after survey; and

WHILEAS, The county commissioners of Island county, in which said land is located have surrendered all claim to said tract of land inuring to said county, and have selected other lands in lieu thereof.

Your memorialists would further say, that John M. Izett, in August, 1869, entered the foregoing described land, having proved his compliance with the pre-emption laws of the United States, and paid his money for the same, having the receipt for said payment, yet the patent has not been issued, as your memorialists understand, from the fact that his declaratory statement was not filed through the carelessness of his attorney, as heretofore stated.

Therefore your memorialists would respectfully pray your honorable body to pass an act confirming all the rights, title and interest of the lands set forth in said memorial, to the said John M. Izett, his heirs and assigns forever, and your memorialists as in duty bound will ever pray.

Passed the House of Representatives Nov. 3, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 27, 1873.

WILLIAM McLANE,

President of the Council.

MEMORIAL

PRAYING CONGRESS TO CONFER CERTAIN POWERS UPON THE
COUNTY COMMISSIONERS OF THURSTON COUNTY.

*To the Senate and the House of Representatives of
the United States of America in Congress assembled:*

The memorial of the Legislative Assembly of the Territory of Washington respectfully represents:

WHEREAS, Extensive coal fields are situated in the vicinity of Skookumchuck river, within a short distance of Tenino on the line of the Northern Pacific railroad, about sixteen miles south of Olympia in the county of Thurston, and Territory of Washington, the development of which mines would add vastly to the resources and progress of said Territory, and especially to said county of Thurston; and

WHEREAS, The town of Olympia, at the head of ship navigation of Puget Sound is the nearest and natural point of outlet for such coal mines; and

WHEREAS, Capitalists have entered upon the opening and developing of said mines, by reason whereof there is a prospect of securing railroad connection between said mines and the town of Olympia, but the great expense attending said development will not justify the immediate construction of a railroad, but it is believed that with aid from the county of Thurston capitalists can be induced to undertake the construction of a railroad connecting the Skookumchuck coal fields with the town of Olympia aforesaid and also have close connection between said town and the Northern Pacific railroad at or near Tenino, the nearest point on said railroad to said town of Olympia; and

WHEREAS, Upon the 8th day of Oct. A. D. 1873, the legal voters of Thurston county held a special election, due notice thereof having been given in accordance with the provisions of the election law of said Territory; and

WHEREAS, The legal voters of said Thurston county did, by more than a three-fourths vote, signify their willingness that the board of county commissioners should issue bonds in a sum not to exceed two hundred thousand (200,000) dollars payable after ten years, and within twenty-five years, bearing interest not to exceed *ten per cent. per annum* to any person, firm or company who should construct a first class road of the same gauge as the North Pacific Railroad between the points aforesaid, said bonds not to be issued until after the final completion of said road, and upon good and adequate security, that said road should be operated with freight and passenger trains for a period of twenty-five (25) years; and

WHEREAS, By the organic act the county commissioners are powerless to give force and effect to the expression of the tax-payers of said Thurston county,

Your memorialists, the Legislative Assembly of the Territory of Washington, therefore pray your honorable bodies to pass an act with proper restrictions and limitations, conferring the power on said board of county commissioners of the County of Thurston to contract with any person, firm or company to build and equip said railroad from the head of convenient ship navigation on Budd's Inlet, Puget Sound, to intersect the line of the Northern Pacific Railroad at or near Tenino to secure railroad connection with freight and passenger trains, by and between said city of Olympia and the line of said North Pacific Rail Road, and to issue bonds, as aforesaid, to said person, firm or company in a sum not to exceed two hundred thousand (200,000) dollars payable after ten years, and within twenty-five years, with interest not to exceed ten per centum per annum.

And your memorialists will ever pray, &c., &c.

Passed the House of Representatives October 17, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 18, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

PRAYING AN APPROPRIATION TO OVERCOME OBSTACLES IN THE
COLUMBIA RIVER.

*To the Senate and House of Representatives of
the United States of America in Congress assembled:*

Your memorialists the Legislative Assembly of Washington Territory would respectfully represent to your honorable bodies, that the Cascade Range of mountains divide the Territory into Western and Eastern Washington. That Eastern Washington Territory is almost exclusively a grazing and agricultural country, that the soil thereof is capable of producing all the grasses and cereals known to the Middle and Western States, that the product of Walla Walla county alone with a population of about 8,000 souls, in its grain yield for the year 1873, as shown by the most carefully prepared statistics will reach the enormous sum of one million of bushels. That large bodies of land in the counties of Walla Walla, Yakima, Whitman and Stevens are equally as susceptible of cultivation as those already occupied, improved and cultivated, that the counties above enumerated are fast filling up with an intelligent and industrious population. Your memorialists would further repectively represent, that the people residing in the counties in Eastern Washington Territory are almost wholly dependent upon the means afforded by the Columbia River for an outlet to the Pacific Ocean and to markets for the productions of their soil and the fruits of their labor.

That from the points of shipment on the said Columbia river to the junction of the Willamette river therewith, Nature has interposed great obstacles to the free and successful navigation of the stream—one at the Dalles and one at the Cascades, making a portage of fourteen miles, at the former place, and of

five or six at the latter an imperative necessity. The costs and expenses attending the transportation of freight over the portages aforesaid, are so burdensome upon the people of Eastern Washington as to amount almost to an entire prohibition; that the people may have an opportunity to develop the region of country in which they live and at the same time provide the means of subsistence for themselves and families whilst thus laboring without meeting with the great hindrances to the free navigation of the Columbia river hereinbefore specified, your memorialists earnestly pray your honorable bodies to make such an appropriation as shall in your judgments overcome the obstacles aforesaid,

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives November 4, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 4, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

PRAYING FOR THE ESTABLISHMENT OF A MAIL ROUTE FROM
SEATTLE TO WALLULA.

To the Honorable Postmaster General of the United States:

Your memorialists the Legislative Assembly of the Territory of Washington would respectfully represent that there are over two thousand inhabitants in the valley of the Yakima river in Yakima county in this Territory, and the number is very rapidly increasing in consequence of recently discovered gold mines in

said valley as well as the rich and extensive agricultural and grazing lands in that section ;

That a large portion of the people of said valley are entirely without mail service, and what service there is in said valley, is by very circuitous routes, viz: to Wallula via Umatilla on the Columbia river over the foot-hills of the Blue mountains, and to Puget Sound via the Columbia river.

Also that there is no postoffice at the mouth of the Yakima river, where one is very much needed to accommodate a large settlement at that point.

Therefore your memorialists pray that a mail route may be established from Seattle in King county via the Snoqualmie pass to Ellenburgh, thence to Yakima city, thence to Smith Burnham's, at the mouth of the Yakima river, and thence to Wallula, on the Columbia river;

That a postoffice be established at Smith Burnham's, at the mouth of the Yakima river, and that Smith Burnham be appointed postmaster of such postoffice.

Also that a semi-weekly mail service be immediately established on such route.

Passed the House of Representatives November 12, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 13, 1873.

WM. McLANAN,

President of the Council.

MEMORIAL

FOR A BOOM ON THE SNOHOMISH RIVER.

To 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 respectfully represent, that the right and

exclusive privilege be granted to William Romines, of Snohomish county, W. T., of placing a trap boom for logs, etc., from a point in section 19, township No. 28 north, range 6 east, Willamette Meridian, in and on the Snohomish River. The head fastenings of the said boom for logs to be at permanent anchorage near the west side of the Snohomish river at an alder tree on the bank of a dry slough bearing south from which a cotton wood tree two feet in diameter bears south eight west one hundred and twenty-four links distant, and a cedar tree, four feet in diameter bears north twelve west three hundred and twenty-five links distant, the same being marked and noted as the head or anchorage of the said boom for logs.

Your memorialists would further pray that the said William Romines give bonds to this effect: That he will place a permanent anchorage for a boom of logs to trail down the said river Snohomish, from said anchorage a distance not exceeding one-half mile for the purpose of catching, collecting or enclosing any and all lumber, timber and saw logs or floating material that may pass down said river at all suitable stages of water at said point above mentioned, and deliver the same to owners or agents, and that he may be privileged to collect from said owners or agents a rate of charges for salvage and delivery to be fixed by the Congress of the United States.

Your memorialists would further pray to grant to the said William Romines the exclusive right and privilege of placing said boom and the exclusive privilege of the river for a distance of not to exceed three miles up or down said river from the head of said boom and for a period of time not to exceed twenty years. And that the river shall be open free from all charges and cleared from all obstructions, night and day, to any and all vessels navigating the same.

Owing to the absolute necessity of having a boom placed at said point, the said William Romines will bind himself to have said boom erected within sixty days from a time to be specified by the Congress of the United States.

Your memorialists would therefore pray your honorable body

to pass an act empowering the said William Romines to erect said boom as herein prayed for.

And your memorialists as in duty bound will ever pray.

Passed the House of Representatives November 7, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 5, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

FOR AN APPROPRIATION TO IMPROVE THE NAVIGATION OF THE
SOUTH FORK OF LEWIS RIVER.

*To 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 respectfully represent, that the South Fork of Lewis River in Clarke county of this Territory could be made navigable for river steamers for a distance of ten miles at all seasons of the year; that said river at or near its confluence with the main Lewis river is obstructed with drift, or jam, to the exclusion of navigation, thereby retarding the settlement of the valley of said South Fork of Lewis river. The said valley contains a vast body of agricultural land, also a large amount of valuable timber. That learning from a competent engineer who has examined said section of country, that the obstructions can be removed for the sum of three thousand dollars, and thereby open a channel for immigration, and an outlet for lumber and farm produce, to a tract of land capable of sustaining a large population.

Your memorialists would therefore respectfully pray your honorable bodies to pass an act appropriating three thousand dollars for the removal of said drift or jam and the making of said river free of obstructions and navigable.

And your memorialists as in duty bound will ever pray.

Passed the House of Representatives October, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October, 1873:

WM. McLANE,

President of the Council.

MEMORIAL

PRAYING CONGRESS TO DECLARE CERTAIN STREAMS AND
SLOUGHS IN SNOHOMISH AND KING COUNTIES, WASHINGTON
TERRITORY, NAVIGABLE WATERS.

*To 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, respectfully represent; that several of the streams or parts thereof described in the prayer of this memorial, over which the government surveys have been extended, have not been meandered though they are navigable, in fact—that it is very important to the interests of the public that said streams should be kept open to free navigation.

Your memorialists, therefore pray your honorable body to declare the Snohomish river in Snohomish and King counties, Washington Territory, and all of the streams and sloughs, that are tributaries or outlets of said Snohomish river, to be naviga-

ble waters, at all points in said counties of Snohomish and King, when at any season of the year there is sufficient depth of water, for deep or light draft vessels, boats, lumber, rafts or logs, and that no person shall be allowed to obstruct the same, whether they are meandered or not.

Passed the House of Representatives November 7, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 8, 1873.

WM. McLANE,

President of the Council.

MEMORIAL.

FOR A WAGON ROAD.

*To the 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 respectfully represent, that at the present time there is no means of communication between the valley of the Lower Columbia river and the basin of Puget Sound, in which the capital of said Territory is situated; that a large and thriving commercial interest is being developed in said Lower Columbia valley, creating extensive settlements therein; that their present means of communication with said Territorial capital is by ascending said Columbia river, which is frequently obstructed by ice.

Your memorialists would further represent, that a good and practicable wagon road could be constructed from Cathlamet, on

the Columbia river (the county seat of Wahkiakum county) through the valley of Strong's river to Boisfort Prairie, thereby connecting at said point with the military wagon road leading from Fort Steilacoom to Monticello, by an outlay of about twenty thousand dollars.

Wherefore your memorialists would respectfully pray your honorable bodies to pass an act appropriating the sum of twenty thousand dollars to be applied in the construction of a wagon road from Cathlamet, in Wahkiakum county, W. T., to Boisfort Prairie, in Lewis county, W. T.

And as in duty bound will ever pray.

Passed the House of Representatives November 11, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 7, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

RELATIVE TO EXTENDING THE PUBLIC SURVEYS OVER SAN JUAN
AND OTHER ISLANDS.

*To the Senate and House of Representatives of the
United States of America in Congress assembled:*

The memorial of the Legislative Assembly of the Territory of Washington, respectfully represents:

That the Islands known as the archipelago De Haro, now recognized as a part of the Territory of Washington, are already occupied by some sixty actual settlers, citizens of the United States, who having had entire faith in the integrity of

American title to said Islands, by the proper construction of the treaty of limits of June 15, 1846, located claims, either as donation, homestead, or pre-emption, in accordance with the tenor or spirit of one or the other acts of Congress of the United States, granting lands to actual settlers.

That prior to 1859, none of the said Islands, except alone the Islands of San Juan and Orcas had been settled upon or in any way, in whole or in part, appropriated by either British subjects, or company, or American citizens.

That prior to the treaty of June 15, 1846, no British subjects or company had made or attempted to make any settlement of any character, for purposes of trade, agriculture or occupancy.

That at the time of the Scott-Douglass project of treaty admitting joint occupancy by the United States and Great Britain, there were probably twenty-five claims taken up upon said San Juan and Orcas Islands, and not a single British subject, save alone Charles John Griffin and his employees (two Scotchmen, one Englishman, and several Kanakas) holding a sheep ranch for the Hudson Bay Company, on the southern portion of the Island, twenty acres improved at head quarters, or residence of Griffin, with huts for the herders at several points on the Islands; at these huts no permanent improvements or enclosures, save corrals, were attempted for protection of their flocks at night.

That since 1859, by a recognized agreement between the British and American garrison commanders, British subjects and American citizens have made settlements, or taken up claims, and by the custom universally recognized, these claims did not contain over one hundred and sixty acres of land. Under the said commanding officers' order, as referees when disputes arose between such settlers as to boundary lines of the said claims, the British commander in several instances granting to non-residents the privilege of pasturage for sheep, which grantees have now their flocks running over a portion of said Islands. All such

British settlers claim such land and such privileges they enjoy from the grace and sufferance of such British commanders.

The facts are that with the exception of the settlement of said Griffin for and on behalf of the Hudson Bay Company, all the rights of the British claimants in these Islands have attached since 1859, and arise from the consent and sufferance of the British garrison commanders, and tacit acquiescence of the United States officers commanding the American posts.

That these claims are vague, indefinite and intangible, tending vastly to discourage *bona fide* settlement, and can only be ascertained and definitely determined after public surveys shall have been extended, and notice of their extension promptly given; and that such survey seems the only means whereby citizens of the Government and the British claimants can be justly dealt with.

Therefore, your memorialists pray that the public surveys be forthwith extended over said islands.

And in duty bound will ever pray.

Passed the House of Representatives October 25, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 24, 1873.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO THE FREE NAVIGATION OF THE CHEHALIS RIVER.

*To 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 respectfully represent that the Cheha-

lis river in this Territory could be made navigable for river steamers for a distance of sixty miles or more at all seasons of the year; that said river above the flow of tide water is obstructed with drifts or jams to the great exclusion of the same thereby retarding the settlement of the Chehalis valley which contains a large area of our finest lumber and farming lands.

Your memorialists would therefore respectfully pray your honorable bodies to pass an act appropriating twenty thousand (20,000) dollars for the removal of said drifts or jams.

And your memorialists as in duty bound will ever pray.

Passed the House of Representatives Oct. 16, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council Oct. 17, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

IN RELATION TO SEATTLE AND WALLA WALLA RAILROAD AND
TRANSPORTATION COMPANY.

*To 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 a corporate company known as the Seattle and Walla Walla Railroad and Transportation Company has been duly organized under and by virtue of the laws of said Territory, for the purpose of building equipping and running a railroad in said Territory from Seattle to

Walla Walla, via the Snoqualomie pass; and whereas, the accomplishment of that project is much to be desired, and would be a great benefit, especially to the people of said Territory residing east of the Cascade Mountains, and on Puget Sound. Therefore your memorialists respectfully request that your honorable bodies pass an act granting to the said Seattle and Walla Walla Railroad and Transportation Company the right of way over the public domain on the line of their proposed road, together with suitable depot grounds, and also such additional lands to aid in the construction of said road, as your honorable bodies may deem proper; also to authorize the county commissioners of the counties of King, Yakima, Walla Walla and any other county or counties in said Territory, to aid in the construction of the said proposed railroad by subscribing to the capital stock of the same in the name and on behalf of the said counties respectively, and by issuing bonds of the said counties respectively payable not less than ten nor more than twenty years from the date thereof, and bearing interest not to exceed the rate of ten per cent. per annum in payment for said stock so by them taken in said railroad company, or by issuing bonds, bearing interest as aforesaid, as a loan to said company to be used in the construction of said road, or to aid said company in the construction of said road by the credit of said county or counties in any other manner the said commissioners may deem proper: *Provided*, That the said subscription, loan or other aid, shall in no case exceed the sum of \$500,000 in any one county: *And provided further*, That the said subscription, loan, or other aid, shall have been submitted to the people of the said counties respectively, and been voted for by three-fifths of the legal votes, cast at the election held for that purpose.

Passed the House of Representatives October 17, 1872.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 21, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

RELATIVE TO THE ESTABLISHMENT OF A LAND OFFICE AT PORT
TOWNSEND, WASHINGTON TERRITORY.

*To 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 establishment of a land office at the town of Port Townsend, Washington Territory, is a matter of vital importance to all the people in the northern part of the Territory, and that Congress in justice and right ought to act in this matter for the following reasons, to wit: The only land office at which settlers in this part of the Territory can enter homestead and pre-emption land claims is at the city of Olympia, near the center of the Territory, and distant about two hundred miles from a majority of the settlers in said portion of the Territory;

That there are in the counties of Clallam, Island, Jefferson, Snohomish and Whatcom, exclusive of San Juan and other islands late in dispute, about seven hundred homestead and pre-emption claimants, who, if a land office is not established at Port Townsend, will be obliged to go to Olympia to prove up their claims at an expense of more than three times the amount that government receives in fees for such entries; and in that portion of the Territory not one-tenth part of the land has been surveyed or settled. All this besides much valuable time to these settlers may be saved by the establishment of a land office at Port Townsend, at but a small cost per annum to the general government. In view of the foregoing and many other facts bearing on this question which we cannot embrace in this memorial, we, the representatives and councilmen of Washington Territory in our capacity as law makers, do earnestly request you to pass

an act establishing a land office at the town of Port Townsend for the district composed of the counties of Clallam, Island, Jefferson, Snohomish, Kitsap and Whatcom.

And as in duty bound your memorialists will ever pray.
Passed the House of Representatives October 20, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 20, 1873.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO APPROPRIATION FOR OPENING MILITARY ROAD
FROM FORT STEILACOOM TO FORT WALLA WALLA.

*To 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 represent, that whereas the General Government did in the year 1853, open a military road over the Cascade Range of mountains between Forts Steilacoom and Walla Walla, and said road was used by immigrants seeking homes upon the western slopes of said mountains and the waters of Pu-Sound in the succeeding year, and by the volunteer troops of the Territory in the Indian wars of 1855 and 1856 and that by reason of the paucity of inhabitants along the line of said road and the great expense incurred in keeping up the repairs upon the mountain roads, said military road is now nearly impassable and whereas the pressing needs of the two portions or great geographical divisions of Washington Territory are now separated by the

Cascades Range, and the vital interests of the whole Territory require this natural barrier should be surmounted, we therefore pray your honorable body to appropriate the sum of \$10,000 to render practicable the said military road, the same to be expended between the Nisqually Plains and the eastern side of the Cascades.

And your memorialists will ever pray.

Passed the House of Representatives November 5, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 6, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

RELATIVE TO CARRYING THE MAILS ON ROUTES NOS. 43,113
AND 43,114, BETWEEN PORT GAMBLE AND SEABECK AND
SEABECK AND UNION CITY BY STEAM VESSEL.

*To 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 respectfully represent:

That at present the mail service on route No. 43,113 and 43,114 is performed with a small sail vessel to the great inconvenience of the public residing on said route, as by said sailing vessel it cannot be performed with any regularity and certainty.

Your memorialists would further state that Hood's Canal that receives their mail from said route is rapidly settling up as the land has been recently surveyed and opened for entry; that

the service cannot be performed with any convenience or justice to the residents supplied by said route with said vessel.

Your memorialists therefore respectfully pray that the mails on said routes No. 43,113 and 43,114 be carried by steam vessel and the same be designated in the letting of said routes for the next four years;

And your memorialists will ever pray, &c., &c.

Passed the House of Representatives October 20, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 20, 1873.

W. M. McLANE,

President of the Council.

MEMORIAL

RELATIVE TO INCREASED MAIL SERVICES ON ROUTE NO. 43,108.

To the Honorable Postmaster General of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington would respectfully represent:

That the section of country along the eastern shore of Puget Sound, between the town of Seattle and Bellingham Bay, comprises one of the richest portions of Washington Territory, which is rapidly becoming thickly settled; that an extensive business and commerce is already existing therein, which is constantly increasing; that a great drawback to the increase of business exists there, from the want of proper mail facilities necessary for business, there being but a weekly mail along said extent of country, which is designated as mail route No. 43,108; that the establishment of a semi-weekly mail along said route,

would greatly facilitate the transaction of business, and increase the volume thereof, beside being the means of affording the immigrant additional aid and facility to reach that portion of our Territory where extensive tracts of rich agricultural lands are still unoccupied.

In view of these facts, your memorialists would respectfully request that you would establish a semi-weekly mail on mail route No. 43,108, to go into operation from and after the first day of July, 1874; and as in duty bound will ever pray.

Passed the House of Representatives November 3, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 4, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

RELATIVE TO CARRYING THE MAILS ON ROUTE NUMBER 43,116.

To the Honorable the Postmaster General of the United States.

Your memorialists the Legislative Assembly of Washington Territory respectfully represent:

That at present the mail service on route No. 43,116 is performed with a small sail vessel to the great inconvenience of the public residing on said route, as by said sail boat it cannot be performed with any regularity or certainty.

Your memorialists would further state that Port Discovery, which is included in route No. 43,101, should be included in route No. 43,116.

And further, that the rapid settlement of Squim Bay requires the establishment of mail communications and the same is located on said route No. 43,116.

Your memorialists therefore respectfully pray that the mails on said route be carried by steam vessel, and that said route include Port Discovery and Squim Bay, and the same be designated in the lettings of said route for the next four years. And your memorialists will ever pray.

Passed the House of Representatives October 25, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 24, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

FOR RELIEF OF WILLIAM PACKWOOD.

*To 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, respectfully represent; that

WHEREAS, William Packwood, now a resident of Lewis county, and one of the pioneer settlers of Washington Territory, has spent many years in exploring and opening out the resources of the said Territory, having largely devoted his means and time to that purpose, since the year 1857; and

WHEREAS, The said William Packwood did discover, some ten years since, in the Cascade Mountains a vein of anthracite coal, which is inaccessible for purposes of commerce without a large expenditure of capital; and

WHEREAS, The said Packwood is unable to purchase said land at the price fixed by government for said coal lands; and

WHEREAS, He is not willing to make the location of said vein known to the public until he can secure to himself and his heirs some of the benefits to be derived from his discovery;

Therefore, in consideration of the facts and the services of the said Packwood, and to the end that said coal vein may be developed, your memorialists pray that a special act may be passed enabling the said Packwood to enter three hundred and twenty acres of said coal land at the price of one dollar and twenty-five cents per acre.

Passed the House of Representatives October 25, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 24, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

RELATIVE TO THE REMOVAL OF OBSTRUCTIONS FROM THE SKAGIT
AND NOOTSAK RIVERS.

*To 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 respectfully represent, that the Skagit and Nootsak rivers rise in the Cascade mountains, flow through the finest body of agricultural land in Washington Territory, and empty into the waters of Puget Sound; that the

lands adjacent to these rivers will make homes for thousands of families which when cleared of the forest and thoroughly developed, will not be surpassed by any place on earth in all that makes home attractive to inhabitants of the temperate zone; but as said lands are covered with such a growth of heavy timber and underbrush, that it is impossible for any one to travel through the woods without cutting a path, it will be a long time before said lands are occupied, because those who would make their homes in the woods and live there in their present condition, have not the means to cut the roads that must be cut, and those who have the means will not go there until the country is further developed; that the Skagit river is capable of steamboat navigation for about seventy miles, and the Nootsak about thirty miles were they cleared of the driftwood that has collected in several parts of said rivers, completely obstructing the passage even of logs; that the mountains around the upper portion of said river are covered with forests of pine, fir and cedar, which for size, quantity and quality, are unsurpassed if equaled in any part of the earth, which if manufactured into lumber and spars would afford profitable employment to the thousands of our industrious citizens, and add millions of dollars to our national wealth, but which are inaccessible at present from the obstructions in said rivers.

That the removal of the obstructions in said rivers would give settlers access to a large portion of the aforesaid agricultural lands, and would to a certain extent supply the want of roads, and would enable the lumberman to transport his timber from the mountains to the waters of Puget Sound. In view of these facts, and in consideration of the public welfare being best promoted by the general government aiding and fostering the development of our internal resources,

Your memorialists would respectfully pray your honorable bodies to grant an appropriation of twenty-five thousand (25,000) dollars for the Skagit river, and the sum of fifteen thousand (15,000) dollars, for the opening of the Nootsak river, to be used for the purpose of opening said rivers to navigation,

in whatever manner the Secretary of the Treasury may consider as best adapted to accomplish the object desired on the most economical scale.

And your memorialists as in duty bound will ever pray.

Passed the House of Representatives October 16, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 21, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

RELATIVE TO THE ANNEXATION OF THE COUNTIES OF IDAHO, SHOSHONE AND NEZ PERCE, IN IDAHO TERRITORY, TO WASHINGTON TERRITORY.

*To 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 respectfully represent that the people embraced in all that portion of the Territory of Idaho, commonly known as North Idaho, embracing the counties of Idaho, Shoshone and Nez Perce, have solicited, time and again, through their representatives and the public press, for the last eight years to be annexed to the Territory of Washington.

Serious weighty reasons exist why such annexation should be effected. An impassable barrier in the shape of towering, rugged mountains, where perennial snows ever abound, making it absolutely necessary that in order to have any communication with other portions of the Territory, during eight months of the year, to take circuitous routes through Washington Territory

and the State of Oregon before any portion of the balance of the Territory can be reached, either on foot, horseback, or by vehicle.

We would further represent that that portion of Idaho which it is proposed to annex to Washington is a narrow strip of country, about in proportion to the balance of the Territory as the handle of a frying pan is to the pan, and it lays contiguous to our Territory, lying immediately east, and with no barriers intervening. Its commercial, social and political interests are identical with ours; its products, climate and people are in every respect similar. It helps to form one grand basin where there is no dissimilarity in the soil, the pursuits of the people, the general appearance of the country or the character of its resources. Annex the same to Washington and it must grow and prosper; but keep it tied to Idaho Territory and it must ever remain in a comparatively primitive state. As where there is no affinity of interest, no affinity of feeling, and where there is so little hope of ever overcoming to any great extent the rankling sectional feeling, that sectional antagonism which too often is prevalent among the greater towards the smaller population, there is little ground for hoping that these conditions will ever be materially changed.

Other important reasons exist why the annexation should be made. The extra expense attending the administration of the affairs of the Territory and particularly the extra burdens imposed on North Idaho in being so far removed from the territorial capital. The apparently useless efforts to obtain favorable representation in both the territorial legislature and the halls of Congress.

Your memorialists hardly deem it necessary to enter into a further detail of the grievances growing out of the relationship existing between Northern Idaho, or the "pan-handle" of Idaho, as it is more commonly called, and Southern Idaho, as your honorable bodies have time and again been memorialized on this subject, and are fully posted as to the merits and demerits of the proposition, and it is only to keep ripe in your minds the

wishes and interests of the people of North Idaho, which from time to time have been made known to your honorable bodies, for the last eight years, and which the delegate from Idaho, who, as a matter of course, always hails from the southern portion of Idaho has, it would seem, always manifested some delicacy in bringing the matter to your notice in that light which would lead you to give the matter that consideration the real merits of the proposition demand.

To that end your memorialists will ever pray.

Passed the House of Representatives Nov. 13, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council Nov. 14, 1873.

WM. McLANE,

President of the Council.

MEMORIAL

RELATIVE TO VACATING THE GOVERNMENT RESERVATION AT
PORT ANGELES, WASHINGTON TERRITORY.

*To the Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, respectfully represent:

That in the year 1863, pursuant to the act of Congress, approved March 3, 1863, entitled, "An act for increasing the revenue by reservation and sale of town sites on public lands," the President of the United States reserved at Port Angeles, at that time the port of entry of the collection district of Puget

Sound, a tract of land fronting on the harbor of Port Angeles, five and a half miles in length, and one mile in breadth.

That in 1866, the custom house was removed from said Port Angeles, and by act of Congress it ceased to be the port of entry, and there is no probability direct or remote, that said town site will ever be occupied for purposes of trade or commerce.

That in said strip of land, there is a considerable quantity adapted to agriculture and in the present condition of things settlement and cultivation are entirely retarded. That but a small portion of lots were sold under the provisions of said act, and such sales were confined to the immediate vicinity of the custom house, at or near the head of the bay.

Your memorialists therefore pray that such reservation be vacated, or so much thereof as does not interfere with the vested rights of purchasers, and that the land be opened to settlement under the pre-emption and homestead laws of the United States.

Resolved, By the House of Representatives of the Territory of Washington, the Council concurring, that our Delegate in Congress be instructed to use his best influence to secure favorable action upon the foregoing memorial.

Passed the House of Representatives November 5, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 6, 1873.

WM. McLANE,

President of the Council.

RESOLUTIONS.

RESOLUTIONS
OF THE
LEGISLATIVE ASSEMBLY
OF
WASHINGTON TERRITORY FOR 1873.

RESOLUTION

PROVIDING FOR CANCELLING CERTAIN TERRITORIAL WARRANTS.

Resolved by the House the Council concurring, That the territorial auditor is hereby authorized and ordered to cancel all territorial warrants now in his hands, the duplicates of which are supposed to have been paid.

Passed the House of Representatives November 12, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 12, 1873.

WM. McLANE,

President of the Council.

RESOLUTION

RELATIVE TO VISITING THE TERRITORIAL UNIVERSITY.¹

Resolved by the House the Council concurring, That there be appointed a committee consisting of five members of the House and three of the Council, whose duty it shall be to visit Seattle for the purpose of enquiring into the condition of the Territorial University, at that place and make report to their respective houses.

Passed the House of Representatives October 25, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 25, 1873.

WM. McLANE,

President of the Council.

RESOLUTION

RELATIVE TO THE INTRODUCTION OF NEW BUSINESS.

Resolved by the House the Council concurring, That no new business shall be received in either House after Thursday the 13th instant.

Passed the House of Representatives November 12, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council November 13, 1873.

WM. McLANE,

President of the Council.

RESOLUTION

FIXING RATES OF COMPENSATION FOR TERRITORIAL PRINTING
AND FOR THE APPOINTMENT OF TERRITORIAL PRINTER.

Resolved, by the House of Representatives of the Territory of Washington, the Council concurring, That the maximum rates to be paid for printing by the Territory of Washington shall be as follows, viz: For composition seventy-five (75) cents per 1,000 ems; for press work seventy-five (75) cents per token. That the bills of the Territorial printer, be audited by the territorial auditor. And that E. T. Gunn be and he is hereby appointed Territorial Printer.

Passed the House of Representatives October 11, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 11, 1873.

W. M. McLANE,

President of the Council.

RESOLUTION

RELATIVE TO VISITING THE TERRITORIAL INSANE ASYLUM.

Resolved by the House the Council concurring, That a joint committee of five, three on the part of the House and two

RESOLUTIONS

on the part of the council, be appointed for the purpose of visiting the Insane Asylum at Fort Steilacoom and report on the condition and management of the same.

Passed the House of Representatives October 18, 1873.

N. T. CATON,

Speaker of the House of Representatives.

Passed the Council October 18, 1873.

WM. McLANE,

President of the Council.

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