

LAWS

OF THE

TERRITORY OF WASHINGTON

ENACTED BY THE

LEGISLATIVE ASSEMBLY,

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LAWS
OF THE
TERRITORY OF WASHINGTON

Enacted at the Sixth Biennial Session, which was begun and held at the City of Olympia, the Capital of said Territory, on Monday, the first day of October, A. D. 1877, and was adjourned without day on Friday, the 9th day of November, A. D. 1877.

ELISHA P. FERRY, GOVERNOR. THOMAS MILBURNE REED,
President of the Council. RUFUS G. NEWLAND, 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 constitution 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 must be joined with her, except

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.

2. When the action is between herself and her husband, she may sue or be sued alone.

3. When she is living separate and apart from her husband, she may sue or be sued alone.

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. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also. And she may defend in all cases in which she is interested, whether she is sued with her husband or not.

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 when the death of a person is caused by the wrongful act or neglect of another, his heirs, or personal representatives may maintain an action for damages against the person causing the death; or when the death of a person is caused by an injury received in falling through any opening or defective place in any sidewalk, street, alley, square, or wharf, his heirs, or personal representatives may maintain an action for damages against the person whose duty it was, at the time of

the injury, to have kept in repair such sidewalk or other place. In every such action the jury may give such damages, pecuniary or exemplary, may as, under all circumstances of the case, to them seem just.

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 may, before the trial intervene in an action or proceeding, who has an interest in the matter in litigation in the success of either party, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding 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 the defendant, and is made by a complaint setting forth the grounds upon which the intervention rests, filed by leave of the court or judge on the *ex parte* motion of the party desiring to intervene.

SEC. 24. When leave is given to intervene, a copy of the intervenor's complaint shall be served upon the parties to the action or proceedings who have not appeared, or publication of a notice of the intervention containing a brief statement of the nature of the intervenor's demand shall be made in all cases where there are absent or non-resident defendants. The notice shall be published in the same manner and for the same length of time as prescribed in this act for publication of summons. And the complaint shall also be served upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint. The court shall determine upon the rights of the intervenor 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 must be tried in the county in which the defendants, or some of them, reside at the commencement of the action, or may be served with process, or, if none of the defendants reside in this Territory, or if residing in the Territory, the county in which they reside is unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if the defendant is about to depart from the Territory, such action may be tried in any county where either of the parties resides, or service is had, subject, however, to the power of the court to change the place of trial as provided in this act. If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein,

unless the defendant, at the time he appears and answers or demurs, files an affidavit of merits, and demands in writing that the trial be had in the proper county.

SEC. 52. The court may, on motion, when it appears by affidavit and other satisfactory proof, change the place of trial in the following cases:

1. When the county designated in the complaint is not the proper county.

2. When there is reason to believe that an impartial trial cannot be had therein.

3. When the convenience of witnesses and the ends of justice would be forwarded by the change.

4. When, from any cause, the judge is disqualified from acting, which disqualification exists in either of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law; when he has been attorney or counselor for either party in the action or proceeding.

SEC. 53. If the motion for a change of the place of trial 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 an order is made transferring an action or proceeding for trial, the clerk of the court, must transmit the pleadings and papers therein to the court to which it is transferred. The costs and fees thereof and of filing the papers anew, must be paid by the party at whose instance the order was

made, except in the cases mentioned in subdivision one, section fifty-two, in which case the plaintiff shall pay costs of transfer. The court to which an action or proceeding is transferred has and exercises over the same, the like jurisdiction as if it had been originally commenced therein.

SEC. 56. Notwithstanding the provisions of section fifty-three, all the parties to the action by stipulation in writing or by consent in open court and entered in the records may agree that the place of trial be changed to any county or district in the Territory, and thereupon the court must order the change agreed upon.

SEC. 57. If such 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 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.

SEC. 59. The clerk of the court must also transmit with the original papers where an order is made changing the place of trial, a certified transcript of all record entries up to and including the order for such change.

CHAPTER IV.

MANNER OF COMMENCEMENT OF CIVIL ACTIONS.

SEC. 60. 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. 61. 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, and dated 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, 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; 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. If served in any other judicial district in the Territory, forty days.

4. If served by publication as hereinafter provided within sixty days after the date of the summons: *Provided*, That if service is to be made by publication the summons shall contain in addition to the requirements of this section, the cause and general nature of the action.

SEC. 62. 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, and this notice shall be recorded by the auditor as deeds and other conveyances are recorded.

SEC. 63. 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 except where the service is by publication. 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. 64. 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, of 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. 65. If at the time the complaint is filed or any time afterward the plaintiff or intervenor, or an attorney in the action for the plaintiff or intervenor, file in the action his affidavit stating that the person on whom service is to be made, 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 or the party to be served is a foreign corporation or the cause of action against such corporation arose within the Territory service may be made by the publication of the summons.

SEC. 66. When the affidavit required in section sixty-five has been filed, the clerk of the court shall make out a summons

as required in section sixty-one and shall deliver the same to the person filing the affidavit or his attorney in the action.

SEC. 67. Service of the summons by publication shall be made by advertising the same in full in some weekly newspaper published in the county where the court is held if any such there be and if not then in a weekly newspaper of general circulation in the county where the court is held published in the judicial district where said court is held. Such publication shall be once a week for six consecutive weeks, and the service of summons shall be deemed complete on the last day of publication. Such summons must be published for the first time within the fourteen days following the date of said summons, and if not so published a new summons for publication must be obtained.

SEC. 68. 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. 69. 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. 70. 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 the service is by publication of the summons, the

original summons shall be returned to the clerk of the court who issued it accompanied by a printed copy thereof as published together with the affidavit of the editor, publisher, foreman or principal clerk employed in the newspaper office where published, showing, in what capacity the affiant makes the affidavit, the name of such weekly newspaper, the place where it is published, and its general circulation in the county where the court is held if not published in such county, and that the printed copy as returned was published for six consecutive weeks in such newspaper and showing also the date of the first publication and the date of the last publication thereof and that said newspaper named is a newspaper published at least once a week as a weekly newspaper, in the county or judicial district required in section sixty-seven of this act.

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

SEC. 71. 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. 72. A voluntary appearance of the defendant shall be equivalent to personal service of the summons and a copy of the complaint upon him.

CHAPTER V.

OF PLEADINGS.

SEC. 73. 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. 74. 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. 75. The first pleading on the part of the plaintiff shall be the complaint.

SEC. 76. 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. 77. 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. 78. The demurrer may specify the grounds of objection in the statutory language of section seventy-seven, or the grounds may be distinctly specified; it may be taken to the whole complaint; or to any one of the alleged causes of action stated therein.

SEC. 79. When any of the matters enumerated in section seventy-five [77] do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 80. 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. 81. 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. 82. The answer of the defendant must contain:

1. A general or 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. 83. 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, or connected with the subject of the action.

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 whether they be such as have been heretofore denominated legal or equitable or both. 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 intelligibly distinguished.

SEC. 84. The defendant may demur to one or more of several causes of actions stated in the complaint, and answer the residue.

SEC. 85. 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. 86. When the answer contains new matter, constituting a defense or counter claim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him, or 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. 87. 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. 88. 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 en-

titled to on the pleadings, and if the case require it he may have a jury called to assess the damages.

SEC. 89. 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. 90. 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. 91. 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. 92. 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. 93. 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. 94. 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. 95. 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. 96. 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. 97. 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. 98. 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. 99. 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. 100. In an action 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. 101. 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. 102. 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 effect all the parties to the action, and not require different places of trial, and must be separately stated.

SEC. 103. Every material allegation of the complaint, not controverted by the answer, and every material allegation of new matter in the answer, not 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. 104. 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. 105. 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. 106. 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. 107. 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. 108. 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. 109. The court may, in furtherance of justice; and on such terms as may be proper, amend any pleadings or proceedings, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms, allow an answer to be made after the time limited by this

code; and may upon such terms as may be just, and upon payment of costs, relieve a party, or his legal representatives from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when for any cause satisfactory to the court, or the judge at chambers, the party aggrieved has been unable to apply for the relief sought during the term at which such judgment, order or proceeding complained of was taken, the court, or the judge at chambers, in vacation, may grant the relief upon application made within a reasonable time, not exceeding five months after the adjournment of the term."

SEC. 110. 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. 111. 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. 112. 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. 113. 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. 114. The court may, on motion, allow supplemental pleadings, showing facts which occurred after the former pleadings were filed.

CHAPTER IX.

OF ARRESTS AND BAIL.

SEC. 115. 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. 116. 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. 117. 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. 118. 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. 119. 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. 120. 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. 121. 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. 122. The warrant must be delivered to the sheriff,

who, upon arresting the defendant, must deliver to him a copy thereof.

SEC. 123. 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. 124. 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. 125. 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. 126. 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. 127. 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. 128. In case of failure to comply with the condition of the bond, the bail can be proceeded against by action only.

SEC. 129. 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 commencement of the action against the bail, or within such further time as may be granted by the court.

SEC. 130. 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. 131. 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. 132. The qualifications of the bail shall be as follows:

1. Each of them shall be a resident of the Territory; but no counselor or attorney at law, sheriff, clerk of the district court, or other officer of such court, shall be permitted to become bail in any action.

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. 133. 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. 134. 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. 135. 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. 136. 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. 137. If the 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. 138. 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. 139. 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. 140. 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. 141. 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. 142. 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. 143. 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. 144. 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. 145. 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. 146. 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. 147. 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. 148. The qualification of sureties and their justification shall be as prescribed in respect to bail upon an order of arrest.

SEC. 149. 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. 150. 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. 151. 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 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. 152. The sheriff shall file the affidavit, with the proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein; or if the clerk reside in another county, shall mail or forward the same within that time.

CHAPTER XI.

INJUNCTIONS AND RESTRAINING ORDERS.

SEC. 153. 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. 154. 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 respect-

ing 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. 155. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment in that proceeding.

SEC. 156. 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. 157. On the hearing of an application for an injunction, each party may read affidavits.

SEC. 158. 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. 159. No injunction or restraining order shall be granted until the party asking it shall enter into a 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. 160. 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. 161. 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. 162. 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. 163. An order of injunction shall bind every person and officer restrained from the time he is informed thereof.

SEC. 164. 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. 165. 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. 166. 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. 167. 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. 168. 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. 169. 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. 170. 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. 171. 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. 172. 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. 173. 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. 174. 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 hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 175. 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 a debt, or incurring the obligation for which the action is brought.

SEC. 176. 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, or undertaking 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, or undertaking 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, or undertaking 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 or undertaking for an attachment.

SEC. 177. 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. 178. 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. 179. 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. 180. 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. 181. 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. 182. 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. 183. 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. 184. 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. 185. 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. 186. 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. 187. 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. 188. 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. 189. 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. 190. 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. 191. The defendant may at any time before final judgment apply on motion upon reasonable notice to the plaintiff, to the court in which the action is brought or to the judge thereof for an order directing that the attachment be discharged on the grounds set out in section one hundred and ninety-two (192)

SEC. 192. The motion provided for in section one hundred and ninety-one shall be allowed if it shall appear to the court or judge that the writ was issued wrongfully oppressively or without sufficient cause or that it was improperly or improvidently issued. And the defendant may file with such motion affidavits controverting the affidavit on which the writ was obtained. And in furtherance of justice the court or judge shall allow additional affidavits to be filed by either the plaintiff or defendant or both and the court or judge shall then hear and decide the motion on the writ bond or undertaking and affidavits on file, and if the motion prevails the defendant shall recover a judg-

ment for all costs and disbursements incurred by reason of said writ.

SEC. 193. If upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

SEC. 194. 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. 195. 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. 196. 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. 197. 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 mate-

rially 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. 198. 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. 199. 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. 200. 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. 201. 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. 202. 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. 203. 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. 204. 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. 205. An issue of law arises upon a demurrur to the complaint, answer, or reply, or to some part thereof.

SEC. 206. 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. 207. 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. 208. An issue of law shall be tried by the court, unless referred 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. 209. 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 or 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. 210. 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. 211. 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. 212. 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. 213. *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. 214. 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. 215. 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. 216. 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. 217. 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. 218. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

SEC. 219. 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 challenges 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. 220. 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. 221. 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. 222. 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. 223. 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. 224. 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. 225. 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. 226. 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. 227. 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. 228. 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. 229. 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 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. 230. 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. 231. 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. 232. 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. 233. 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. 234. 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. 235. 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. 236. 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. 237. 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. 238. 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. 239. 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. 240. 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. 241. 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. 242. 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. 243. 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. 244. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounces gen-

erally 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. 245. 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. 246. 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. 247. 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. 248. 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. 249. 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. 250. 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. 251. 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. 252. 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.

SECTION 253. Where the parties do not consent the court or judge may upon the application of either or of its own motion, direct a reference in all cases formerly cognizable in chancery in which reference might be made and also,

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. 254. 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. 255. 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. 256. 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. 257. 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. 258. 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. 259. 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. 260. 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.

SECTION 261. No particular form of exception is required. The objection must be stated with so much of the evidence or other matter as is necessary to explain it and no more. But when the exception is to the verdict or decision upon the grounds of the insufficiency of the evidence to sustain it the objection must specify the particulars in which such evidence is alleged to be insufficient.

SECTION 262. A bill containing the exception to any ruling may be presented to the judge at the time the ruling is made or the exception may be entered on the judge's minutes and afterwards settled. The bill must be conformable to the truth, or be at the time corrected until it be so and signed by the judge and filed with the clerk.

SECTION 263. If a bill is not presented at the time of the ruling, a bill containing the exceptions or any of them relating to any ruling had up to the time of the entry of judgment may upon three days notice to the adverse party at any time after such ruling is made and within ten days after the entry of judgment or such other time as may be fixed by the court or judge, be presented to the judge and settled.

SECTION 264. Exceptions to any decisions made after judgment may be presented to the judge at the time of such decision and may be settled or noted as provided in section two hundred and sixty-two and a bill thereof may be presented and settled afterwards as provided in section two hundred and sixty-three, and within like periods after entry of the order upon appeal from which such decision is reviewable.

SECTION 265. If the judge in any case refuse to allow an exception in accordance with the facts the party desiring the bill settled may apply by petition to the supreme court to prove the same. The application may be made in the mode and manner and under such regulations as that court may prescribe and the bill when proven must be certified by a justice thereof as correct and filed with the clerk of the court in which the action was tried and when so filed it has the same force and effect as if settled by the judge who tried the cause.

SECTION 266. If the judge who presided at the trial ceases to hold office before the bill is tendered or settled he may

nevertheless settle such bill or the party may as provided in the preceding section apply to the supreme court to prove the same.

SEC. 267. 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. 268. 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. 269. 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. 270. 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. 271. 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. 272. 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. 273. 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. 274. 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. 275. The laws in force in this Territory relating to evidence and the manner of procuring the attendance of witnesses, shall govern in arbitrations.

SEC. 276. 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. 277. 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. 278. 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. 279. 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. 280. 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. 281. 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. 282. 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. 283. 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 or determined, or continued, it shall be deemed withdrawn and may be disregarded.

SEC. 284. 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. 285. In all cases of motion for a new trial, the grounds thereof shall be clearly specified, and no cause of new trial not so stated shall be considered or regarded by the court.

SEC. 286. 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. 287. A judgment is the final determination of the rights of the parties in the action.

SEC. 289. 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. 288. 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. 290. 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 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. 291. In every case other than those mentioned in the last section, the judgment shall be rendered on the merits.

SEC. 292. 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. 293. Judgment may be had if the defendant fail to answer to the complaint, as follows:

1. In any action arising on contract for the recovery of money only the plaintiff may file with the clerk proof of personal service of the summons and complaint on one more of the defendants. The court shall thereupon enter judgment for the amount claimed against the defendant or defendants or against one more of the several defendants in the cases provided for in section sixty-nine. Where the defendant by his answer in any such action shall not deny the plaintiff's claim but shall set up a counter claim amounting to less than the plaintiff's claim judgment may be had by the plaintiff for the excess of said claim over the said counter claim in like manner in any such action, upon the plaintiff's filing with the clerk of the court a statement admitting such counter claim.

2. In other actions the plaintiff may upon the like proof apply to the court after the expiration of the time for answering, for the relief demanded in the complaint. If the taking of an account or of 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. If the defendant give notice of appearance in the action before the expiration of the time for answering he shall be entitled to five days notice of the time and place of application to the court for the relief demanded in the complaint.

3. In action where the service of the summons was by publication, the plaintiff upon the expiration of the time for answer-

ing may upon proof of service by publication apply for judgment and the court must thereupon require proof of the demand mentioned in the complaint and must 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 or for such other relief as he may be entitled to.

SEC. 294. 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. 295. 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. 296. 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. 297. 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. 298. 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 acknowledgements of deeds.

SEC. 299. 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. 300. 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.

SECTION 301. The statement must be presented to the district court or a judge thereof and if the same be found sufficient, the court or judge shall endorse thereon an order that judgment be entered by the clerk whereupon it may be filed in the office of the clerk who shall enter a judgment for the amount confessed with costs. Execution may be issued and enforced thereon in the same manner as upon judgments in other cases.

CHAPTER XXVI.

SUBMITTED CASES.

SEC. 302. 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. 303. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceedings prior to the trial. The case, the submission and a copy of the judgment shall constitute the judgment roll.

SEC. 304. 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. 305. 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. 306. 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. 307. 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. 308. 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. 309. 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. 310. Immediately after entering the judgment the clerk shall attach all the papers in the case and keep them in his office.

SEC. 311. 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. 312. 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 statements and transcripts 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. 313. 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. 314. 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 herein-after 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. 315. 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. 316. 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. 317. 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.

SEC. 318. When a judgment is recorded against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in the sixty-ninth section act such defendants who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

SEC. 319. The summons, as provided in the last section, must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner, and returnable within the same time, as the original summons. It is not necessary to file a new complaint.

SEC. 320. The summons must be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied; and must specify the amount due thereon.

SEC. 321. Upon such summons, the defendant may answer within the time specified therein denying the judgment, or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was rendered, except a discharge from such liability by the statute of limitations.

SEC. 322. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recorded, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer constitute such written allegations.

SEC. 323. The issue found [formed] may be tried as in other cases, but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER XXVIII.

LIEN OF JUDGMENTS.

SEC. 324. 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. 325. 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 and recorded 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. 326. 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. 327. 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. 328. 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 personal 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. 329. 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. 330. 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. 331. 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. 332. 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. 333. 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. 334. 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. 335. 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. 336. 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. 337. All property, real and personal, of the judgment debtor not exempt by law, shall be liable to execution.

SEC. 338. 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. 339. 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. 340. 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. 341. 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. 342. 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. 343. 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. 344. 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. 345. 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. 346. 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, and the date of such entry.

SEC. 347. 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. 348. 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. 349. 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. 350. 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. 351. 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 householder 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. To a person engaged in the business of logging, for his support and that of his family three yoke of work cattle, and their yokes; and axes, chains, implements for the business and camp equipments not exceeding three hundred dollars coin in value.

14. 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 or the price thereof, or for any tax levied thereon.

SEC. 352. 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. *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.

SECTION 353. When a debtor claims personal estate as exempt by this act he shall deliver to the officer holding the execution or other process a list by separate items of all the personal estate owned or claimed by him including money bonds bills notes claims and demands with the residence of the person against whom the said bonds bills notes claims and demands are and shall verify such list by affidavit. He shall also deliver to such officer a list by separate items of the property he claims as exempt. If the husband be absent or incapable of acting the claim may be made the list delivered and verified by the wife with the same effect as if made by the husband. If the creditor his agent or attorney demand an appraisalment thereof two disinterested householders of the neighborhood shall be chosen one by the debtor and the other by the creditor his agent or attorney and these two if they cannot agree shall select a third but if either party fail to choose an appraiser, or the two fail to select a third or if one or more of the appraisers fail to act the officer shall fill the vacancy. The appraisers shall forthwith proceed to make a list by separate items of the personal estate selected by the debtor as exempt which they shall decide as exempt stating the value of each item and annexing to the list their affidavit to the following effect "We solemnly swear that to the best of our judgment the above is a fair cash valuation of the property therein described" which affidavit shall be

signed by two appraisers at least and be certified by some person authorized to administer oaths. The list shall be delivered to the officer holding the execution or other process and be by him annexed to and made part of his return and the property therein specified shall be exempt from levy and sale and the other personal estate of the debtor shall remain subject thereto. In case no appraisement be required the officer shall return with the process the list of the property claimed as exempt by the debtor. The appraisers shall each be entitled to one dollar to be paid by the creditor if all the property claimed by the debtor shall be exempt otherwise to be paid by the debtor.

CHAPTER XXXII.

CLAIM TO PROPERTY LEVIED UPON AND ATTACHED.

SEC. 354. 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. 355. 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. 356. The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution, defendants.

SEC. 357. 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. 358. 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 indorse 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.

5. 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. 359. 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. 360. 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. 361. 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. 362. 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. 363. 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. 364. 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. 365. 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 acknowledgement.

SEC. 366. 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 execution, 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. 367. 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. 368. 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. 369. 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. 370. 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 in whole 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. 371. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in conse-

quence 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. 372. 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. 373. 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. 374. 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. 375. 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. 376. 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. 377. 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. 378. 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. 379. 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 redemption, 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. 380. 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. 381. 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. 382. 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. 383. 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. 384. 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. 385. 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. 386. 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. 387. 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. 388. 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 commenced 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. 389. 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. 390. Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action or proceeding.

SEC. 391. 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. 392. 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 effect 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. 393. 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. 394. 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 counselor 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. 395. 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 sub-district 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. 396. 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. 397. 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. 398. 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. 399. 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. 400. 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. 401. 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. 402. 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. 403. 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. 404. 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. 405. 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. 406. 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. 407. 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. 408. 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. 409. The testimony of a party, either upon examination at the trial, or upon interrogatories filed, may be rebutted by adverse testimony.

SEC. 410. 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.

SEC. 411. The testimony of a witness 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 sub-district and more than twenty miles from the place of trial.
2. When the witness is about to leave the sub-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.

4. When the witness resides out of the Territory.

SECTION 412. Either party may commence taking testimony by depositions at any time after service upon the defendants.

SEC. 413. 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.

SECTION 414. Depositions may be taken out of the Territory by a judge justice or chancellor or clerk of any court of record a justice of the peace notary public mayor or chief magistrate of any city or town or any person authorized by a special commission from any court of this Territory.

SECTION 415. Any court of record of this Territory or any judge thereof is authorized to grant a commission to take depositions within or without this Territory. The commission must be issued to a person or persons therein named by the clerk under the seal of the court granting the same and depositions under it must be taken upon written interrogatories unless the parties otherwise agree.

SECTION 416. Prior to the taking of any deposition unless taken under a special commission a written or printed notice specifying the action or proceeding, the name of the court or tribunal in which it is to be used and the time and place of taking the same shall be served upon the adverse party his agent or attorney of record or left at his usual place of abode. The notice shall be served so as to allow the adverse party sufficient time by the usual route of travel to attend and one day for preparation exclusive of Sundays and the day of service and the examination may if so stated in the notice be adjourned from day to day.

SECTION 417. When the party against whom the deposition is to be read is absent from or a non resident of the Territory and has no agent or attorney of record therein he may be notified of the taking of the deposition by publication. The publication must be made three consecutive weeks in some newspaper printed in the county where the action or proceeding is pending if there be any printed in such county, and if not in some newspaper printed in this Territory of general circu-

lation in that county. The publication must contain all that is required in the written or printed notice and may be proved in the manner prescribed in case of the publication of summons.

SEC. 418. 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. 419. 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. 420. 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. 421. 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. 422. 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. 423. 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. 424. 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 XIX.

PROCEEDINGS TO PERPETUATE TESTIMONY.

SEC. 425. 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. 426. 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. 427. 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. 428. 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. 429. 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 XL.

RECORDS, DOCUMENTS, BOOKS, ETC.

SEC. 430. 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. 431. 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. 432. 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. 433. Whenever any deed, conveyance, bond, mortgage or other writing shall have been recorded or filed in pursuance of law, copies of record 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. 434. Copies of all papers on file in the office of the surveyor general of Oregon and Washington, register and receivers of the various land offices in this Territory, secretary of Washington Territory, Territorial treasurer, Territorial auditor, Territorial superintendent of common schools 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, where such officers have an official seal, shall be admitted [in] evidence in all the courts of the Territory.”

“SEC. 435. Any certificate of residence and cultivation of the public lands issued by the surveyor general of Oregon or Washington Territory, or by the register and receiver of either of the land offices therein, or any certificate, receipt or exemplification of the records of either of said offices issued to any settler upon, or purchaser of said lands, or in any way affecting the rights of parties to lands in said Territory issued or given in pursuance of law, or as evidence of any matter recorded in either of said offices, or any copies of maps, plats or diagrams of land claims of every nature or kind or plats of the public surveys, certified by either of said officers, shall be admitted as evidence in all the courts of this Territory.”

SEC. 436. 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. 437. 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 XLI. (41.)

TO REVERSE, VACATE, OR MODIFY JUDGMENTS IN THE COURTS IN WHICH RENDERED.

SEC. 438. The district court in which a judgment has been rendered, or by which, or the judge of which, a final order has been made, shall have power after the term at which such judgment or order was made, to vacate or modify such judgment or order:

1. By granting a new trial for the cause within the time and in the manner, and for any of the causes prescribed by the sections relating to new trials.

2. By a new trial granted in proceedings against defendant served by publication only as prescribed in section sixty-eight chapter IV, of this act.

3. For mistakes, neglect or omission of the clerk, or irregularity in obtaining a judgment or order;

4. For fraud practiced by the successful party in obtaining the judgment or order.

5. For erroneous proceedings against a minor person of unsound mind, when the condition of such defendant does not appear in the record, nor the errors in the proceedings.

6. For the death of one of the parties before the judgment in the action.

7. For unavoidable casualty, or misfortune preventing the party from prosecuting or defending;

8. For error in a judgment shown by a minor within twelve months after arriving at full age.

SEC. 439. When the grounds for a new trial could not with reasonable diligence have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases, not later than the second term after the discovery, on which notice shall be served and returned, and the defendant held to appear as in an original action. The facts stated in the petition shall be considered as denied without answer. The case shall be tried as other cases by ordinary proceedings but no motion shall be filed more than one year after the final judgment was rendered.

SEC. 440. The proceedings to correct mistakes or omissions of the clerk or irregularity in obtaining a judgment or order, shall be by motion served on the adverse party, or on his attorney in the action, and within one year; and when made to vacate a judgment because of irregularity in obtaining it, must be made on the second day of the succeeding term.

SEC. 441. The proceedings to obtain the benefit of subdivisions four, five, six, seven and eight of section one of this chapter, shall be by petition, verified by affidavit, setting forth the judgment or order. The facts or errors constituting a cause to vacate or modify it, and the facts constituting a defence to the action if the party applying was a defendant, and such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto be a minor or person of unsound mind, and then within one year from the removal of such disability.

SEC. 442. In such proceedings the party shall be brought into court in the same way, on the same notice as to time, mode of service, and mode of return, and the pleadings shall be governed by the principles, and issues be made up by the same form, and all the proceedings conducted in the same way, as near as can be, as in original action by ordinary proceedings, except that defendant shall introduce no new cause, and the cause of the petition shall alone be tried.

SEC. 443. The judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defence to the action in which the judgment is rendered; or, if the plaintiff seeks its vacation, that there is a valid cause of action; and when judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

SEC. 444. The court may first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action.

SEC. 445. The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or the judge upon its being rendered probable, by affidavit or petition sworn to, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

SEC. 446. In all cases of affirmance of the judgment or order, when the proceedings have been suspended, judgment shall be rendered against the plaintiff in error for the amount of the former judgment, interest and costs, together with damages at the discretion of the court, not exceeding ten per cent. on the amount of the judgment.

SEC. 447. The supreme court has appellate jurisdiction over all judgments and decisions of all other courts of record, as well in case of civil actions as in proceedings of a special or independent character. For the exercise of such appellate jurisdiction, section nine of the Organic Act of the Territory, providing for the allowance of writs of error, bills of exception and appeals, and for the exercise of chancery as well as common law jurisdiction, it is hereby provided that in all actions at law, as the same are known and recognized, the proceedings shall be by writ of error. In all such cases the supreme court shall hear and determine the cause upon the errors assigned in the notice of the plaintiff in error, and the party suing out such writ of error shall be called the plaintiff in error, and the adverse party shall be called the defendant in error. In all actions of an equitable character or where equitable relief is sought, or where chancery jurisdiction shall have been exercised by the district court or judge thereof, the proceeding shall be by appeal. In all such equitable causes, the party taking or prosecuting the appeal shall be known as the appellant; the adverse party the appellee. When both parties appeal the cause shall be docketed as it was in the court below. In suits of error and appeals, subject always to the distinction herein recognized, the practice shall be as hereinafter prescribed.

SEC. 448. An appeal or writ of error may also be taken to the supreme court from the following orders:

1. An order made affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment from which an appeal might be taken.

2. A final order made in special proceedings affecting a substantial right therein; or made on a summary application in an action after judgment.

3. When an order grants or refuses, continues, or modifies a provisional remedy; or grants, refuses, dissolves, or refuses to dissolve an injunction or attachment; when it grants or refuses a new trial, or when it sustains or overrules a demurrer.

4. An intermediate order involving the merits and materially affecting the final decision.

5. An order or judgment on habeas corpus. If any of the above orders are made by a judge, the same is recorded in the same way as if made by a court.

SEC. 449. The court may also, in its discretion, prescribe rules for allowing appeals or writs of error on such other intermediate orders or decisions as is deemed expedient, and for permitting the same to be taken and tried during the progress of the trial in the court below; but such intermediate appeals or writs must not retard proceedings in the court from which the appeal is taken.

SEC. 450. A mistake of the clerk shall not be ground for an appeal or writ of error until the same has been presented an acted upon by the court below.

SEC. 451. A judgment or order shall not be reserved for an error which can be corrected on motion in an inferior court until such motion has been made then [there] and overruled.

SEC. 452. The supreme court may review and reverse on appeal or writ of error any judgment or order of the district or circuit court, although no motion for a new trial was made in such courts.

SEC. 453. When a cause is tried by the court, it shall not be necessary in order to secure a review of the same in the supreme court, that there should have been any finding of facts or conclusions of law stated in the record, but the supreme court shall hear and determine the same whenever it shall appear from a certificate of the judge, agreement of parties or their attorneys, or, in case the evidence consists wholly of written testimony, from the certificate of the clerk, that the transcript contains all the evidence introduced by the parties on the trial in the court below.

SEC. 454. The court may issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction.

SEC. 455. Appeals and writs of error from the district court may be taken to the supreme court at any time within six months from the rendition of the judgment or order appealed from or complained of, and not afterward. But nothing herein contained shall prevent the district judge who tried the cause to make certificate that the cause involves the determination of a question of law upon which it is desirable to have the opinion of the supreme court. In such cases said judge 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 which shall have the effect of a special verdict, and may under the direction of the judge of the district court, be taken to the supreme court, and for that purpose the district court shall render a judgment in form only, which shall not be executed until the final decision of the cause. The supreme court, on hearing such cases, may give judgment or remand the cause for further proceedings in the district court.

SEC. 456. A part of several co-parties may appeal or prosecute a writ of error; but in such case they must serve notice thereof upon all the other co-parties and file the proof thereof with the clerk of the supreme court.

SEC. 457. If the other co-parties refuse to join, they cannot

nor can any of them, take an appeal or writ of error afterwards; nor shall they derive any benefit from the appeal, or suit in error unless from the necessity of the case.

SEC. 458. Unless they appear and decline to join, they shall be deemed to have joined and shall be liable for their due proportion of costs.

SEC. 459. An appeal or writ of error from cast [part] of an order or from one of the judgments of a final adjudication, or from part of a judgment, shall not disturb or delay the rights of any party to any judgment or part of any judgment, or order not appealed from, but the same shall proceed as if no such appeal had been made.

SEC. 460. An appeal or writ of error is taken, by the service of a notice in writing on the adverse party, his agent, or any attorney who appeared for him in the court below, and also upon the clerk of the court wherein the proceedings were had, stating the appeal from the same, or from some specific part thereof, defining such part, where appeal is resorted to. In suits in error, said notice shall contain a particular description of the judgment or order or decision by which the plaintiff in error claims he has been aggrieved, together with a particular description of the errors assigned.

SEC. 461. An appeal shall not be perfected until the notice thereof has been served upon both the party and the clerk, and the clerk paid or secured his fees for a transcript; whereupon the clerk shall forthwith transmit by mail, express or messenger, not a party nor the attorney of a party, a transcript of the record in the cause, or so much thereof as the appellant or plaintiff in error, in writing in the notice has directed, to which shall be appended copies of the notices of appeal, or suit in error, and of the supersedeas bond if any.

SEC. 462. The notice of appeal or suit in error must be served at least thirty days, and the cause filed and docketed at least fifteen days before the first day of the next term of the supreme court, or the same shall not then be tried unless by consent of parties. If the appeal or writ of error is taken less than thirty days before the term, it must be so filed and docketed, before the next succeeding term.

SEC. 463. If the appellant fails to file a transcript and have the cause docketed as provided in the preceding section, or fails to file at the time the transcript should be filed, the certificate of the clerk of the inferior court, stating when he was served with notice, and that he has not had sufficient time to prepare the transcript, the appellee or defendant in error may file a certified copy of the judgment or order appealed from, and of the notice served on such clerk, and, on motion, have the appeal or suit in

error dismissed, or the judgment or order appealed from affirmed.

SEC. 464. If the transcript has been sent up, but the appellant or plaintiff in error does not file the same when the same should be filed as herein provided, the appellee or defendant in error may file the same, and may, on motion, have the appeal dismissed or judgment affirmed, as the court from the circumstances of the case shall determine.

SEC. 465. If the transcript has been sent up, and errors have not been assigned in the notice as hereinbefore required, the appellee or defendant in error may have the appeal or writ of error dismissed or the judgment or order affirmed, unless good cause for the failure be shown by affidavit.

SEC. 466. In an action by ordinary proceedings, and in an action by equitable proceedings, tried in whole or in part on oral testimony, all proper entries made by the clerk, and all papers pertaining to the cause and filed therein, except subpoenas, depositions, and other papers which are used as mere evidence, are to be deemed part of the record. But in an action by equitable proceedings, tried upon written testimony, the depositions and all papers which were used as evidence, are to be certified up to the supreme court, and shall be so certified, not by transcript, but in the original form. But a transcript of a motion, affidavit or other paper, when it relates to a collateral matter, shall not be certified unless by direction of the appellant. If so certified when not material to the determination of the appeal or writ of error, the court may direct the person blameable therefor to pay the costs thereof.

SEC. 467. The appellant or plaintiff in error shall file a perfect transcript, and to that end the clerk of the court below must, at any time on his suggestion of the diminution of the record and on the payment of fees, certify upon any omitted part of the record, according to the truth, as the same appears in his office of record; and such applicant shall not be entitled to any continuance in order to correct the record, unless it shall clearly appear to the court that he is not in fault. Subject to which requirement, either party may, on motion before trial day, obtain an order on the clerk below, commanding him to transmit at once to the supreme court a true copy of such imperfect or omitted part of the record as shall be in general terms described in the affidavit or order. Such motion must be supported by affidavit, unless the diminution be apparent or admitted by the adverse party, and must not be granted unless the court is satisfied that it is not made for delay.

SEC. 468. An appeal or writ of error shall not be dismissed for any informality or defect in the notice or the service thereof, if from the transcript it can be reasonably understood that

the adverse party has had sufficient notice of the pendency of the suit in error or appeal, and the notice recites the errors alleged or the order or judgment complained of with such certainty, that his substantial right would not be prejudiced by the hearing of the cause. And the supreme court shall, upon reasonable terms, allow all amendments in matters of form, curative of such defects, to the end that substantial justice be secured to the parties.

SEC. 469. An appeal or writ of error shall not stay proceedings on the judgment or order or any part thereof, unless the appellant shall cause to be executed before the clerk of the court which rendered the judgment or order, by one or more sufficient sureties to be approved by such clerk, a bond to the effect that the appellant or plaintiff in error shall pay to the appellee or defendant in error all costs and damages that shall be adjudged against the appellant on the appeal; also that he will satisfy and perform the judgment or order appealed from, in case it shall be affirmed, and any judgment or order which the supreme court may render, or order to be rendered by the inferior court, not exceeding in amount or value the original judgment or order, and all rents or damages to property during the pendency of the appeal, out of the possession of which the appellee is kept by reason of the appeal. If the bond is intended to stay proceedings on only a part of the judgment or order, it shall be varied so as to secure the part stayed, alone. When such bond has been approved by the clerk, and filed, he shall issue a written order commanding the appellee and all others to stay proceedings on such judgment or order, or on such part as is superseded as the case may be. No appeal or stay shall vacate or affect the judgment appealed from.

SEC. 470. In cases wherein the appellant or plaintiff in error has perfected his appeal or writ of error to the supreme court, and the clerk of the district or circuit court has unjustly refused to approve the appeal bond offered, or makes the penalty therein too large, or the conditions thereof unjust, the appellant may move the supreme court if in session, or in its vacation, on such written notice to the appellee as the judge may prescribe, may move any judge thereof to determine the conditions, fix the penalty, and approve the appeal bond. The motion, verified by the affidavit of the appellant or plaintiff in error or his attorney, shall contain a brief statement of the nature of the action in which the appeal or writ of error was taken, of the judgment or order appealed from, of the steps taken by the appellant or plaintiff in error with reference to his appeal, and of his giving, or offering to give, an appeal bond, of the action of the clerk of the court below with reference to such bond, and wherein he has acted wrongfully; and if the supreme court, or any judge thereof, considers that the clerk has made unjust conditions in the bond,

or the penalty thereof too high, or has wrongfully refused to approve the same, such court or judge shall issue an order prescribing the conditions of the appeal bond, fixing the penalty thereof and either approve it or direct the clerk of the supreme court so to do, which bond shall be filed with the officer last named. The supreme court or judge thereof, may order that all or any part of the papers and records in the cause appealed, or certified copies thereof, be produced on the hearing of such motion, and pending the disposition thereof may make an order staying the enforcement of the judgment or order appealed from, and on such terms as are just. The order, if made by the judge, shall be in writing and signed by him, and upon the service thereof, or of a certified copy, when made in court, upon the clerk of the court below, all proceedings in the court appealed from shall be stayed, and all orders, all processes, executions, or other papers issued therefrom shall be recalled, and the appellant or plaintiff in error be placed in the same condition that he was when the judgment or order appealed from was made or rendered.

SEC. 471. If the appellee or defendant in error believe the bond defective, or the sureties insufficient, he may move the supreme court if in session, or in its vacation, on ten days' written notice to the appellant, may move any judge of said court to discharge the bond, and if the court or such judge shall consider the sureties insufficient, or the bond substantially defective in securing the rights of the appellee, the court or such judge shall issue an order discharging such bond, unless a good bond with sufficient sureties, be executed by a day by him fixed. The order, if made by a judge, shall be in writing and signed by him; and upon his filing, or the filing of a certified copy of the order when made in court, in the office of the clerk of the inferior court, execution and other proceedings for enforcing the judgment or order may be taken if a new and good bond is not filed and approved by the day as aforesaid.

SEC. 472. But another order staying proceedings may be issued by the clerk, upon execution before him of a new and lawful bond with sufficient sureties as hereinbefore provided.

SEC. 474. If the judgment or order is for the payment of money the penalty shall be in at least twice the amount of the judgment and costs. If not for the payment of money the penalty shall be sufficient to save the appellee or defendant in error harmless from the consequences of taking the appeal or writ of error. But it shall in no case be less than one hundred dollars.

SEC. 475. The taking of the appeal from a part of a judgment or order, and the filing of a bond as above directed, does

not cause a stay of execution as to any part of the judgment or order not appealed from.

SEC. 476. If execution has issued prior to the filing of the bond above contemplated, the clerk shall countermand the same.

SEC. 477. Property levied upon and not sold at the time such countermand is received by the sheriff, shall forthwith be delivered up to the judgment debtor.

SEC. 478. The supreme court may reverse or affirm the judgment or order below, or the part of either appealed from, or may render such judgment or order as the inferior court or judge should have done, according as it may think it proper.

SEC. 479. The supreme court, when it affirms the judgment, shall also, if the appellee or defendant in error moves therefor, render judgment against the appellant or plaintiff in error and his sureties on the bond above mentioned, for the amount of the judgment, damages and costs referred to therein in case such damages can be accurately known to the court without an issue and trial.

SEC. 480. Upon the affirmance of any judgment or order for the payment of money, the collection of which, in whole or part, has been superseded by bond as above contemplated, the court shall award to the appellee, or defendant in error, damages upon the amount superseded; and, if satisfied by the record that the appeal or writ of error was taken for delay only, must award such sum as damages, not exceeding fifteen per cent. thereon, as shall effectually tend to prevent the taking of appeals or writs of error for delay only.

SEC. 481. If the supreme court affirm the judgment or order, it may send the cause to the court below to have the same carried into effect, or it may itself issue the necessary process for this purpose, and direct such process to the sheriff of the proper county as the party may require.

SEC. 483. If, by the decision of the supreme court, the appellant or plaintiff in error becomes entitled to a restoration of any part of the money or property that was taken from him by means of such judgment or order, either the supreme court, or the court below, may direct execution or writ of restitution to issue for the purpose of restoring to such appellant or plaintiff in error, his property or the value thereof.

SEC. 484. Property acquired by a purchaser in good faith under a judgment subsequently reversed, shall not be affected by such reversal.

SEC. 485. The supreme court shall have power to enforce its mandates upon inferior courts and officers by fine and im-

prisonment, which imprisonment may be continued until obeyed.

SEC. 486. If a petition for rehearing be filed, the same shall suspend the decisions of the court on its presentation, or one of the judges, if in vacation, shall so order, in either of which case such decision shall be suspended until the next term.

SEC. 487. The petition for rehearing shall be the argument of the applicant therefor, and if the court think that such argument requires a reply, it shall so indicate to the other party and he may make reply within such time as said court shall allow, and with a view to a rehearing the court may extend the suspension of proceeding yet farther, if need be.

SEC. 488. The clerk shall docket the causes as the same are filed in his office, and shall arrange and set a proper number for trial each day of the term, placing together those from the same judicial district, and shall cause notice of the manner he has set such causes to be published and distributed in such manner as the court may direct.

SEC. 489. The court shall hear all the causes docketed, when not continued by consent, or for cause shown by the party, and the party may be heard orally or otherwise, in his discretion.

SEC. 490. No cause is decided until the opinion in writing is filed with the clerk.

SEC. 491. If remanded to the inferior court to be carried into effect, such decision and the order of the court thereon, being certified thereto and entered on the records of the court, shall have the same force and effect as if made and entered during the session of the court in that district.

SEC. 492. An assignment of error need follow no stated form, but must, in a way as specific as the case will allow, point out the very error objected to, among several points in a demurrer, or in a motion, or instructions, or rulings in an exception, it must designate which is relied on as an error, and the court will only regard errors which are assigned with the required exactness; but the court must decide on each error assigned.

SEC. 493. All motions must be entered in the motion book, and shall stand over till the next morning after the morning on which entered, and till after having been publicly called by the court, unless the parties otherwise agree, and the adverse party shall be deemed to have notice of such motion.

SEC. 494. When a review of an original paper in the action may be important to a correct decision of the appeal, or writ of error, the court may order the clerk of the court below to transmit the same, which he shall do in some safe mode to the clerk

of the supreme court, who shall hold the same subject to the control of the court.

SEC. 495. The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the district court, and the case may proceed. The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice.

SEC. 496. When appellant, or plaintiff in error has no right, or no further right to prosecute the appeal or writs of error the appellee or defendants in error may move to dismiss, and if the grounds of the motion do not appear in the record, or by a writing purporting to have been signed by the appellant or plaintiff in error and filed, they must be verified by affidavit.

SEC. 497. The appellee or defendant in error may, by answer filed and verified by himself, agent or attorney, plead any facts which, under the taking of the appeal or writ of error improper, or destroy the right of appellant or plaintiff in error further prosecuting the same, to which answer the appellant or plaintiff in error may file a reply, likewise verified by himself, his agent or attorney, and the questions of law or fact therein, shall be determined by the court.

SEC. 498. The service of all notices of appeal or writs of error, or in any way growing out of such rights, or connected therewith, and all notices in the supreme court, shall be in the way provided for the services of like notices in the district court, and they may be served by the same person and returned in the same manner, and the original notice of the appeal or writ of error, must be returned immediately after service to the office of the clerk of the district court where the suit is pending.

SEC. 499. Executions issued from the supreme court shall be the same as those from the district court and attended with the same consequences, and shall be returnable in the same time.

SEC. 500. Whenever, in the foregoing act the words appeal, appellant or appellee, are used, they shall be construed when so required and applicable to law proceedings as contradistinguished from equitable actions, as suit in error, plaintiff in error or defendant in error.

CHAPTER XLII.

SET-OFF.

SEC. 501. 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. 502. 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. 503. 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. 504. 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. 505. 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. 506. To entitle a defendant to a set-off he must set the same forth in his answer.

SEC. 507. 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. 508. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof, but no such judgment shall be rendered against the plaintiff when the contract which is the subject of the action shall have been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff in the action.

CHAPTER 43.

COSTS IN CIVIL ACTIONS.

SEC. 509. The measure and mode of compensation of attorneys and counselors 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. 510. Costs shall be allowed the party in whose favor the judgment is rendered, except as is otherwise provided by law.

SEC. 511. 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. 512. 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. 513. 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. 514. 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. 415. 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. 516. 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 impaneling 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. 517. 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 ten days after the judgment.

SEC. 518. The fees of referees shall be five dollars to each for every day necessarily spent in the business of the reference and twenty cents per folio for writing testimony but the parties may agree in writing upon any rate of compensation, and thereupon such rate shall be allowed.

SEC. 519. 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. 520. 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. 521. 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. 522. 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. 523. 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. 524. 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. 525. 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. 526. 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. 527. 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. 528. 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. 529. 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. 530. 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. 531. When the plaintiff in an action resides out of the district or county, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until a bond, executed by two or more persons, be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the progress of the action, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court or judge, upon proof that the original bond is insufficient security, and proceedings in the action stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond.

CHAPTER 44.

OF COMMISSIONERS TO CONVEY REAL ESTATE.

SEC. 532. 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. 533. 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. 534. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

SEC. 535. 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. 536. 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. 537. 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. 538. 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. 539. 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 XLV.

ACTIONS TO RECOVER AND AFFECTING REAL ESTATE.

SEC. 540. 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. 541. 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. 542. 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. 543. 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. 544. 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. 545. 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. 546. 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. 547. 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. 548. 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. 549. 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. 550. 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. 551. 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. 552. 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. 553. 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 granting him a new trial, upon the payment of the costs of the action.

SEC. 554. 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. 555. 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.

CHAPTER 46.

“SECTION 556. 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 act, 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 condition shall be prima facie presumed in favor of the party having or claiming under the elder certificate, or patent, as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. Any person in possession, by himself or his tenant, of real property, and any private or municipal corporation in possession by itself or its tenant of any real property, or when such real property is not in the actual possession of any one, any person or private or municipal corporation claiming title to any real property under a patent from the United States, or during his or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons, corporations or associations claiming an interest in said real property or any part thereof, or any right thereto adverse to him, them, or it, for the purpose of determining such claim, estate, or interest; and where several persons, or private or municipal corporations are in possession of, or claim as aforesaid, separate parcels of real property, and an adverse interest is claimed or claim made in or to any such parcels, by any other person, persons, corporations or associations, arising out of a question, conveyance, statute, grant, or other matter common to all such parcels of real estate, all or any portion of such persons or corporations so in possession, or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all

persons, corporations or associations claiming such adverse interest.”

CHAPTER XLVII.

PARTITION OF REAL PROPERTY.

SEC. 557. 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. 558. 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. 559. 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. 560. 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. 561. 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. 562. 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. 563. 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. 564. 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. 565. 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. 566. 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. 567. 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. 568. 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. 569. 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. 570. 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 sold.

SEC. 571. 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. 570. 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. 571. 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. 572. 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. 573. 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. 574. The report of the referee may be excepted to by either party to the suit, or to the proceeding 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. 575. 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. 576. 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. 577. 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. 578. 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. 579. 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. 580. 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. 581. 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. 583. 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. 584. 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. 585. 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. 586. 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 by an instrument duly acknowledged and filed with the clerk.

SEC. 587. 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. 588. 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. 589. 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. 590. 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. 591. 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. 592. 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. 593. 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. 594. 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. 595. 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. 596. 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. 597. 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. 598. 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. 599. 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. 600. 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. 601. 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. 602. 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. 603. 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, and upon an order of the court.

SEC. 604. 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. 605. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs.

SEC. 606. 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. 607. 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. 608. 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. 609. 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. 610. 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. 611. 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. 612. 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. 613. 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. 614. When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the district court of the district or county where the land, or some part thereof, lies, to foreclose the equity of redemption contained in the mortgage.

SEC. 615. 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. 616. 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. 617. 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. 618. 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. 619. 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. 620. 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. 620. 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. 621. 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. 622. 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. 623. 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 indorsed upon such an execution, and the sale thereof under such order, shall foreclose the equity of redemption or the mortgage therein.

SEC. 624. 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. 625. 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 49.

THE SPECIFIC PERFORMANCE OF CERTAIN CONTRACTS.

SECTION 626. If any person, who is bound by a contract, in writing, to convey any real estate, shall die before making the conveyance, the district court having jurisdiction over the county in which such real estate or any portion thereof, is situate, may make a decree authorizing and directing the conveyance of such real estate to the person entitled thereto, in all cases, when such deceased person, if living, might be compelled to make such conveyance.

SEC. 627. On filing and presentation of a petition of any person claiming to be entitled to such conveyance under such contract, setting forth the facts upon which such claim is predicated, the district court or the judge thereof, shall make an order appointing a time and place for hearing such petition, which shall be at some day of a regular term of said district court and shall also order notice of the pendency thereof and the time and place of the hearing, to be published at least four successive weeks next before such hearing, in such newspaper in the Territory as the court shall designate.

SEC. 628. 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 as creditors, heirs, devisees or personal representatives, may appear and resist such petition, by filing their objections in writing, and the court may examine on oath the petitioners, and all witnesses who may be produced on the hearing by any interested party for that purpose.

SEC. 629. After a full hearing upon such petition and objections, of the facts and circumstances of the claim, if the court is satisfied that the petitioner is entitled in equity to a conveyance of the real estate described in the petition or any part thereof or any interest therein, the court shall make a decree authorizing and directing the execution and delivery of a conveyance to the petitioner.

SEC. 630. Such conveyance shall be executed by the executor or administrator of the estate of the deceased, if the deceased was a resident of or had his place of abode at the time of his death in this Territory, or if he died therein;

but in such case no decree for conveyance shall be made, unless the executor or administrator shall have been personally served with a copy of the said petition and the notice provided for in the 2nd section of this act, for at least 2 weeks prior to the time appointed for the hearing.

SEC. 631. If the deceased died out of the Territory and not having been a resident thereof at the time of his death, such conveyance shall be executed by a commissioner to be appointed by the court in the decree, for that purpose, but in such case in addition to the notice provided for in the second section of this act, it shall appear to the satisfaction of the court at the hearing, that the executor, or administrator of such deceased duly appointed in another state, territory or country or his heirs or devisees shall have had reasonable notice personally of the pendency of said petition, and of the time and place appointed for such hearing. And such foreign executor or administrator shall have the same right at the hearing or on appeal to file objections and resist the claim of the petitioners, as an executor or administrator appointed under the laws of the Territory would have, and it shall not be necessary in such case that an administration of the estate of the deceased be had in the Territory, to authorize the decree of conveyance prayed for, if the district court upon the hearing shall so find.

SEC. 632. A conveyance executed under the provisions of this act shall so refer to the decree authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally and the conveyance made in pursuance of a decree shall pass to the grantee all the estate, right, title and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself were still living and then executed the conveyance in pursuance of such contracts.

SEC. 633. Any party interested may within six months from the rendition of the decree, appeal therefrom to the supreme court in the same manner as appeals are taken and prosecuted from final decrees or judgments in equity causes; but if no appeal be taken from such decree within the time limited therefor, or if such decree be affirmed on appeal, it shall be the duty of the executor, administrator or commissioner to execute and deliver 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 conclusive evidence of the correctness of the proceedings and of the authority of the executor, administrator or commissioner to make such conveyance.

SEC. 634. A copy of the decree for the conveyance made by the district court and duly certified and recorded in the office

of the auditor of the county, wherein the land is situate, shall give to the person entitled to the conveyance a right to the immediate possession of the land contracted for and of holding the same according to the terms of the intended conveyance, in like manner and with like effect, as if they had been conveyed in pursuance of the decree.

SEC. 635. 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 persons 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 execution or administration for their benefit.

SEC. 636. The testimony of witnesses in support of the claim of the petitioner, may be taken by deposition, before any officer authorized to administer oaths, whenever the deposition of such witness might be taken to be used in the trial of a civil action in the district court. But notice of the particular time and place of taking such depositions shall be published by the petitioner in the paper required to be designated by the second section of the act, for three successive weeks prior to taking the same, which notice shall also state the name of the officer before whom the deposition is to be taken, and the name of the witnesses whose testimony is proposed to be taken, at such time and place. Any party interested in the estate may appear and cross-interrogate such witnesses, and the manner of examination and the form of such deposition shall be in conformity with the chapter regulating depositions of witnesses residing in the Territory, although such witnesses may not reside therein.

SEC. 637. Any party interested in the estate and resisting the claim of the petitioner, may after filing his objections take the testimony of witnesses in his behalf in like manner, and as in an affidavit for continuance in civil actions upon good cause shown and for that purpose, the court may postpone the final hearing of such petition until the testimony can be taken.

CHAPTER 50.

AUTHORITY TO CHANGE A PERSON'S NAME.

SECTION 638. Any person desiring a change of his name or

that of his child or ward may apply therefor to the district court of the county in which he resides by petition setting forth the reasons for such change thereupon such court in its discretion may order a change of the name and thenceforth the new name shall be in place of the former.

CHAPTER LI.

NE EXEAT.

SEC. 639. 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. 640. 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. 641. 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. 642. 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. 643. 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 con-

tract 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. 644. The defendant may have the same remedy by writ of habeas corpus as in other cases of arrest and bail.

SEC. 645. The proceedings may be had before justices of the peace in all cases within their jurisdiction.

SEC. 646. 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. 647. 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. 648. 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. 649. 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. 650. 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. 651. 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. 652. 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. 653. 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. 654. 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. 655. 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. 556. 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. 657. 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 provided 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. 658. 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. 659. 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. 660. 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. 661. 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. 662. 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. 663. 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. 664. 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. 665. 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. 666. 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. 667. 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. 668. 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. 669. 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. 670. 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. 671. 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. 672. 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. 673. If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay.

SEC. 674. 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. 675. 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. 676. 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. 677. 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. 678. 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. 679. 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. 680. 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. 681. 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. 682. 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. 683. 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. 684. 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. 685. 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. 687. 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. 688. 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 writ of habeas corpus.

SEC. 689. 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. 690. Any writ or process authorized by this chapter may be issued and served, in case of emergency, on Sunday.

SEC. 691. 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. 692. 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. 693. 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. 694. 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. 695. 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. 696. 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. 697. The first writ shall be in the alternative or peremptory, as the court shall direct.

SEC. 698. 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. 699. 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. 700. 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. 701. Obedience to such writ, may be enforced by attachment and fine and imprisonment, or both.

SEC. 702. 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. 703. 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. 704. Costs shall be awarded in these proceedings as in civil actions.

SEC. 705. 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. 706. 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. 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.

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

5. 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. 707. 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. 708. The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court.

SEC. 709. 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. 710. 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. 711. 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. 712. 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. 713. 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. 714. 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. 715. Whenever any defendant shall be found guilty of any usurpation of or intrusion into, or unlawfully exercising any office or 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. 716. 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. 717. 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. 718. 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. 719. An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate or deed granted by the proper authorities of this Territory, when there is reason to believe that the same were obtained by fraud or through mistake or ignorance of a material fact, or when the patentee or those claiming under him have done or omitted an act in violation of the terms on which the letters, deeds or certificates were granted, or have by any other means, forfeited the interest acquired under the same.

SEC. 720. 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. 721. 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. 722. 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. 723. 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. 724. 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. 725. 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. 726. 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. 727. 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. 728. An action may be commenced against an executor 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. 729. 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. 730. 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 subpœna 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. 731. 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. 732. 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 contempt, and that he be punished as therein prescribed.

SEC. 733. 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. 734. 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. 735. 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. 736. 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. 737. 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. 738. 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. 739. 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. 740. 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. 741. 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. 742. 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. 743. 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 LX.

SUITS ON FOREIGN JUDGMENTS.

SEC. 744. 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. 745. 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 LXI.

MISCELLANEOUS PROVISIONS.

SEC. 746. 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. 747. 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. 748. 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. 749. 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. 750. 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. 751. 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. 752. 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. 753. 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. 754. No bond required under the provisions of this act, and intended as such bond, shall be void for want of form or substance, 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. 755. 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. 756. 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. 757. 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. 758. 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 LXII.

OF CONSTRUCTION.

SEC. 759. 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. 760. 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. 761. 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. 762. 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. 763. The provisions of this act shall be liberally construed, and shall not be limited by any rule of strict construction.

SEC. 764. 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.

SEC. 765. This act shall take effect and be in force from and after the first day of January, 1878.

Approved November 8, 1877.

AN ACT

TO PROVIDE FOR THE ASSESSING AND COLLECTING OF COUNTY AND TERRITORIAL REVENUE.

CHAPTER I.

PROPERTY AND POLLS SUBJECT TO ASSESSMENT AND TAXATION.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That all property real and personal within this Territory not expressly exempted therefrom, shall be subject to taxation in the manner provided by law.*

SECTION 2. The terms "real property" and "land" whenever used in this act shall be held to mean and include not only the land itself whether laid out into town lots or otherwise with all things contained therein, but also all buildings, structures, improvements, trees and other fixtures of whatever kind thereon; and all rights and privileges belonging or in anywise appertaining thereto. Nothing in this section contained, however, shall be construed to exempt from taxation any building, structure, improvement, tree or other fixture of any kind, or any right or privilege whatever, owned by any person, which is located upon or appertains to, land which he does not own.*

SECTION 3. The terms "personal estate" and "personal property" shall be construed, to include all household furniture, goods, chattels, moneys, and gold dust in hand or on deposit, either within or without this Territory and not elsewhere taxed; all boats and vessels whether at home or abroad and all capital invested therein; all debts due or to become due from solvent debtors over and above liabilities whether on account, contract.

*See note at end of this act.

note, mortgage, or otherwise, all public stocks, and stocks or shares in all incorporated companies, and such portion of the capital of incorporated companies liable to taxation on their capital, as shall not be invested in real estate, and all buildings, structures, improvements, trees, and other fixtures of any kind on land, and all rights and privileges whatever appertaining to land, the title to which is not in the owner of the land.

SECTION 4. The following property shall be exempt from taxation:

1. All property, real and personal of the United States and of this Territory.

2. All public or corporate property of the several counties, cities, villages, towns, and school districts in this Territory used or intended for corporate purposes, also all burial ground tombs and rights of burial.

3. All buildings used exclusively for public worship, and Sabbath schools, and their contents, and the lot upon which they are built, *Provided*, That all such church property when valued at more than three thousand dollars shall pay a tax upon all above the said value. But any part of any building, being a house of public worship, which shall be kept or used for any other purpose, except for public worship, shall be taxed upon the cash valuation thereof the same as personal property to the owner or owners or to the occupant or occupants; and the taxes shall be collected thereon in the same manner as other taxes.

4. Household furniture to the amount of one hundred dollars.

SEC. 5. A poll tax of two dollars shall be assessed upon every male inhabitant of this Territory between the ages of twenty-one and fifty years the same payable in money of the United States and to be applied to county purposes. And the county commissioners may reserve so much of said funds in the treasury of the county as they may deem necessary to pay the incidental expenses of the county.*

CHAPTER II.

PROPERTY, WHERE AND TO WHOM ASSESSED.

SECTION 6. All lands shall be assessed in the county in which the same shall lie in the name of the owner; but land

*See note at end of this act.

owned by one person and occupied by another may be assessed in the name of the owner, or occupant; and unoccupied land may be assessed as such, without inserting the name of any owner, and every person shall be assessed in the county in which he resides when the assessment is made for all taxable personal property owned by him wheresoever situated on the day of commencing the assessment, including all personal property in his possession or under his control as trustee, guardian, executor or administrator and where there are two or more persons jointly in possession or having control of any such property the same may be assessed to either or all such persons, but it shall be assessed in the county where situated if either of such persons reside in such county.

SECTION 7. The real estate of incorporated companies liable to taxation shall be assessed in the county in which the same shall lie, in the same manner as the real estate of individuals.

SECTION 8. The undivided estate of any deceased person may be assessed to the heirs or devisees of such person, unless occupied by some other person to whom it may be assessed without designating them by name until they shall have given notice to the assessor of the division of the estate, and the names of the several heirs or devisees; and each heir and devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs and devisees their respective portions thereof, when paid.

SECTION 9. All goods, wares and merchandise kept for sale in this Territory; all stock employed in any of the mechanic arts; and all capital and machinery employed in any branch of manufactures or other business within this Territory, owned by any corporation or any person out of this Territory shall be taxable in the county where the same may be, either to the owner thereof or to the person who shall have charge of or be in possession of the same.

SECTION 10. Partners in mercantile or other business may be jointly taxed on their partnership name or severally taxed for their individual shares for all personal property employed in such business and in case they are jointly taxed each partner shall be liable for the whole tax.

SECTION 11. The personal property of any private corporation is liable to assessment and taxation unless otherwise specially provided, and shall be assessed in the name of such corporation, in the county where the principal office or place of business of such corporation is located; but if such corporation is engaged in the business of railroading the rolling stock of such rail road shall be assessed in each county in this Territory

through which it runs, that is to say each county's portion must bear to the whole rolling stock the same ratio which the number of miles of the road in such county bears to the whole number of miles of such road lying in this Territory. The personal property of a private corporation may be seized and sold for any tax levied upon the property of such corporation as in the case of a natural person.

SECTION 12. The owner or holder of stock in any incorporated company which is taxed on its capital shall not be taxed as an individual for such stock.

SECTION 13. When personal property is mortgaged or pledged it shall for the purpose of taxation be deemed the property of the person who has the possession.

CHAPTER III.

MANNER OF MAKING ASSESSMENT.

SECTION 14. For the purpose of this act this Territory shall be divided into two districts. The counties of Stevens, Whitman, Columbia, Walla Walla, Yakima and Klickitat shall constitute the first district and all the other counties of the Territory shall constitute the second district. Between the first Monday of February and the fourth Monday of April in every year the assessor of each county in the second district, and between the first Monday of April and the fourth Monday of June in every year the assessor of each county in the first district shall ascertain by diligent inquiry the names of all persons liable to taxation in his county and also all the taxable personal property and all real estate therein, and make out an assessment roll of all taxable property and appraise the same according to the provisions of the statutes relating thereto.

SECTION 15. Each assessor shall require every person liable to be taxed in his county to furnish him a list of his real estate situated in his county liable to taxation and a list of all personal property owned by every such person, liable to taxation in this Territory stating the same in detail, and shall require such person to make oath that to the best of his knowledge and belief, such list contains a full and true account of all his property liable to be taxed in his county, and if any person shall refuse to furnish such list or to swear to the same when required so to do by the assessor such person shall forfeit and pay to the assessor for the use of the county the sum of fifty

dollars, which sum may be recovered by action in any court having jurisdiction of matters of debt or contract to the amount of fifty dollars, and costs of suit, such suit to be prosecuted by and in the name of the county.

SECTION 16. The assessor shall set down in an assessment roll to be prepared by himself in separate columns and according to the best information he can obtain.

1st. The names of all persons subject to taxation in his county and numbers of the road and school district of which each person assessed is a resident.

2d. A description of each tract or parcel of land to be taxed, specifying under separate heads the township, range, and section and the number of the school and road district in which the land lies, or if divided into lots and blocks then the number of the lot and block.

3d. The number of acres and parts of an acre, as near as the same can be ascertained unless the land be divided into lots and blocks.

4th. The number of acres and parts of acres in each parcel of land except town or city lots that are improved or cultivated.

5th. The full cash value of the improvements upon each lot or parcel of land assessed.

6th. The full cash value of each lot or parcel of land assessed.

7th. The full cash value of all the taxable personal property owned by or to be taxed against such persons as provided by law.

8th. The total valuation of all property assessed, real and personal.

SECTION 17. When lots are situated in any city, village, or town, or addition to such city, village, or town, a plat of which shall have been recorded, the city village town or addition in which the same are situated, shall be specified in the assessment roll.

SECTION 18. When any person is assessed as trustee, guardian executor or administrator a designation of his representative character shall be added to his name, and such assessment shall be entered in a separate line from his individual assessment, and he shall be assessed for the real estate held by him in such representative character for the full value thereof and for all personal property held by him in such representative character.

SECTION 19. If the land assessed be less, or other than a subdivision according to the United States survey, unless the same be divided into lots and blocks, so that it can be definitely

described it shall be described by giving the boundaries thereof or in such other manner as to make the description certain.

SECTION 20. It shall be sufficient to describe lands in all proceedings relative to assessing advertising or selling the same, for taxes by initial letters abbreviations, and figures to designate the township, range, section or part of section and also the number of the lots and blocks.

SECTION 21. Unoccupied lands liable to taxation, when the name of the owner is unknown shall be described, and the value thereof set down in the assessment roll, in a part thereof separate from the other assessment in the same manner that lands of residents are required to be designated.

SECTION 22. The assessment roll shall be made out in tabular form in separate columns with appropriate heads, the columns of quantities and values to be footed up and carried forward to each succeeding page. The Territorial Auditor shall prescribe the form to be used (and) and shall furnish suitable blanks in the prescribed form for each assessment roll the same to be furnished to each county on or before the first Monday of February of each year.

SECTION 23. The assessment roll shall be made out and the oath of the assessor appended thereto, to the effect that the same contains the names of all persons liable for any tax, and a complete, true, and perfect list and description of all property within his county subject to taxation, so far as he could by diligent inquiry ascertain the same; and that the valuation of property therein is true and just, according to his best judgment, and in the first district each assessor shall return his assessment roll to the Auditor of his county on or before the second Monday of July of each year, and in the second district each Assessor shall return his assessment roll to the Auditor on or before the first Monday of May. And each assessment roll shall remain in the office of the Auditor where filed for the two weeks next after it is filed, and be open to public inspection.*

CHAPTER IV.

EQUALIZATION AND LEVY OF TAXES.

SECTION 24. The board of county commissioners of each county shall annually hold a term for the equalization of assess-

*see note at end of this act.

ments, the correction of the assessment roll, and the levying of taxes which term shall commence in the second district on the first Monday of May of each year and in the first district on the first Monday of August of each year, and continue until such business be completed; *Provided however*, That said term shall not be extended beyond the second Monday of June following in any county of the second district, nor beyond the second Monday of September in any county of the first district.*

SECTION 25. The board shall at said term, examine the assessment roll of its county, and shall have power to correct the same, make alterations in the description of lands or other property upon such roll when it shall be necessary to render such description conformable to the requirements of this act, and may make any other alterations in such roll as it may deem necessary to make the same conform to the requirements of this act. The board shall, at said term, hear and determine all matters wherein complaint is made concerning assessments, and shall raise or reduce, as the case may require, all appraisements of property found to be below or above the average valuation of property of the same or similar kind as made by the assessors, so as to make taxation equal and uniform: *Provided*, That in equalization of assessments the board shall be governed by the value of the property on the day the assessor commenced the assessment of the county.

SECTION 26. The board must also place upon and add to the assessment roll any property real or personal subject to taxation which has been omitted by the assessors, and enter for the same a reasonable just and uniform appraisement.

SECTION 27. During said session of the board any person or his Attorney may attend and apply for the correction of any alleged error in the listing or valuation of his property.

SECTION 28. The board of County Commissioners of each county shall at said term in each year estimate and determine the amount of money to be raised in such county for county purposes, for a year, and apportion such amount together with the amount of school and other taxes required by law to be raised in its county according to the valuation of taxable property in the county. And such determination shall be entered at large in its records.

SECTION 29. For the purpose of raising a revenue for county purposes the county Commissioners of each county in the Territory shall, at said term levy a tax on all taxable property in its county, which tax shall be sufficient in amount to defray the expenses of the county: *Provided*, The county tax shall not exceed eight mills on every dollar of taxable property in the county for any one year.

*See note at end of this act.

SECTION 30. Within ten days after the equalization of assessments is completed and approved by the board of county commissioners each county Auditor shall furnish to each road supervisor in his county the lists required to enable said supervisor to collect the road taxes in their road districts. And each county auditor shall within the same time forward to the Territorial Auditor a statement of the total valuation of taxable property in his county. And the Territorial Auditor shall thereupon charge each county with the amount of Territorial tax due from each respectively at the rate of four mills on the dollar for the total amount of property in the county as per the auditor's statement of land listed, and the total value thereof.

SECTION 31. It shall be the duty of the Territorial Auditor to furnish for the use of the county commissioners, assessors, auditors, and other officers, such forms and blanks as shall secure uniformity of proceedings and returns throughout the Territory.

SECTION 32. The poll tax of two dollars provided by section 5 of this act shall be due from each person subject thereto at the time he is assessed and shall be collected by the assessor who shall have the same power and authority to collect said poll tax by distress as is given to the sheriff by this act for the collection of delinquent taxes, on personal property. The money so collected by the assessor shall be paid to the county treasurer at the time of the return of his assessment roll. The assessor shall be provided by the auditor with blank poll tax receipts which shall be charged against him at the rate of two dollars for each when delivered to him. And he shall make a full return to the auditor showing the names of all persons from whom he has collected a poll tax and the names of all persons liable therefor who have not paid such poll tax, and shall settle his account with the auditor in which settlement he shall be credited with the amount of money paid by him to the treasurer and with two dollars for each receipt returned by him.

SECTION 33. The auditor of each county in the second district shall on or before the second Monday of August in every year, and the auditor in each county in the first district shall on or before the second Monday of November of each year make out a duplicate of the assessment roll with columns added thereto, showing the amount of the territorial, school, county poll, road poll, and road property tax, and any special tax to be collected, and the aggregate amounts of all taxes charged on the valuation of all property assessed to each person named on the assessment roll, and shall deliver a copy of said duplicate assessment roll to the sheriff of the county. The copy delivered to the sheriff shall have appended thereto the warrant of the board of county commissioners under the hand of

the president of the board and the county auditor, and the seal of the board of county commissioners in general terms requiring the treasurer to collect the taxes therein levied, according to law. The county auditor shall take the receipt of the treasurer for the copy of the tax roll with the warrant attached on delivering the same, and said receipt shall be filed and carefully preserved and the auditor shall at the same time charge the treasurer with the amount of all the taxes on said roll; the tax list and warrant of the commissioners shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained.

CHAPTER V.

COLLECTION OF TAXES.

SECTION 34. When any person shall be discovered to be disposing of removing from the county any personal property on which a tax has been assessed and not collected it shall be the duty of the sheriff to immediately proceed to collect the taxes due from such person by levying upon and making sale of such personal property in the manner herein provided for the collection of delinquent taxes.

SECTION 35. On the first day of December of every year all unpaid taxes in the second district, shall become delinquent and on the first day of March of every year all unpaid taxes in the first district shall become delinquent, and shall thereafter draw interest at the rate of twenty-five cents per annum, and all taxes on lands, city and town lots, steamboats, and other vessels are hereby made a perpetual lien thereupon against all persons and bodies corporate; such lien shall have precedence over all other liens except for prior tax.

SECTION 36. The county treasurer of each county or his deputy shall attend at the county seat at all times to receive the taxes not yet paid and he is also required to receive and collect so far as practis[c]able the taxes remaining unpaid on the list of any former year or years. In all cases when taxes are paid he shall give a receipt to the person paying the same if demanded.

SECTION 37. No demand of taxes shall be necessary but it shall be the duty of every person subject to taxation under this law to attend at the treasurer's office at the county seat and pay his taxes and if any person neglect to so attend and pay

his taxes until after the same become delinquent the "sheriff" shall collect the same by distress and sale of the personal property of the delinquent or by sale of the real estate of such delinquent as hereinafter provided.

SECTION 38. To all delinquent taxes ten per cent. of the amount thereof shall be added as a penalty and shall be collected by the treasurer at the same time and in the same manner that the tax is collected.

SECTION 39. Whenever any district, town, city or local tax shall have been levied according to law and the same shall not have been paid within the time limited it shall be the duty of the collector of such tax to send the delinquent list of such tax to the treasurer of the county embracing such city town or district at or before the time the county and Territorial tax for the same year becomes delinquent and it shall then be the duty of such county treasurer to collect such local tax at the same time and in the same manner as delinquent Territorial and county taxes are collected and for the purpose of collection, such city district town or other local tax shall be added to the amount of delinquent Territorial and other taxes and in making sale of any property real or personal for the delinquent taxes the treasurer shall sell such property for the purpose of paying all such delinquent taxes and he shall credit the proper district town or city with the amount so collected less his fees and the costs of such collection and the amount credited shall be subject to the order of the proper officers of such district town or city.

SECTION 36. [40.] County orders or warrants shall be received in payment of county taxes to an amount not exceeding such tax and county treasurers are hereby authorized to indorse upon the back of county orders or warrants tendered in payment of taxes the amount of the tax so paid which amount shall be deducted from the original amount of such order or warrant thereafter and the county treasurer shall keep an account of all indorsements so made in a book to be kept for that purpose only noting therein the number and date of each order or warrant the names of the payees thereof and the date and amount of each indorsement and they shall produce said account before the county commissioners at their annual settlement with them.

SECTION [41.] When the treasurer distrains personal property he may keep it at the expense of the owner until a sale thereof unless the tax, penalty, interest due and all costs and expenses be sooner paid. He shall immediately give notice of the time and place of sale of property distrained by posting written or printed notices thereof in three public places in the county one of which shall be at the place of the sale. The time to be stated in the notice shall be not less than five nor more

than ten days from the day of the taking, but he may adjourn the sale from day to day for a period not exceeding three days and shall adjourn at least once when there are no bidders and in case of an adjournment he shall post a notice thereof at the place of sale. The property shall be sold to the highest bidder for cash.

SECTION [42.] If the treasurer be impeded or resisted in the execution of his office he may require any suitable person or persons to aid him therein and if any such person refuse to aid he shall forfeit and pay a sum not exceeding ten dollars to be recovered by civil action in any court having jurisdiction of cases of contract of such amount. The action to be prosecuted by the county as plaintiff and the amount recovered shall be for the use of the county and the person or persons resisting shall be liable as in case of resisting the sheriff in the execution of civil process.

SECTION 37. [43.] In every case when property has been distrained for taxes the treasurer shall be entitled to collect and receive from the delinquent as part of his compensation mileage at the same rate as is allowed by law to sheriffs for levying an execution upon personal property.

SECTION 38. [44.] The treasurer shall continue to receive payment of all taxes after the same shall have become delinquent but he shall require all delinquents to pay the ten per cent. penalty and interest as provided in this act.

SECTION 39. [45.] Any surplus remaining from the proceeds of property sold for taxes above the taxes interest thereon penalty mileage of the treasurer and expenses of collection shall be paid to the owner of the property sold.

SECTION 38. [46.] In addition to the other compensation and emoluments allowed to him the treasurer shall receive for his services the ten per cent. upon delinquent taxes collected as penalty whether the same be collected by distress or paid voluntarily by the delinquent but the treasurer shall receive no pay for the collection of taxes by sale of real estate except as provided in Section 57 of this act and a fee of one dollar for each certificate of sale issued to purchasers the same to be paid by the purchaser and to be added to the cost of collection and all sums collected as penalty except what the treasurer is entitled to receive as herein provided shall be for the use of the county.

SECTION [47.] The treasurer shall sell at public auction all real estate upon which taxes have been levied and not paid which the treasurer is required by this act to collect or sufficient thereof to pay all such taxes interest penalty and costs to the highest bidder for cash: *Provided*, That if there be no bidder for any parcel or lot of a sum sufficient to pay all taxes penalty

interest and costs including cost of advertising notice of sale, that the treasurer is required to collect by sale of such parcel or lot the same shall be struck off to the county for the whole amount of all such taxes penalty interest and costs.

SECTION [48.] The sale of real estate for taxes shall be at the county seat of each county and shall commence in the second district on the first Monday of April and in the first district on the first Monday of July of each year at ten o'clock in the forenoon and shall be continued from day to day until all such real estate shall be sold or twice offered for sale on different days.

SECTION [49.] The treasurer shall give notice of all sales of real property by publication thereof once a week for three consecutive weeks commencing the first week of the month preceding the sale in a newspaper of general circulation in the county and by posting printed notices in six public places in the county three weeks prior to the sale the notice required to be published and posted by this section shall contain a notification that all real estate upon which the taxes for the preceding year (naming it) have not been paid and all real estate previously sold to the county for taxes of any preceding year will be sold and the time and place of such sale; and said notice must also contain a list and description of all lands, city and town lots to be sold and the names of the persons to whom the same are assessed unless the same are assessed as belonging to persons "unknown" in which case the same shall be so designated, and the whole amount of taxes penalty interest and costs including costs of advertising the notice to be collected from each person named in the list or from each parcel or lot assessed as "unknown."

SECTION 39. [50.] Real estate sold to the county for taxes shall be offered for sale at each subsequent sale of real estate for delinquent taxes until the same shall have been sold or redeemed.

SECTION 40. [51.] On or before the first Monday of May following the sale of real estate in the second district and on or before the first Monday of August following such sale in the first district for delinquent taxes the treasurer shall file in the office of the county auditor a return of the sale showing the land sold, the names of the purchasers and the sums paid by them for each parcel or lot and also a copy of the notice of sale and his affidavit of advertising and posting thereof as required by this act stating the name of the paper in which the same was published, the number of publications, the date of the first and last, the date and place where the notices were posted, and such affidavit shall be evidence of the regularity of the proceedings.

SECTION 41. [52.] If any parcel or lot shall sell for more

than the taxes penalty interest and costs to be collected therefrom, the surplus shall be paid to the former owner, and any person may before the sale of his property pay all taxes penalty interest and costs and stop such sale.

SECTION [53.] If real estate once sold to the county be afterwards redeemed or sold to any person or corporation other than the county the county treasurer shall account to the Territory the county and to any district city or town for the amount due to each out of the proceeds of such sale or redemption and shall pay the same as other collections.

SECTION [54.] The purchaser of any tract or lot of land sold for taxes shall be entitled to a certificate describing the land so purchased and stating the amount paid and date of the sale which certificate shall be assignable. It shall be signed by the county treasurer in his official capacity and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires a lien on the land for the amount paid by him at the sale and if he subsequently pay any tax levied upon the same whether for any year or years previous or subsequent to the sale he shall have the same lien for the taxes so paid and he shall be entitled to interest on the amount of all taxes paid by him at the rate of twenty-five per cent. per annum.

SECTION 42. [55.] The county treasurer shall within ten days after each annual sale of real estate for taxes make out a list of all lands city and town lots sold to the county and deliver the same to the county auditor who shall enter the same as county lands city and town lots in a book to be kept for that purpose, and taxes shall be regularly assessed thereon, and the taxes cost and interest at the rate of twenty-five per cent. per annum shall be carefully charged by the county treasurer from year to year until the same shall be sold or redeemed.

SECTION 43. [56.] All lands city and town lots sold to actual purchasers shall be subject to redemption by the former owner thereof his successor in interest or creditors having a lien thereon within two years thereafter on payment of the amount paid by the purchaser at the tax sale and interest thereon at the rate of twenty-five per cent. per annum from the day of the sale; and all taxes paid by the purchaser or assignee of the purchaser in the land subsequent to the sale, and interest thereon at the rate of twenty-five per cent. per annum from the day of payment of such taxes to the purchaser or his assignee who shall receipt therefor or to the treasurer for the purchaser or his assignee.

SECTION 44. [57.] Lands and city and town lots sold to the county may be redeemed by the former owner thereof by the payment to the county treasurer of the amount of all taxes penalty interest costs and accrued taxes and interest charged to

such lands or lots. And on presentation of the treasurer's receipt for such payment, the county auditor shall give to the redemptioner a certificate of redemption signed by him in his official capacity and sealed with the seal of the board of county commissioners and shall charge such treasurers with the amount of such receipt, and shall omit the lands city or town lots so redeemed from his list of county lands.

CHAPTER VI.

CONVEYANCE OF REAL ESTATE SOLD FOR TAXES.

SECTION 45. [58.] If within two years after the sale of any parcel or lot of land for taxes the same be not redeemed as herein provided the holder of the treasurer's certificate of sale may commence an action in the district court of the district embracing the county where the property is situated to obtain a conveyance of the title to such parcel or lot of land by the filing of a petition alleging the facts upon which the claim is founded.

SECTION [59.] Pleadings in every such case shall be addressed to the judge of the court and the case shall proceed and be determined according to the rules and principles governing equity cases.

SECTION [60.] Notice of the pendency of the suit shall be given by publication thereof for four consecutive weeks in a newspaper of general circulation in the county which notice shall contain the title of the court in which the action is pending a description of the property the name of the person to whom it was assessed unless it was assessed as unoccupied and unknown in which cases shall be so designated: the date of the tax sale and shall state the time when the case will be heard which shall be on some day of a regular term and shall require all persons interested to appear and show cause if any there be why a conveyance of the title to the property described shall not be decreed to the plaintiff.

SECTION [61.] At the time stated in the notice or as soon thereafter as practicable the court shall hear the case and at such hearing the original tax list with the warrant appended delivered to the treasurer and the treasurer's return of the sale and the notice of the sale and affidavit of the publication and posting thereof and the treasurer's certificate issued to the purchaser shall be produced and admitted as evidence if the same

be then in existence or if not in existence then satisfactory proof of the material facts must be made.

SECTION 45. [62.] If it shall appear to the court that sale of the property was made by the treasurer for a tax which he was by law required to collect after proper notice of such sale as herein required that the plaintiff in the suit or the person under whom he claims was the highest bidder and the purchaser at such sale, that the amount bid was actually paid and that no redemption has taken place a conveyance of the title to the property shall be decreed to the plaintiff and the court shall appoint a commissioner to execute a deed for that purpose.

SECTION 47. [63.] Such deed when executed and approved by the court and delivered and recorded shall be held to convey to the grantee all the right title interest and estate of all persons whomsoever claiming an interest therein at the time of the decree and to rest in the grantee an absolute estate in fee simple in such real estate subject however to all claims for taxes accruing after the sale.

SECTION 48. [64.] If in any action brought to obtain a conveyance of title under the provisions of this act it shall appear that the plaintiff is not entitled to such conveyance and that taxes have been lawfully assessed upon the parcel or lot claimed or against the owner thereof and that such tax has not been paid by the owner of said parcel or lot the court shall give judgment in favor of the plaintiff and against the owner of the property for the true and just amount of such tax due from the owner or those under whom he claims and ten per cent. additional as penalty if the same has become delinquent as provided in this act and all costs and accrued interest and taxes or so much thereof as shall have been paid by the plaintiff or those under whom he claims with interest on the amount paid at the rate of twenty-five per cent. per annum.

SECTION 49. [65.] When by mistake or wrongful act of the treasurer real estate has been sold for taxes on which no tax was due, or for any amount in excess of the amount justly due at the time of such sale, the county shall save the purchaser harmless by repaying to him the amount of principal and interest to which he would have been entitled had such real estate been rightfully sold, and the treasurer and his sureties shall be liable for the amount to the county on his official bond or the purchaser may recover the same directly from the treasurer and his sureties by civil action.

SECTION 50. [66.] Whenever any action or proceeding shall be commenced and maintained in any court or before any judge to prevent or restrain the collection of any tax or part thereof or any particular act of an officer in the collection thereof or to recover any such tax before paid or to recover the

possession of or title to any property real or personal sold for taxes or to invalidate or cancel any deed or grant thereof for taxes or to restrain prevent recover or delay any payment of taxes, if the court or judge grant the relief sought in such action the true and just amount of taxes due upon such property or by the person or persons commencing such action and all interest penalty and cost accrued thereon according to the provisions of this act must be ascertained and payment shall be given therefor in the same action or proceeding against the person or persons liable for the same.

SECTION 51. [67.] If any parcel of real estate thus sold should not in the option of the tax purchaser be of a sufficient value to justify the costs of proceeding, as directed in section 52 and this act to confirm title he may procure a title deed to said property from the county treasurer on surrender of his certificate of purchase and establishing to the satisfaction of said treasurer that all subsequently accrued taxes have been fully paid which deed shall run in the name of the Territory of Washington and shall convey the premises in fee simple to the grantees subject to be set aside only upon action brought in due form of law by the party or parties claiming under the original title within ten years from the date of the public tax sale at which it was sold and upon conclusive proof of such irregularities of procedure in violation of the provisions of this act or under the provisions of this act as to constitute an equitable defeasance of the said conveyance and for executing such tax deed the county treasurer shall receive a fee of one dollar and fifty cents and the county recorder a fee of one dollar and fifty cents for recording the same.

CHAPTER VII.

ACCOUNTS AND SETTLEMENTS.

SECTION 53. [68.] The treasurers of the several counties of the Territory shall on the first Monday of every month pay into the territorial treasury or forward to the territorial treasurer in such manner as he shall direct all funds on hand belonging to the Territory and they shall on or before the first Monday of July of every year make full settlements with the territorial auditor of their accounts with the Territory for the preceding fiscal year.

SECTION 54 [69.] The fiscal year contemplated by this act shall commence on the first day of July and end on the thirtieth day of June.

SECTION [70.] Each county treasurer shall at the time of his annual settlement with the territorial auditor render a statement verified by his own affidavit or that of his deputy of all territorial taxes previously credited to his county by the territorial auditor as delinquent and uncollected and collected by him after such credit and not previously reported and also of all territorial taxes due from property listed and assessed by him.

SECTION 55. [71.] The Territorial treasurer shall send or give a receipt to the county treasurer entitled thereto for the amount of each payment into the territorial treasury and shall deliver a duplicate of every such receipt to the Territorial Auditor who shall file and preserve the same. And each county treasurer in his settlement with the Territorial Auditor shall be allowed and credited with the amounts shown by such receipts to have been paid into the treasury by him and with four per cent. on the amount so paid as his fees for collection as provided in section 56 of this act and with the amount of expenses incurred in forwarding the territorial funds to the territorial treasurer if proper vouchers be produced therefor, and with the amount of territorial tax shown to be unpaid by the certified statement of the county auditor signed by him and authenticated by the seal of the Board of County Commissioners.

SECTION 57. [72.] The county treasurer of each county shall be allowed to retain two per cent. upon all moneys received and two per cent. on all moneys paid out as his fees, which shall be deducted from the gross amount collected in kind except in counties where the treasurers thereof receive a salary in lieu of commissions as their compensation.

SECTION 58. [73.] If on the assessment rolls or tax lists there shall be any error in the name of a person taxed the name may be changed and the tax collected from the person intended if he be taxable and can be identified by the assessor or treasurer and whenever the treasurer shall ascertain that any land or other property is omitted from the assessment roll or tax list he shall assess the same and estimate the tax thereon and enter the same upon his tax list and inform the county auditor thereof who shall charge him with the amount of such tax.

SECTION [74.] The several county treasurers shall at the August term in each year of the boards of county commissioners of their counties attend with their books and vouchers and settle their accounts before said board; in such settlements they shall be allowed the following credits:

1st. The amount credited by the territorial auditor on settlement for the preceding year.

2nd. The amount of principal and interest paid on county orders subsequent to last preceding settlement whether such orders have been fully paid or but partially paid.

3rd. The amount of taxes remaining uncollected after due diligence on the part of the treasurer to collect the same.

4th. The amount of surplus proceeds of sales of property paid to the former owners of property sold or other persons entitled thereto.

5th. The amount of taxes due on lands city and town lots sold to the county at the last preceding annual sale.

6th. The amount allowed by law to the treasurer for his compensation.

7th. The commissioners shall also allow the treasurer credit for any double assessments or error for which the treasurer is not justly accountable proven to exist.

SECTION 59. [75.] Each county treasurer shall at the time of making his annual settlement with the board of county commissioners furnish a statement of the amount collected by him as interest on delinquent taxes and of the amount of penalty collected by sale of real estate and of all surplus proceeds of property sold for taxes and of the amount of such surplus paid to the parties entitled thereto subsequent to last preceding settlement which statement must be verified by the affidavit of the treasurer or his deputy and the same shall be filed and presented by the county auditor and the amount so collected charged against the treasurer.

SECTION 60. [76.] If any county treasurer shall refuse or by negligence fail to collect any tax which he is required by law to collect he and his sureties shall be liable therefor and the same may be recovered by a civil action in the name of the county.

SECTION 61. [77.] In addition to the fees allowed by law, the boards of county commissioners of the several counties shall allow a reasonable sum for the preparing of rolls schedules and lists to officers required by law to prepare the same and shall also allow the cost of publication of lands city and town lots sold to the county and shall also allow to the Territorial auditor the actual reasonable and necessary costs of all blanks and assessment rolls furnished by him for the use of the officers of the counties and also the postage paid and all necessary expense incurred in forwarding said blanks and assessment rolls and other matter which the Territorial auditor is required by law to transmit to the county officers.

SECTION 62. [78.] The entries made in the county treas-

urer's books the assessment rolls, the duplicate assessment rolls schedules transcripts and warrants attached thereto delinquent lists books and records of the county auditor required to be kept by him by any law shall be *prima facie* evidence in all judicial proceedings.

SECTION [79.] The county fund shall not make up any deficiency in the territorial school or any special fund by reason of taxes becoming delinquent and uncollectable.

SECTION 63. [80.] All advertisements authorized under the provisions of this act shall be published in some newspaper published in the territory having a circulation in the county authorizing such publication. The publisher shall be paid for advertising such notices at a rate not exceeding seventy-five cents for each separate description of real estate or at the rate of one dollar per square of twelve lines or part thereof.

SECTION 64. [81.] Nothing in this act shall be so construed as to interfere with the provisions of any act allowing the levy of a special tax in any county in this Territory but the manner of collecting such special taxes shall be as hereinbefore provided.

SECTION 65. [82.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SECTION [83.] This act shall take effect and be in force from and after the first day of January A. D., 1878.

SECTION [84.] Nothing in this act shall be construed to alter or repeal an act entitled "An Act relating to the receiving of county warrants in payment of county taxes in Clarke county" passed at the present session of the Legislative Assembly of this Territory.

Approved, November 9th, 1877.

NOTE BY THE SECRETARY.

The following is attached to the margin of the act between Sections 1 and 2:

"Amend after the words, 'The Treasurer shall reside at the county seat,' by inserting the words 'unless otherwise provided by the board of county commissioners.'

"Adopted, O'B. McReavy."

The words following "thereto," in line 7, of Sec. 2, are printed, in accordance with a marginal amendment on the act, in place of the following:

"Nothing herein contained, however, shall be construed to exempt from taxation any improvements made by settlers on the public lands, which improvements shall be deemed and taxed as personal property until such settler is entitled to make final proof."

In Section 23, line 8, the word "first" is printed in place of "second," and on line 10 the word "July" is printed instead of "August," and after the word "year" in same line the words "and in the second district each assessor shall return his assessment roll to the auditor on or before the first Monday of May" are inserted, as per marginal amendment.

In Section 24, lines 5 and 6, the word "first" is printed in place of "fourth," as per marginal amendment.

AN ACT

TO PROVIDE FOR THE INCORPORATION OF CITIES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That when the inhabitants of any part of any county not embraced within the limits of any city or incorporated town, which inhabitants exceed two hundred and fifty in number, shall desire to be organized into a city, they may apply by petition in writing signed by not less than forty of the qualified electors of the Territory to be embraced in the proposed city, to the judge of the district court of the proper county, which petition shall describe the territory proposed to be embraced in such city, and shall have annexed thereto an accurate map or plat thereof and state the name proposed for such city, and shall be accompanied with satisfactory proof of the number of inhabitants within the territory embraced in said limits.

SEC. 2. When such petition shall be presented, the judge shall forthwith appoint five commissioners who shall at once call an election of all the qualified electors residing within the territory embraced within said limits as described and platted, to be held at some convenient place within said limits, the notice for which shall be given by publication in some newspaper published within said limits, if any there be, for three successive weeks, and by posting notices in five public places within said limits; said posting and the first publication to be not less than three weeks preceding such election. Such notice shall specify the place and time of such election and a description of the

limits of said proposed city, and that a description and plat thereof are on file in the office of the clerk of the district court. Said commissioners shall act as judges and clerks of the election, and shall qualify as required by law for judges and clerks of county elections, and shall report the result of the ballot to the judge of the said district court. The ballot used at said election shall be, "For Incorporation," "Against Incorporation."

SEC. 3. If a majority of the ballots cast at such election be in favor of such incorporation, the clerk of said district court shall, immediately on the return of the commissioners being filed in his office, give notice of the result by publication in a newspaper, or, if no newspaper be published in the county, by posting in five public places within the limits of the proposed city. A copy of the notice, with the proper proof of its publication, shall be filed with the papers, and a certified copy of all papers and entries relating to the matter on file in the said clerk's office, shall be filed in the auditor's office of the county and in the office of the Secretary of the Territory.

SEC. 4. When certified copies are made and filed as required by the preceding section, and officers are elected and qualified for such city as hereinbefore provided, the incorporation thereof shall be complete; whereof notice shall be taken in all judicial proceedings.

SEC. 5. When the incorporation of such city is complete; the commissioners shall give notice for two consecutive weeks of the time and place of holding the first election of officers therefor by publication in a newspaper, or, if none be published within the limits of such city, by posting notices in five public places within the limits of the same. At such election the qualified electors of such city residing within the limits of such city shall choose officers therefor, to hold until the first annual election as hereinafter prescribed. The Commissioners shall act as judges and clerks of the election, and otherwise it shall be conducted and the officers elected thereat shall be qualified in the manner prescribed in chapter V of this act for the election of city officers.

CHAPTER II.

SPECIAL CHARTERS.

SEC. 6. Any city incorporated by special act or charter, or

in any other manner than that provided by this act, including any acting or de facto city, may abandon its charter and organize under the provisions of this act with the same territorial limits, by pursuing the course hereinafter prescribed.

SEC. 7. Upon the petition of forty legal voters in any such city to the council thereof, praying that the question of abandoning its charter be submitted to its legal voters, the council shall immediately direct a special election to be held, at which such question shall be decided, specifying at the same time, the time and place or places of holding the same, and appoint the judges and clerks of the election.

SEC. 8. The mayor, or presiding officer of the council, shall at once issue a proclamation giving notice of such election, of the question submitted to the electors, and of the time and place of holding the election, which proclamation shall be published for four weeks in some newspaper published in such city, and if there be none published therein, then such proclamation shall be published by posting a copy thereof in five public places within the corporate limits of such city.

SEC. 9. At such election, those who desire to vote in favor of abandonment of the charter shall deposit a ballot with the words "in favor of abandonment," those desiring to vote against the abandonment shall deposit a ballot with the words "against abandonment." The election shall be conducted in other respects as elections for city officers are conducted under the charter. The abstract of votes shall be returned to the city council, who shall canvass the same and declare the result which shall be entered on the journal.

SEC. 10. If the majority of votes cast at such election be in favor of the abandonment of the charter, the council shall immediately call a special election for the election of officers of such corporation according to the provisions of this act, and from and after the election and qualification of such officers, the former charter of such city shall be considered as abandoned, and such city shall be considered as organized under and shall have all the rights and be subject to all the liabilities of this act; but the officers so elected shall hold their offices only until the next annual municipal election in such city. If a majority of the votes be against abandonment, that question cannot be again submitted until the expiration of one year from the time of such election.

SEC. 11. All rights and property of every description which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal corporation under the organization herein contemplated, and no right or liability, either in favor of or against

such corporation existing at the time, whether such corporation be a de jure or de facto corporation provided it be acting as a municipal corporation and no prosecution of any kind, shall be affected by such change: *Provided*, That when a different remedy is given by this act which can properly be made applicable to any existing right at the time such change is made, the same shall be deemed cumulative to the remedies before provided and may be used accordingly; *And provided further*, That the regularity, legality or validity, of such municipal corporation under its former organization, shall not in any manner be called in question in any legal proceedings now pending or hereafter to be instituted, but such municipal corporation shall be conclusively deemed to have been legally and regularly organized, valid and existing, in all respects and for all purposes.

CHAPTER III.

POWERS.

SEC. 12. Cities organized as provided in this act shall be bodies politic and corporate under such name as may be selected and adopted by the common council of each at the first meeting thereof, and by such corporate name may sue, or be sued; contract or be contracted with; acquire, hold, or convey property real or personal; have a common seal which they may change at pleasure; and have such other privileges as are incident to municipal corporations of like character not inconsistent with the laws of this Territory and shall be subject to the rules restrictions and obligations prescribed in this act. They shall have power to assess, levy, and collect taxes for general municipal purposes, not to exceed two-fifths per centum per annum, upon all property both real and personal, within the city, which is by law taxable for Territorial and county purposes and to levy and collect special taxes as herein-after provided. But all taxes for general and special municipal purposes, exclusive of assessments for improvement as hereinafter provided in sections seventeen, eighteen and twenty, shall not in any year exceed one and a half per centum on the property assessed.

SEC. 13. They shall have power to make regulations for prevention of accidents by fire; to organize and establish fire departments; ordain rules for government of the same; to provide fire engines and other apparatus, and a sufficient supply of water;

and to levy and collect special taxes for these purposes, not to exceed in any year one-fifth of one per centum upon the taxable property within the city. And on petition of the owners of one-half of the ground included within any prescribed limits within the city, to prohibit the erection within such limits any building, or any addition to any building, unless the outer walls thereof be made of brick and mortar, and iron, or stone and mortar, and to provide for the removal of any building or any addition erected contrary to such prohibition. (limits any building, or any addition to any building, unless the outer walls thereof be made of brick and mortar, or iron, or stone and mortar, and to provide for the removal of any building or any addition erected contrary to such prohibition.)

SEC. 14. They shall have power to purchase or condemn and enter upon and take any lands within or without the corporate limits, for public squares, streets, parks, commons cemeteries, hospital grounds, or to be used for work houses, or houses of correction, or any other proper and legitimate municipal purpose, and to enclose, ornament, and improve the same, and to erect necessary public buildings thereon; and for these purposes may levy and collect special taxes, not exceeding one-fifth per centum in any year. The city shall have entire control of all such buildings, and all lands purchased or condemned under the provisions of this section, and of all streets, highways, squares and other public grounds within its limits, established or appropriated to public use by authority of law, or which have been or may be hereafter dedicated to public use by any person or persons; and have power in case such lands are deemed unsuitable or insufficient for the purposes intended, to dispose of and convey the same, and conveyances of such property, executed in the manner that may be prescribed by ordinance, shall be held to extinguish all rights and claims of said city or the public, existing prior to such conveyance. But when such lands are so disposed of and conveyed, enough then shall be reserved for streets to accommodate adjoining property owners.

SEC. 15. They shall have power to provide for the lighting of the streets and furnishing the city with gas or lights, and for the erection or construction of such works as may be necessary or convenient therefor; and have power to levy and collect for these objects a special tax, not exceeding one-fifth of one per centum per annum upon the taxable property within the limits, for the benefit of such lights, which limits shall be fixed by the city council each year, before levying any tax authorized by this section, and all such taxes shall only be assessed upon and collected from property within said limits.

SEC. 16 They shall have power to provide for clear-

ing, opening, graveling, improving and repairing of streets and highways and alleys; and for the prevention and removal of all obstructions therefrom or from any cross or sidewalk; also to regulate cellar ways and cellar lights on sidewalks within the city; and to provide for clearing the streets; also for constructing sewers and clearing and repairing the same; and have power to assess, levy and collect each year a road, poll tax, of not less than four nor more than six dollars on every male inhabitant of the city, between the ages of twenty-one and fifty years, except persons that are a public charge; also a special tax on property of not less than two nor more than six mills on every dollar's worth of property within the city; which taxes shall be expended for the purposes specified in this section, and the officers of the county shall not levy or collect any road tax, or road poll tax, upon the inhabitants or property within the city.

SEC. 17. They shall have power to construct and repair sidewalks, and to curb, pave, grade, macadamize and gutter any street or streets, highway or highways, alley or alleys, therein or any part thereof; and to levy and collect a special tax or assessment, on the lots and parcels of land fronting on such street or streets, highway or highways, alley or alleys or any part thereof, sufficient to pay the expense of such improvement, and for such purpose may establish assessment districts, consisting of a portion or the whole of any such street or streets, highway or highways, alley or alleys, or of several streets, highways, and alleys, as may be deemed advisable. But unless the owners of more than one half of the property subject to assessment for such improvement, petition the council to make the same, such improvement shall not be made until a majority of five-sevenths of all the members of the council, by vote, assent to making of the same.

SEC. 18. They shall have power to cause any lot of land within their limits, on which water at any time becomes stagnant, to be drained or filled up; and to cause any vault upon any lot or block within the city to be cleaned when necessary; and in case of failure or refusal of the owner of any such property to comply with the requirements of any ordinance or resolution of the city council, with reference to such matters after such notice, as in such ordinance or resolution may be prescribed; the work necessary may be done at the expense of the city, and the amount so expended shall be assessed as a tax upon such property; and shall be collected as other assessments.

SEC. 19. They shall have power by general ordinance to prescribe the mode in which the charge on the respective owners of lots or lands on the lots or lands shall be assessed and determined for the purposes authorized by this act: *Provided*, Always that the assessment shall in every case be made upon the

basis of the value of the property assessed: such charge when assessed shall be payable by the owner or owners at the time of the assessment personally, and shall also be a lien upon the respective lots or parcels of land from the time of the assessment. Such charge may be collected and such lien may be enforced by a proceeding in law or in equity, either in the name of such city, or of the officer to whom it shall have directed payment to be made. In any such proceedings where pleadings are required, it shall be sufficient to declare generally for work and labor done and materials furnished on the particular lot, parcel of land, or street, highway or alley. In any such proceeding where the court trying the same shall be satisfied that the work has been done, or the material furnished which according to the true intent and meaning of this act would be properly chargeable upon the lot or land, through or by which the street, highway or alley improved or repaired may pass, a recovery shall be permitted or a charge enforced to the extent of the proper proportion of the value of the work or materials which should be chargeable on such lot or land, notwithstanding any informality, irregularity or defect in the proceedings of the officers of the city, but in such case the court may adjudge as to costs as may be deemed proper, and in cases where an assessment shall have been regularly made and payment shall have been neglected or refused at the time when the same was required, the city shall be entitled to demand and recover in addition to the amount assessed and interest thereon at ten per cent. per annum, from the time of the assessment, five per cent. to defray the expenses of collection, which shall be included in any judgment or decree which may be rendered.

SEC. 20. They shall have power to provide for the survey of the blocks and streets of the city, and for making and establishing the boundary lines of such blocks and streets; and to establish the grades of all streets within the city, and to lay off, widen, straighten, name, change, extend, vacate and establish streets, highways and alleys and all public grounds and to provide for the condemnation of such real estate as may be necessary for such purposes, and to levy and collect assessments upon all property benefitted by any change or improvement authorized by this section, sufficient to make compensation for all property condemned or damaged, and to authorize or forbid the location and laying down of tracks for railways and street railways on all streets, alleys and public places, but no railway track can thus be located and laid down until after the injury to property abutting upon the street, alley or public place upon which such track is proposed to be located and laid down, has been ascertained and compensated in the manner provided for compensation of injuries, arising from re-grade of streets in section 106 of this act.

SEC. 21. They shall have power to erect and maintain water works; or to authorize the erection of the same for the purpose of furnishing the city with a sufficient supply of water, but no such works shall be erected by the city, until a majority of the voters of the city, at a general or special election or five-sevenths of the members of the city council, by vote assent thereto.

SEC. 22. They shall have power to construct or authorize the construction of such water works without the limits of the city, and for the purpose of maintaining and protecting the same from injury, and the water from pollution, its jurisdiction shall extend over the territory occupied, by such works; and all reservoirs, streams, trenches, pipes and drains, used in and necessary for the construction, maintenance and operation of the same, and over the stream or source from which the water is taken for five miles above the point from which it is taken; and to enact all ordinances and regulations necessary to carry the power herein conferred into effect.

SEC. 23. If the right to construct and operate such water works is granted to private individuals or incorporated companies, by such city, it may make such grant, to inure for a term of not more than twenty-five years; and may authorize such individual or company to charge and collect from each person supplied by them with water, such water rent as may be agreed upon between said person or corporation so building such works, and said city, and such city is authorized and empowered to enter into a contract with the individual or company constructing such works to supply the city with water for fire purposes, and for such other purposes as may be necessary for the health and safety thereof, and to pay therefor such sum or sums as may be agreed upon between said contracting parties.

SEC. 24. Such cities are hereby authorized and empowered to condemn and appropriate so much private property as shall be necessary for the construction and operation of such water works; and if it shall authorize the construction and operation thereof by individuals or private corporations it may confer by ordinance upon such person or persons, or corporation, the said power to take and appropriate private property for such purpose.

SEC. 25. They shall have power at the regular time for levying taxes in any year to levy and collect a special tax not exceeding one-half of one per centum upon the taxable property within the limits prescribed as hereinafter provided, for the purpose of constructing such water works, provided no such tax shall be levied for the purpose of aiding any private individual or corporation. And when such work shall have been constructed such city shall have power to assess and col-

lect, from time to time, in such manner as the city council may deem equitable from each tenement, or other place supplied with water, such water rent as may be deemed reasonable; and at the regular time for levying taxes in each year to levy and collect in addition to the tax already authorized by this section a special tax on taxable property within the limits prescribed as hereinafter provided, sufficient with the water rents hereby authorized, to pay the expenses of running and operating such works; and if the right to build, maintain, and operate such water works shall be granted to private individuals or corporations by the city and the city shall contract with such individuals or corporation for a supply of water for any purpose, said city shall levy and collect, each year, a special tax sufficient to pay off such water rent to such individual or company, provided that said taxes shall not exceed one-half of one per centum upon the taxable property within the limits, of the benefits and protection of such works, which limits shall be fixed by the city council each year before levying any tax authorized by this section; and all such taxes shall only be assessed upon and collected from property within said limits.

SEC. 26. They shall have power to make regulations to prevent the introduction of contagious diseases into the city; to remove persons affected with such or other diseases therefrom, to suitable hospitals provided by the city for that purpose; to provide for the support, restraint and employment of vagrants and paupers; to restrain and punish any disturbance or any unlawful or indecent practice.

SEC. 27. They shall have power to make regulations and pass ordinances preventing domestic and other animals running at large; and to license, tax, regulate and restrain the keeping of dogs within the city limits; and to authorize the distraining, impounding and sale of the same for the penalty incurred and costs of proceeding; or may authorize their destruction.

SEC. 28. They shall have power to regulate, license and tax all carts, wagons, drays, coaches, omnibuses, and every description of carriage which may be kept for hire; and to fix the rates thereof; to license, tax and regulate or prohibit theatricals, shows and other exhibitions and public amusements; and to license, tax, and regulate auctioneers, hawkers, peddlers, brokers, pawnbrokers, and all offensive or noxious trades or occupations.

SEC. 29. They shall have power to establish and maintain a day and night police or either of them, and to provide for the election or appointment of such number of police officers as may be necessary; which officers shall have full power and authority to make arrests within or without warrants, within or

without the limits of the city; to summon aid; and to exercise all other powers necessary and requisite for the prevention of crime or apprehension of offenders. And in all cases where arrests are made for offenses tried under the general laws of the Territory, before justices of the peace or other Territorial courts, such police officer shall be entitled to receive the same fees as sheriffs or constables, for the same services.

SEC. 30. They shall have power to prevent injury or annoyance from anything dangerous, offensive or unhealthy, and to cause any nuisance to be abated; to suppress and restrain disorderly houses, houses of ill fame or gambling houses, and to authorize the destruction of all instruments or devices used for purposes of gaming; to regulate the transportation and keeping of gunpowder or other combustibles, and to provide or license magazines for the same; to prevent and punish fast or immoderate riding or driving of horses through the streets; to regulate the speed of trains and locomotives on railways over the streets or through the limits of the city; to prevent any riots, noise, disturbance or disorderly assemblages, and to protect the property of the corporation and its inhabitants, and to preserve peace and order therein.

SEC. 31. They shall have power to regulate the burial of the dead and to prevent any interments within the limits of the city, and to cause any body interred contrary to such prohibition to be taken up and buried without the limits of the city.

SEC. 32. They shall have power to establish and regulate markets; to provide for the measuring or weighing of hay, coal, or any other article of sale.

SEC. 33. They shall have power to borrow money on the credit of the city for any purpose within the authority of the corporation, including the payment of any existing debt; but the indebtedness of the city must never exceed in the aggregate the sum of fifteen thousand dollars, and any debt or liability incurred in excess of said sum of fifteen thousand dollars shall be invalid and void.

SEC. 34. They shall have power to adopt proper ordinances for the government of the city, and to carry into effect the powers given by this act; and to provide for the punishment of a violation of any ordinance of the city by a fine not exceeding one hundred dollars, or imprisonment for not more than thirty days, or both, or by a forfeiture or penalty not exceeding one hundred dollars, and for working any person sentenced to such imprisonment, or committed in default of payment of any such fine, upon the streets or public squares during the term thereof.

SEC. 35. They shall have power to make harbor regulations and rules; to regulate or prevent the discharge of ballast.

or other material in any harbor within the city limits; to assess and collect harbor dues from all vessels and water craft whatever, arriving at or departing from the city; to license and tax wharfingers; and to build, construct and regulate wharfs, piers and landing places at the foot of any street terminating at the shore of any bay lake or river. And to regulate and prescribe the limits of the extension of wharfs into the waters of any harbors within the city limits, to prevent the construction of wharves beyond such limits, and to remove any wharf or wharves that have hertofore been or shall hereafter be constructed beyond such limits at the expense of the owner or owners of such wharf or wharves, to be recovered by ordinary civil action, or as the city council may by ordinance provide.

SEC. 36. They shall have power to establish and regulate the fees and compensation of all its officers, except when otherwise provided; and, have such other powers and privileges not herein specifically enumerated, as are incident to municipal corporations of like character and degree, not inconsistent with the laws of the United States or of this Territory and as may be necessary for carrying into effect the provisions of this act according to the true intent and meaning thereof.

CHAPTER IV.

GOVERNMENT.

SEC. 37. The power and authority given to each municipal corporation by this act shall be vested in a mayor and common council, together with such other officers as are in this act mentioned, or may be created under its authority.

SEC. 38. The common council shall consist of seven members; they shall be elected for two years, and shall hold their office until their successors are elected and qualified: *Provided*, That at the first annual election after the incorporation of an city three of the seven members shall hold their offices for one year only, and if such city be divided into two or more wards the council shall make an equitable apportionment of the members holding for different periods among the several wards and when such apportionment is made the members to hold for two years shall be chosen by lot, in the presence of the mayor and council.

SEC. 39. The mayor shall be elected for one year, and shall hold his office until his successor is elected and qualified.

SEC. 40. There shall be elected as hereinafter specified a justice of the peace, marshal, clerk, attorney, treasurer, health officer, city surveyor, street commissioner, harbor master, and an assessor, who shall be officers of the municipal corporation. The assessor and collector to be one officer, who shall be officers of the municipal corporation. The marshal shall be elected by the qualified voters of the corporation, and shall hold his office for one year or until his successor is elected and qualified. The common council shall annually, at the first regular meeting thereof, after the qualification of the new members elected at each annual city election, designate and appoint one of the justices of the peace for the precinct, within which such city is situate who shall have been duly elected and appointed and qualified as required by law, who shall be the justice of the peace of the city, and shall keep his office therein, and shall have jurisdiction over all crimes defined by any ordinance of the city and of all actions brought to enforce or recover any penalty or forfeit, declared or given by any such ordinances, and full power and authority to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith. All civil or criminal proceedings before such justice of the peace, under and by authority of this act, shall be governed and regulated by the general laws of this territory, relating to justices of the peace and to their practice and jurisdiction, and shall be subject to review in the district court of the proper district, by certiorari or appeal, the same as other cases: The attorney, clerk, treasurer, health officer, surveyor, street commissioner, and harbor master, and the assessor, shall be elected by the common council at the meeting above specified, and they shall be liable, at any time to be removed by the council, for malfeasance, inattention or incompetency.

SEC. 41. No person is eligible to any office in such municipal corporation who, at the time of his election or appointment, is not entitled to the privilege of an elector according to the laws of this Territory, and who has not resided in such city for the six months next preceding such election or appointment.

CHAPTER V.

ELECTIONS.

SEC. 42. There shall be a general election for all

city officers required to be elected under this act on the second Monday of July of every year.

SEC. 43. No person is qualified to vote at any election under this act who does not possess the qualifications in section forty-two of this act for officers. And who if under fifty years of age has not paid either a poll or property tax in such city for the fiscal year then last past, such payment to be proved by the proper official receipt therefor, except when such receipt is lost or mislaid, when it may be proved by the oath of the person offering to vote. And all officers required to be elected by this act except those elected by the common council shall be elected by the qualified voters of the city.

SEC. 44. That at all elections for city officers the vote shall be by ballot at the time and place designated by the common council.

SEC. 45. The city clerk under the direction of the council shall give ten day's notice by posting the same in at least two public places in each ward of the city, or by publication in some newspaper published in said city of such general election, the officers to be elected, the place designated for holding the election, and the judges and clerks appointed to conduct the same.

SEC. 46. All elections shall commence at nine o'clock A. M., and continue until five o'clock of the same day, without closing the polls. If any judge of election fails to attend, and serve at the proper time, the voters of the ward, then present, may elect another in his place, and if any clerk of election fails to attend and serve at the proper time, the judges of the election may appoint another in his place.

SEC. 47. Judges and clerks of election must possess the qualifications of voters in the ward where they act as such, but a mistake or error in this respect, or a failure to give the notice required by section 46 of this act shall not invalidate any election otherwise legal.

SEC. 48. On the first regular meeting of the council next after such election the returns thereof shall be canvassed by the city council, and the written statement of such canvass shall be made and signed by the presiding officer of the council and attested by the clerk, and immediately filed with the clerk. Such written statement of the canvass shall contain the whole number of votes given at such election, the number given for any person for any office and the names of persons elected, and to what office: *Provided*, That if the requisite number of city officers shall not be elected, by reason of two or more persons having an equal and the highest number of votes for one and the same office, the city council shall give notice to the several persons so having the highest and an equal number

of votes, to attend at the council chamber at an appointed time, and the said council shall then and there proceed publicly, to decide, by lot, which of the persons so having the highest and an equal number of votes shall be deemed duly elected, and a certificate of election shall be duly issued to the person thus declared elected as hereinafter provided.

SEC. 49. After such statement of the canvas is filed, the clerk shall make and sign within two days thereafter, a certificate of election for each person declared thereby to be elected, and deliver the same to him, on demand.

SEC. 50. A certificate of election is primary evidence of the facts therein stated, but the council is the final judge of the qualifications and election of the mayor and its own members; a contested election for any other office must be determined by the council according to the laws of the territory regulating proceedings in contested elections for county officers.

SEC. 51. The term of office of every person elected to office under this act, shall commence on the tenth day after the canvas of the election returns by the council, and terminate accordingly, except as otherwise provided by this act, and by such time such person must qualify by taking and filing the oath of office, and give such official undertaking for the faithful performance of his duties as may be required, or he shall be deemed to have declined, and the office considered vacant, except when there is a contest, in which case such person must qualify within ten days from the determination of such contest.

SEC. 52. All officers elected under this act, before entering upon the duties of their office, must take and file with the clerk, an oath of office to the following effect: "I, A. B., do solemnly swear (or affirm) that I will support the Constitution of the United States, and of this Territory, and that I will, to the best of my ability, faithfully perform the duties of the office of —, during my continuance therein. So help me God." If the person affirms, instead of the last clause, there must be added: "and this I promise under the pains and penalties of perjury."

SEC. 53. All laws of this territory regulating and governing general elections and proceedings, and matters incidental thereto, shall apply to and govern elections under this act, except as herein otherwise provided.

CHAPTER VI.

VACANCIES IN OFFICE.

SEC. 54. An office becomes vacant upon the death or resignation of the incumbent or failure to qualify as required; the office of the mayor, clerk, treasurer, assessor and collector shall be deemed vacant whenever the incumbent thereof shall be absent from the city for the period of sixty days; the office of marshal and the justice of the peace shall be deemed vacant whenever the incumbent shall be absent from the city for the period of twenty days; the office of the councilmen shall be deemed vacant whenever an incumbent shall fail to attend six regular consecutive meetings of the council, unless absent upon leave of the council first obtained.

SEC. 55. A vacancy in any office shall be filled by the council, at a regular meeting.

SEC. 56. An officer, appointed to fill a vacancy, must, within five days after being notified of the appointment, by the clerk, qualify therefor, as in the case of an officer elected, or he shall be deemed to have declined, and the office be considered vacant.

CHAPTER VII.

OF THE ORGANIZATION AND POWERS OF THE COUNCIL.

SEC. 57. The city council shall possess all the legislative powers granted by this act, and all other corporate powers of the city, not herein, or by some ordinance of the city, conferred on some other officer.

SEC. 58. The council must provide for the time and place of its regular meetings, at any of which, it may adjourn to the next regular meeting, or to some time prior thereto, and it may be convened by the mayor at any time, upon a day's notice given to each of the members.

SEC. 59. A majority of the members of the council shall

constitute a quorum to do business, but a less number may meet and adjourn from time to time and compel the attendance of absent members.

SEC. 60. The council may adopt rules for the government of the conduct of its members and its proceedings. It must keep a journal of its proceedings, and on the call of any one of its members, must cause the yeas and nays to be taken and entered in its journal, upon any question before it; but upon a question to adjourn, the yeas and nays shall not be taken, unless upon the call of four members. Its deliberations and proceedings must be public.

SEC. 61. The council may punish any member for disorderly or improper conduct at any meeting, or for refusing or neglecting to attend any regular meeting without sufficient excuse therefor, and may by a two-thirds vote expel a member.

SEC. 62. The mayor is ex-officio president of the council, and presides over its deliberations when in session. He is not entitled to vote, but has authority to preserve order, enforce the rules of the council, and determine the order of business subject to such rules and to an appeal to the council. If the mayor should be absent at any meeting of the council, the council must appoint one of their own number president, to serve during the meeting, or until the mayor attends.

SEC. 63. On the tenth day next following any general election, there must be a regular meeting of the council; and such meeting is appointed by this act, and no notice thereof, or call therefor is necessary.

SEC. 64. A majority of the whole number constituting the council, as then provided by law, is a majority of the council or members thereof, within the meaning of this act, and not otherwise, unless expressly so provided. The concurrence of a majority of a quorum is a sufficient majority to determine any question or matter, other than the final passage of an ordinance.

CHAPTER VIII.

THE MAYOR—HIS POWERS AND DUTIES.

SEC. 65. The mayor is the executive of the corporation. It is his duty annually at the first regular meeting in July, to communicate by message to the common council a general statement of the condition and affairs of the corporation, and to

recommend adoption of such measures as he may deem expedient and proper, and to make special communications to the council from time to time, as he may think proper and useful.

SEC. 66. The mayor shall take and approve all official undertakings, which the ordinances of this city may require any officer to give as a security for the faithful performance of his duty, or any undertaking which may be required of any contractor for the faithful performance of his contract, and when he approves such undertaking, he must immediately file the same with the clerk.

SEC. 67. He shall perform such other duties, and exercise such other authority as may be prescribed by this act, any city ordinance, or any law of the United States or of this Territory.

SEC. 68. Any ordinance which shall have passed the council, shall, before it becomes a law, be presented to the mayor for his approval; if he approves he shall sign it; if not, he shall within ten days, return it with his objections in writing to the council who shall cause the same to be entered on the journal, and shall proceed to reconsider the same. If after such reconsideration five-sevenths of the members of the council shall agree to pass the same, it shall become a law.

SEC. 69. During any temporary absence of the mayor from the city, or if he be unable for any reason to act, the council shall elect one of their own members who shall be the acting mayor, and perform all the duties of such office during such temporary absence or inability, except as is otherwise provided in this act.

CHAPTER IX.

THE POWERS AND DUTIES OF OTHER OFFICERS.

SEC. 70. The city attorney shall represent the city in all suits or proceedings in which the city is legally interested, and give his advice and opinion in writing concerning any matter in which the city is interested, when required by the mayor or council; but the city may employ additional counsel when deemed advisable by the council.

SEC. 71. It shall be the duty of the clerk to keep a fair and correct journal of the proceedings and to file and keep all papers and books of the city council. The clerk is authorized to administer any oath required to be taken in connection with the duties of his office.

SEC. 72. All demands and accounts against the city must be presented to the clerk with the necessary evidence in support thereof, and he must submit the same to the council, who shall, by a vote, direct whether the same shall be paid, or any part thereof, as they may deem it just and legal.

SEC. 73. When the council orders any demand or account to be paid, if money has been appropriated for that purpose, and not otherwise, the clerk must draw a warrant upon the treasurer for the amount ordered paid, which warrant must be drawn on the special or general fund appropriated therefor, and be signed by the mayor and attested by the clerk.

SEC. 74. The clerk must keep proper books of account, showing therein all sums appropriated, the date thereof, and out of what fund, the date and amount of all warrants drawn thereon, and to whom payable, and all such other matters and things as may be prescribed by ordinance, or proper and necessary to a correct understanding of the city finances.

SEC. 75. The treasurer is receiver of taxes and must receive and keep all moneys that shall come to the city, by taxation or otherwise, and pay out the same upon the warrant of the mayor attested by the clerk.

SEC. 76. The treasurer must keep an account with the general fund, and a separate account with each special fund that may be raised for any specific object, and when a warrant is drawn on any particular fund, it can only be paid out of such fund.

SEC. 77. The treasurer must make a report of the receipts and expenditures to the common council at the first regular meeting in the months of December and June of each year which report shall be published in any newspaper published in the city.

SEC. 78. The assessor must annually make a correct list of all the property subject to taxation by the city, with the valuation thereof, and certify and return the same to the clerk.

SEC. 79. A person feeling himself aggrieved by any such assessment either in the valuation or listing of the property, may apply in writing to the council, to have such assessment revised, and if the council deem the same erroneous they must correct it. The party applying for such correction may be examined as a witness in relation to the matter, if he desire it, or the council require it.

SEC. 80. The assessment of property must be made in the manner prescribed by law for assessing property for territorial and county taxes; but the form of the assessment roll, and the rule for ascertaining the ownership of property, and in whose name it may be assessed, may be prescribed by ordinance, and

the time of making such assessment and the return thereof, and of applying to the council for a revision thereof must be prescribed by ordinance.

SEC. 81. The marshal is a peace officer and must execute all process issued by the justice of the peace of the city or directed to him by any magistrate of the territory; he must attend regularly upon the court of said justice of the peace and the meetings of the council, he has power by and with the approval of the council, to appoint one or more deputies, who shall possess the same power. He shall make arrests for breach of the peace or for commission of a crime within the city limits, with or without warrant, as a peace officer may do under the laws of the territory, he shall exercise a vigilant control over the peace and quiet of the city, and he is the keeper of the city prison, or house of correction, unless otherwise prescribed by ordinance.

SEC. 82. The marshal must keep a correct record of all arrests made by him or his deputies, showing the time, cause or complaint upon which said arrest was made, and must make a full and complete report in writing each month, to the city council.

SEC. 83. The justice of the peace of the city shall, before exercising any of the functions of his office as such, give a bond to the city in such sum and with such conditions as the council may require. He must keep a proper account of all fines, costs, or other moneys received by him when acting under and by authority of this act, and he must pay to the treasurer monthly all such moneys and take duplicate receipts therefor, one of which he must file with the clerk.

SEC. 84. The powers and duties of all other officers of the city shall be as prescribed by ordinance.

SEC. 85. The official books and papers of all the city officers are city property, and must be kept as such by such officers during their continuance in office, then delivered to their successors.

SEC. 86. The official books and papers of any officer mentioned in this act may be inspected at any time by a committee of the council appointed for that purpose.

CHAPTER X.

ORDINANCE.

SEC. 87. The style of every ordinance shall be, "The city

of ———, does ordain as follows:” All ordinances and resolutions, or orders for the appropriation or payment of money, shall require, for their passage and adoption, the concurrence of a majority of all the members of the council; no ordinance shall contain more than one subject, which shall be clearly expressed in its title, and no ordinance or section thereof, shall be revised or amended, unless the new ordinance contain the entire ordinance or section revised or amended; and the ordinance or section so amended, shall be repealed.

SEC. 88. All ordinances shall, as soon as may be, after their passage, be recorded in a book kept for that purpose, and be authenticated by the signature of the presiding officer and the clerk, and all those of a general or permanent character, and those imposing any fine, penalty, or forfeiture, shall be published in some newspaper of general circulation within the city, and it shall be a sufficient defense, to any suit or prosecution for such fine, penalty or forfeiture, to show that no such publication was made, and such ordinances shall take effect and be in force at the expiration of five days after they have been published.

CHAPTER XI.

OF THE COLLECTION OF DELINQUENT TAXES.

SEC. 89. The assessor shall annually make out a list of the names of all persons within the city, liable to pay a road poll tax, as provided in section seven of this act, and return such list to the council with his assessment of property; said list of names shall be given to the treasurer, and he shall at once proceed to collect such poll tax as the council may have levied for the year, from each person upon said list, the treasurer shall place upon his list, the names of all persons found within the city, liable to pay such poll tax, who shall fail to produce a receipt for the payment of a road poll tax for the current year, he shall demand the amount due from each person named upon the list, and shall proceed at once to collect the same, from any person who shall fail to pay the same, when so demanded by levy and sale of the property real or personal, of such person so delinquent, or sufficient thereof for that purpose, and to pay the expenses of the levy and sale: *Provided*, That any person may pay said poll tax, in work upon the streets of the city, under the direction of the street commissioner, at the rate of two dollars per day. Any person having men em-

ployed either for himself or a company, shall, when required, provide a list of the names of all such persons so employed, liable to pay such road poll tax, and if such employer, or agent of the employer, shall fail to furnish such list or shall furnish an incomplete or otherwise incorrect one, then said employer or company shall be liable for the amount of the road poll tax of his or their employees, and shall pay the road poll tax due by such men or the men so employed, on being notified in writing by the treasurer.

SEC. 90. Whenever any general or special tax has been levied as provided and authorized in chapter III, of this act, every part thereof shall bear interest at the legal rate, from the time it is due and payable, until paid or collected; and all such taxes shall be a lien upon the real estate upon which the same were assessed which shall be prior to all other liens except for a prior tax.

SEC. 91. The council must provide by ordinance within what time all taxes, levied as provided and authorized in chapter II, may be paid to the treasurer; and all taxes not paid to the treasurer within such time, are thereafter delinquent taxes, and must be collected as such. Within five days from the expiration of the time limited for paying taxes to the treasurer, he must return the tax roll to the council, distinguishing thereon the taxes paid and those remaining unpaid.

SEC. 92. The council must thereafter order the clerk to deliver the tax roll to the treasurer of the county within which the city is located and issue and annex thereto a warrant directed to said treasurer, commanding him to proceed and forthwith to collect the delinquent taxes upon such roll, in the manner provided by law, and pay the same to the treasurer, less his fees and costs of collection, and return the warrant with his doings thereon, and the receipt of the city treasurer, for all moneys collected thereby and paid to the city treasurer, to the clerk.

SEC. 93. Such warrant for the purpose of collecting such delinquent taxes shall be deemed an execution against property, and shall have the force and effect thereof against any person, firm or corporation, against whom such taxes are levied or charged on the tax roll, and shall be executed and returned in like manner, except as in this chapter otherwise provided.

SEC. 94. The county treasurer shall proceed to collect the taxes upon such roll at the same time and in the same manner as he is required to do in collecting delinquent territorial and county taxes; and for such purposes he shall have the same authority as is given to him by the laws of the Territory relating to the assessment and collection of Territorial and county taxes. He shall pay to the city treasurer monthly all moneys

collected and due the city as provided in section 93 of this act.

Sec. 95. Whenever any property, real or personal, sold for delinquent taxes, shall bring more than the amount of such taxes, with interest and the costs and charges of collection, the surplus must be paid to the treasurer, and the person executing the warrant must take a separate receipt for such surplus and file the same with the clerk on the return of the warrant. At any time thereafter the owner of the property sold, or his legal representative, is entitled to a warrant upon the treasurer for such surplus.

Sec. 96. The council may provide, by ordinance, within what time a warrant for the collection of delinquent taxes, must be returned, and may order an alias warrant to issue for the collection of any such taxes not made on a previous one. All costs and charges for collecting delinquent taxes, must be made on the warrant, and collected as part of the tax; council may prescribe by ordinance, the fees and compensation for collecting delinquent taxes, but the same shall in no case be paid out of the treasury.

CHAPTER XII.

MISCELLANEOUS PROVISIONS.

Sec. 97. Such cities are not bound by any contract or in any way liable thereon, unless the same is authorized by a city ordinance and made in writing, and by order of the council, signed by the clerk, or some other person in behalf of the city; but an ordinance may authorize any officer or agent of the city, naming him, to bind the city without a contract in writing, for the payment of any sum of money not exceeding fifty dollars.

Sec. 98. Such cities shall be liable to any one for any loss or injury to person or property, growing out of any casualty or accident happening to such person or property on account of the condition of any street or public ground therein. But this section does not exonerate any officer of such city or any other person from such liability, when such casualty or accident is caused by the willful neglect of a duty enjoined upon such officer, or person by law or by gross negligence or willful misconduct of such officer or person in any other respect.

Sec. 99. No money shall be drawn from the city treasury but in pursuance of an appropriation for that purpose made by ordinance, and an ordinance making an appropriation of money

must not contain a provision upon any other subject, and if it does, such ordinance as to such provisions shall be void, and not otherwise.

SEC. 100. A member of the council for words uttered in debate therein, shall not be questioned in any other place.

SEC. 101. The fiscal year of the city shall commence on the first day of July and end on the last day of June of each year.

SEC. 102. In any action, suit or proceedings in any court concerning any assessment of property or levy of taxes authorized by this Act, or the collection of any such tax or proceeding consequent thereon, such assessment, levy, consequent proceeding, and all proceedings connected therewith, shall be presumed to be regular and duly done or taken until the contrary is shown; and when any proceeding, matter or thing is by this act committed or left to the discretion of the council, such discretion or judgment, when exercised or declared, is final and cannot be reviewed or called in question elsewhere.

SEC. 103. The city council is hereby authorized to grant the right to use the streets of said city for the purpose of laying gas pipes intended to furnish the inhabitants of said city with light, to any person or association of persons, for a term not exceeding twenty-five years; and the council may adopt such rules and regulations in granting such exclusive right as they may think proper, and as shall not be inconsistent with law.

SEC. 104. In making a deed for real property sold for delinquent taxes, it is not necessary to recite or set forth the proceedings prior to the sale, but it is sufficient if it substantially appear from such deed that the property was sold by virtue of a warrant from the city for a delinquent tax, and the amount thereof, together with the date of the sale and the amount paid thereat by the purchaser. The style of a warrant for the collection of delinquent taxes shall be in the name of such city.

SEC. 105. The mayor and councilmen are not entitled to and must not receive any salary or compensation for their official service.

SEC. 106. All real property within the limits of such city, not laid off in blocks at the time of making any assessment authorized by this act, must be assessed at its cash value per acre, or fraction thereof as the case may be.

SEC. 107. The city council may divide the city into not less than three nor more than seven wards, and shall apportion the members of the city council to be elected in each, and pro-

vide places for holding elections in each, and appoint officers for conducting the same.

SEC. 108. No street, highway or alley shall be extended, widened, altered or vacated, except on petition to the city council, signed by a majority of the resident owners of real estate within the ward or wards, in or through which such street, highway or alley is proposed to be extended, widened, altered or vacated.

SEC. 109. When the grade of any street, highway or alley shall have been established by authority of such city, and any person or persons, shall have built or made improvements on such street, highway or alley, and the city shall afterward change the established grade or shall change the boundary lines of any block, street, highway or alley in such manner as to injure or diminish the value of the property, which shall have been improved, the city shall pay to the owner or owners of the property so injured, the amount of such damage; and when the parties interested are unable to agree with the city council as to the amount so to be paid, the same shall be assessed by three persons, one of whom shall be appointed by the mayor, one by the owner or owners of the property and one by the two so appointed, or, in case of their disagreement, by the city council; said appraisers shall be sworn to faithfully execute their duties according to the best of their ability, they shall view the premises and receive any legal evidence, and may adjourn from day to day, but shall make their report within thirty days from the time of their appointment; they shall assess the damage sustained over and above the additional value of the property, by reason of the change or improvement; they shall sign their report and deliver the same to the clerk of the district court, of the district embracing the city and if no objection is made thereto, in the manner herein after prescribed, within twenty days thereafter, the assessment shall be final, and the city shall pay the amount so assessed, and upon filing a precipe therefor, the party entitled, may have a judgment entered therefor. If the damage so assessed be excessive or insufficient, the clerk shall upon filing a written precipe therefor, by the city or any person aggrieved, within said twenty days, enter the case upon the trial docket, for the next term; the party claiming damages shall be the plaintiff and the city shall be the defendant; the usual pleadings in a civil action, may be filed or such special pleadings as the court shall allow, and the issues thus formed, shall be tried as other civil actions. The costs shall be taxed against the city, only when the judgment is for a larger amount than was awarded by the appraisers, or the cause has been tried at the instance of the city, for the purpose of reducing the amount of damages, and the damages are not so

reduced, otherwise the costs shall be taxed against the parties claiming damages.

SEC. 110. When private property shall have been condemned, and the compensation to be paid therefor shall be made a charge upon the property benefited thereby, as provided in section eleven of this act, the assessment upon the various lots or parcels of land so charged and the appraisement of damages to be paid to the owners of the property condemned, shall be made by three persons, one of whom shall be appointed by the mayor, one by the owner or owners of property subject to assessment, and one by the owner or owners of property condemned or damaged, or if either or both said classes of property owners fail or refuse to make such appointment after ten days' notice so to do, which notice shall be given in the manner to be prescribed in the ordinance, providing for such condemnation of property, either or both such appointments shall be made by the city council. The persons so appointed shall be sworn; shall proceed in making the assessment, and shall report within the time and in the manner prescribed for appraisements in the preceding section; their award shall be final, unless objection is made within twenty days from the time of the return thereof, to the clerk of the district court. Any party aggrieved by the award, may, upon filing a precipe therefor, have the case docketed for trial at the next term of the court, when the issue in such case is between an owner of property condemned or damaged, and the city; such party shall be plaintiff and the city defendant; and when the issue to be tried, relates to excessive or unfair assessments upon property, the city shall be plaintiff and the owner of the property defendant; the issue shall be made up, the case tried and determined, and costs taxed as provided in the preceding section, provided that all costs taxed against the city, and all costs of the appraisements and other proceedings under this section, shall be added to the gross amount to be raised by assessment and collected from the several property holders, in the same proportion as said gross amount, and said assessments and costs, shall be a lien upon the property therewith charged.

SEC. 111. In all other cases where private property is condemned or taken for public use by authority of this act, the city shall pay a fair compensation therefor to the owners of such property, and when such owners and the city council are unable to agree as to the amount of such compensation, the same shall be assessed and determined in the manner provided by the general laws of this Territory, relating to the mode of proceeding to appropriate lands by private corporations.

SEC. 112. No special tax for any purpose as provided in this act shall be assessed unless by a majority vote of all resi-

dent property holders in any city hereafter incorporated under this act.

SEC. 113. This act shall take effect and be in force from and after its approval by the Governor.

Approved, November 9th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT RELATIVE TO CRIMES AND PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES APPROVED NOV. 10TH 1873.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section one hundred and ten of chapter six of an act entitled an act relative to crimes and punishments and proceedings in criminal cases approved, November 10th, 1873 be amended to read as follows:

SECTION One hundred and ten, 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 purpose any gaming device whatever, and every white man, negro, half-breed Indian Kanaka, or Chinaman who shall play at any game of cards or any game of chance with any Indian for fun, pleasure, luck, money, or anything of value whatever or for any thing whatever, or any white man, negro, half-breed Indian, Kanaka, or Chinaman, who shall run horses on a wager of any kind or for pastime, with an Indian shall be subject on conviction therefor, for each and every offence to a fine of not less than fifty and not exceeding five hundred dollars or to both a fine and imprisonment not exceeding six months. And it is hereby made the duty of any prosecuting attorney, sheriff, constable, or justice of the peace having knowledge of the violation of this section to report the same to a justice of the peace in the county in which such offence was committed or the grand jury acting for such county.

SECTION 2. This act to take effect from and after its approval.

Approved, November 9th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT RELATING TO JUSTICES OF THE PEACE AND TO THEIR PRACTICE AND JURISDICTION," APPROVED NOVEMBER THIRTEENTH, ONE THOUSAND EIGHT HUNDRED AND SEVENTY-THREE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act of the Legislative Assembly approved November thirteenth one thousand eight hundred and seventy-three entitled "An act relating to justices of the peace, and to their practice and jurisdiction;" be and the same is hereby amended as follows, That is to say:

Subdivision two, of section seventeen of said act shall read as follows:

2. Of an action for damages for injury to the person, or for taking or detaining personal property or for injuring personal property, or for an injury to real property when no issue is raised by the answer involving the plaintiff's title to, or possession of the same if the damages claimed do not amount to one hundred dollars also of actions to recover the possession of personal property, when the value of such property does not amount to one hundred dollars.

SECTION 2. The following additional sections are incorporated into said act, the same to follow after section 39 viz:

SECTION —. Personal property, capable of manual delivery, shall be attached by taking it into custody, 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; debts and credits and others 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.

SECTION —. 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 or other person or officer having the writ 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.

SECTION —. 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, constable, or other officer or person having the writ 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.

SECTION —. 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 justice of the peace by whom the writ was issued, 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 justice may after such examination, order personal property capable of manual delivery to be delivered to the sheriff, constable or other officer or person having the writ 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 personal property containing the amount and description thereof.

SECTION —. The sheriff, constable, or other officer, having the writ 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.

SECTION —. If any of the property attached be perishable, the officer or person having the writ shall sell the same in the manner in which such property is sold on execution. The pro-

ceeds 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 the officer or person having the writ if the same can be done without suit. The officer's receipts shall be a sufficient discharge for the amount paid.

SECTION —. If any property attached be claimed by any other person than the defendant or his agent, and the claimant 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 or person having the writ before while the property is in his possession, such officer, or person shall not be bound to keep the property, unless the plaintiff on demand indemnify him against such claim by a bond executed by at least two sufficient sureties who must be residents of the county, and able to prove that they are each worth double the value of the property attached over and above all debts and liabilities exclusive of property exempt from execution, and no claim to property attached 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.

SECTION —. When a claim is made to property in the manner provided in the last section the officer shall at once make a return of the writ with his doings endorsed thereon, and deliver the claimant's affidavit to the justice, who shall file the same and cause notice thereof to be given to the plaintiff or his attorney and if the property be not released for failure on the part of the plaintiff to indemnify the officer, he shall set the case for hearing upon the allegations of the affidavit and the case shall be tried as a new action between the claimant as plaintiff, and the officer and the plaintiff in the attachment, suit, as defendants, and the case shall proceed as other civil actions, and, if either party demand it, a jury may be empaneled as in other cases.

SECTION —. If in such suit the claimant establish his title or right to the possession of the property, judgment shall be rendered in his favor for possession of the property and for costs against the plaintiff in the attachment; if he fail to establish his title or right to the property, judgment shall be rendered against him for costs.

SECTION —. After judgment in the attachment suit, the property attached shall be disposed of in the same manner as provided by law for similar cases in the district courts.

SECTION [3.] Section forty-four of the act of which this act is amendatory is hereby amended to read as follows:

“SECTION forty-four. Property attached may be released by the defendant giving a bond in such amount as the justice may designate with good and sufficient sureties, conditioned for the payment of any judgment that may be recovered against him in the action and the costs thereof; or by claiming that the property is exempt, in which case the question of exemption shall be tried by the justice summarily: *Provided however*, That if either party demand it a jury may be empaneled and the matter may be tried before the court and jury as other civil actions, and so much of the property as shall be decided to be exempt shall be released and delivered to the defendant.”

SECTION [4.] Section sixty-nine of the act of which this act is amendatory is hereby amended to read as follows:

“SECTION sixty-nine. Before the justice shall commence an investigation of the merits of the cause either party may demand that the cause be tried by a jury: *Provided*, That the party demanding the jury shall first pay to the justice the sum of six dollars which shall be paid over by the justice to the jury before they are discharged, and said amount shall be taxed as costs against the losing party.

SECTION [5.] Section seventy-two of the act of which this act is amendatory is hereby amended to read as follows:

“SECTION seventy-two. 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 make a list of the persons, summoned, which he shall certify and annex to the venire and return the same 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 and all jurors summoned under the provisions of this act shall receive the same compensation from the time they are summoned until discharged as is allowed to witnesses under the provisions of this act.

SECTION [6.] Section one hundred and six is hereby amended to read as follows:

“SECTION one hundred and six. If any property levied on be claimed by any other person than the defendant in the execution, and the claimant make affidavit of his title or right to the possession of the same, stating the ground of such title or right, and serve the same upon the sheriff or constable, while the property is in his possession said sheriff or constable shall not be bound to keep the property unless the plaintiff on demand indemnify him in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit and when such claim is made

the sheriff or constable shall immediately file the claimant's affidavit with the justice and notify the plaintiff thereof and unless the property be at once released the justice shall set the case for trial upon the allegations of the claimant's affidavit and the case shall proceed and be determined in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit.

SECTION [7.] Section one hundred and ninety-six of this [the] act of which this act is amendatory is hereby so amended as to read as follows:

SECTION One hundred and ninety-six. 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 holden for the district embracing the county. The appeal shall be taken by orally giving notice thereof at the time the judgment is rendered, or by serving a written notice thereof upon the justice at any time after the judgment and within the time allowed for taking the appeal, when the notice is given orally the justice shall enter the same in his docket. The appellant shall be committed to abide the sentence of said justice until he shall recognize or give a bond to the Territory in such reasonable sum with such sureties as said justice may 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 if not revised by a higher court and in the mean time to be of good behavior.

SECTION [8.] Section two hundred and thirty-one of the act of which this act is amendatory is hereby so amended as to read as follows:

SECTION two hundred and thirty-one. 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. *Provided* That when the magistrate is satisfied that any witness required to recognize with sureties is unable to comply with such order he shall immediately take the deposition of such witness and discharge him from custody upon his own recognizance. The testimony of the witness shall be reduced to writing by the justice or some competent person under his direction and he shall take only the exact words of the witness; the deposition except the cross examination, shall be in the narrative form, and upon the cross examination the questions and answers shall be taken in full. The defendant must be present in person when the deposition is taken and shall have an opportunity to cross examine the witness and he may make any objections to the admission of any part of the testimony and all objections shall be noted by the justice but he

shall not decide as to the admissibility of the evidence but shall take all the testimony offered by the witness. The deposition must be carefully read to the witness and any corrections he may desire to make thereto shall be made by adding the same to the deposition as first taken, it must be signed by the witness, and certified by the justice and transmitted to the clerk of the district court in the same manner as depositions in civil actions. And if the witness is not present when required to testify in the case either before the grand jury or upon the trial in the district court, the deposition shall be submitted to the judge of such district court upon the objections noted by the justice and such judge shall suppress so much of said deposition as he shall find to be inadmissible and the remainder of the deposition may be read as evidence in the case, either before the grand jury or upon the trial in the court.

SECTION [9.] This act shall take effect and be in force from and after the day of its approval by the Governor.

Approved November 9th 1877.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT RELATIVE TO CRIMES AND PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES, APPROVED NOVEMBER TENTH ONE THOUSAND EIGHT HUNDRED AND SEVENTY-THREE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act of the Legislative Assembly approved November tenth one thousand eight hundred and seventy-three entitled an act relative to crimes and punishments and proceedings in criminal cases, be and the same is so amended that section two of said act shall read as follows:

SECTION TWO 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: *Provided always* that in any case where a witness or witnesses whose deposition or depositions have been taken by a committing magistrate pursuant to law are absent and cannot be found when required to testify in such case so much of such deposi-

tion or depositions as the court shall decide to be admissible and competent shall be admitted and read as evidence in such case and on the trial of any indictment the party accused 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 and no person shall be put upon trial on an indictment for a felony until the expiration of five days from the day of his arrest or upon an indictment for murder until thirty days from his arrest without his consent thereto in open court.

SECTION 2. The following additional section shall be and the same is incorporated into and made part of said act the same to follow after section ninety-six of said act; viz

SECTION —. Every person charged with the performance of any duty under the provisions of any law of this Territory relating to elections who wilfully neglects or refuses to perform such duty or who in the performance of such duty or in his official capacity knowingly or fraudulently acts in contravention or violation of any of the provisions of law relating to such duty shall on conviction thereof be fined in any sum not exceeding one thousand dollars to which punishment may be added imprisonment in the county jail for a term not exceeding one year: *Provided however*, That no person shall be put on trial upon an indictment for murder in the first degree within thirty days from the day of his arrest without his consent thereto in open court.

SECTION 3. The following additional section shall follow section one hundred and fifteen; viz

SECTION —. Every person who shall moor or chain any steamer, sloop, scow, or other vessel, or raft, or boom of logs to the piling, piers abutments, or other supports, of any bridge within this Territory shall on conviction thereof be fined in any sum not exceeding three hundred dollars nor less than fifty dollars.

SECTION 4. The following additional section shall follow section one hundred and twenty-eight, of chapter seven, of the act to which this is amendatory; that is to say:

SECTION —. Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of section one hundred and twenty-eight, shall be punishable by imprisonment in the penitentiary, not more than four years nor less than one year, and may in addition thereto be fined in any sum not exceeding five hundred dollars.

SECTION 5. Section one hundred and thirty-seven of said act shall read as follows:

SECTION one hundred and thirty-seven. Every person who shall knowingly sell or give to a minor intoxicating or spirituous liquors without the written permission of the parent or guardian of such minor, shall on conviction thereof be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for a term not exceeding three months, or both.

SECTION 6. The following additional section shall follow section one hundred and forty-two of said act viz

SECTION —. Every person who shall be guilty of an attempt to commit any crime shall be punished by fine, or imprisonment, or both, not exceeding one-half the fine and one-half the imprisonment imposed by law as the greatest punishment for the principal offense, and where by law the punishment for the principal offense is imprisonment in the penitentiary the punishment for an attempt to commit the same may, in the discretion of the court, be by imprisonment in the county jail.

SECTION 7. The following additional section shall be and the same is made part of chapter twenty-two, and shall precede section two hundred and thirty-nine of said act viz:

SECTION —. A continuance may be granted in any case on the ground of the absence of evidence on the motion of the defendant supported by 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 place of residence of the witness or witnesses; and the substance of the evidence expected to be obtained and if the prosecuting attorney 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 continuance shall not be granted.

SECTION 8. Section two hundred and eighty-seven of said act shall read as follows; viz

SECTION two hundred and eighty-seven. When a defendant is committed to jail on failure to pay any fine or costs he shall under the order of the county commissioners work out the amount of the fine and costs at the rate of three dollars per day; and in case he shall so work out the fine and costs or in case he shall not be able to work, or the county commissioners fail to provide work, and he shall have been confined in the county jail one day for every three dollars of such 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 the order of the county commissioners, cause such person to work his unexpired term of imprisonment in such manner as said county commissioners may direct;

SECTION 9. Section two hundred and ninety-eight of said act shall read as follows.

SECTION two hundred and ninety-eight. Writs of error shall be sued out by the filing of precipe therefor signed by the plaintiff in error or his attorney with the clerk of the supreme court and shall be issued by said clerk under seal of the supreme court and be sent by said clerk by mail or by a messenger who shall be a person not a party to or interested in the case to the clerk of the district court and notice of the taking of such writ shall be issued by the clerk of the district court within three days after he receives the writ and shall be served upon the prosecuting attorney of the district or defendant, or his attorney in the same manner as notice in a civil action; and within ten days after the writ is received by the clerk of the district court the plaintiff in error shall file with the clerk of the district court an assignment of errors specifically pointing out each error complained of.

SECTION 10. Section three hundred and twenty-one of said act shall read as follows

SECTION three hundred and twenty-one No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment is 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 but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases.

SECTION eleven No prosecution for offenses committed prior to the approval of this act shall be in any manner affected by this act except that the proceedings, in such cases shall conform to the requirements of this act, and the penalty for such offenses shall be as herein prescribed.

SECTION twelve. This act shall take effect and be in force from and after the day of its approval by the governor.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR THE ELECTION OF JUSTICES OF THE PEACE IN
CASE OF VACANCY.

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

SECTION 1. Whenever a vacancy shall exist in the office of justice of the peace, in any precinct of any county in this Territory, the same shall be filled by election.

SECTION 2. When any auditor of any county shall have filed with him by any legal voter of a precinct in which a vacancy exists, a written certificate of any vacancy, if he be satisfied that there is a vacancy, he shall post or cause to be posted three notices to the legal voters in said precinct calling an election to fill such vacancy in the office of justice of the peace in said precinct, which notices shall also set forth the time when and place where the polls shall be held, and be posted in three public places in the precinct, provided that no such notices shall be posted if said written certificate is filed with the auditor within ninety days next preceding any general election.

SECTION 3. Whenever ten legal voters shall have assembled, at the place named for holding such election for justice of the peace, they may elect three of their number as judges for said special election, two of whom shall act as clerks; and they are hereby required to take an oath and make a return to the county auditor, as officers of election are now, by law, required to do.

SECTION 4. Whenever a special election is held under the provisions of this act, the polls shall be opened at eleven o'clock A. M. or so soon thereafter, not more than two hours, as ten persons are present, and in a precinct where no more than fifty votes were polled at the then preceding general election, shall be kept open two hours; when over fifty votes were cast at the last preceding general election four hours.

SECTION 5. Every person elected a justice of the peace under the provisions of this act, shall qualify in the same manner as if elected at a general election, and shall hold his office until the next general election and till his successor is elected and qualified.

SECTION 6. The judges of the special election herein provided for shall appoint one of their number messenger to convey the returns of said election and file the same with the county auditor, for which he shall receive two dollars and mileage each way at the rate of ten cents per mile; and no further fees shall be paid the said judges of election.

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

Approved November 6th 1877.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT DEFINING THE JURISDICTION AND PRACTICE IN THE PROBATE COURTS OF WASHINGTON TERRITORY," APPROVED NOVEMBER ELEVENTH, ONE THOUSAND EIGHT HUNDRED AND SEVENTY-THREE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act of the Legislative Assembly, approved November eleventh, one thousand eight hundred and seventy three, entitled "An Act Defining the Jurisdiction and Practice in the Probate Courts of Washington Territory," be, and the same is hereby amended as follows, that is to say; section six of said act, shall be, and the same is so amended as to read as follows:

SECTION six. A regular term of the probate court shall be held at the county seat of each county, commencing on the fourth Monday of January, March, May, July, September and November in each year, for the transaction of all business of which said court has jurisdiction. *Provided,* That if any district court be in session at such time the probate court of the county in which such district court is held, shall stand adjourned until the first Monday, after the close of such term of the district court.

SECTION 2. Section three hundred and twenty-seven (327) of said act, shall be and the same is so amended as to read as follows:

SECTION three hundred and twenty-seven. The probate court of any county in this Territory, or the judge thereof, upon application of any person under oath setting forth that any person be 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 or judge at such time and place, as the court or judge may direct; and shall cause to appear 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 and filed with the other papers in the case; and if the said physician or physicians shall certify to the insanity or idiocy of said person, and it appear to the satisfaction of the court or judge that such is the fact, said court or judge shall cause such insane or idiotic person to be taken to and placed in the hospital for the insane in Washington Territory. *Provided*, That such person or any person in his behalf, may demand a jury to decide upon the question of his insanity, and the court or judge shall discharge such person if the verdict of the jury is that he is not insane. Said court or judge shall also inquire as to the ability of such insane or idiotic person to bear the expense of his keeping in said hospital, and shall certify the result to the trustees of the hospital for the insane in Washington Territory, and in case such person shall have sufficient means to bear such expense, said court or judge shall cause to be paid to the Territorial Treasurer the amount of two months' expenses in said hospital in advance and a like amount regularly every two months thereafter so long as such person remains under treatment in said hospital if he shall have means sufficient therefor. *Provided, however*, That if such person be the head of a family, no property that is by law exempt from execution or attachment for debt shall be taken to pay such expenses.

SECTION 3. All of sections ninety-four (94) ninety-five (95) ninety-nine (99) one hundred (100) one hundred and two (102) and one hundred and three (103) of the act of which this act is amendatory are hereby repealed. Section one hundred and forty six shall be, and the same is amended to read as follows:

SECTION one hundred and forty-six. 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 and if the head of the family in his or her lifetime had not complied with the provisions of the law relative to the acquisition of a homestead the widow or the child or children shall be entitled to a homestead as now provided by law for the head of a family, and the same shall be set aside for the use of the child or children or widow

on a petition by such widow or the guardian of such child or children.

SECTION 4. The following additional sections shall be, and the same are hereby incorporated into and made a part of said act to which this act is amendatory, the same to follow after section three hundred and sixty-six of said act and to read as follows:

SECTION Three hundred and sixty-seven. Before letters testamentary or of administration are issued to the executor or administrator he must take and subscribe an oath before some person authorized to administer oaths, that he will perform according to law, the duties of his trust as executor or administrator, which oath must be attached to and recorded with the letters.

SECTION Three hundred and sixty-eight. Every person to whom letters testamentary or of administration are directed to issue must before receiving them; execute a bond to the Territory of Washington with two or more sufficient sureties to be approved by the probate judge. In form the bond, must be joint and several, and the penalty must not be less than twice the value of the personal property, and twice the probable value of the annual rents, profits and issues of the real property belonging to the estate; which values must be ascertained by the probate judge by examining on oath the party applying, and any other persons.

SECTION Three hundred and sixty-nine. The probate judge must require an additional bond, whenever the sale of any real estate belonging to an estate is ordered by him; but no such additional bond must be required when it satisfactorily appears to the court, that the penalty, of the bond given, before receiving letters or of any bond, given in place thereof, is equal to twice the value of the personal property remaining in or that may come into the possession of the executor or administrator including the annual rents profits and issues of real estate and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

SECTION Three hundred and seventy. The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

SECTION Three hundred and seventy-one. When two or more persons are appointed executors or administrators, the probate judge must require and take a separate bond from each of them.

SECTION Three hundred and seventy-two. The bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

SECTION Three hundred and seventy-three. In all cases where bonds or undertakings are required to be given under this title the sureties must possess the qualifications and justify thereon in the same manner as required by the civil practice act for bail upon an arrest and the certificate thereof must be attached to, and filed and recorded with the bond or undertaking. All such bonds and undertakings must be approved by the probate judge before being filed or recorded.

SECTION Three hundred and seventy-four. Before the probate judge approves any bond required under this title, and after its approval, he may of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the executor or administrator, requiring his appearance on the return of the citation, and on its return, he may examine the sureties and such witnesses as may be produced touching the property of the sureties and its value; and if upon such examination he is satisfied that the bond is insufficient he must require sufficient additional security.

SECTION Three hundred and seventy-five. If sufficient security is not given within the time fixed by the judge's order the right of such executor or administrator to the administrator [tion] shall cease, and the person next entitled to the administration on the estate, who shall execute a sufficient bond must be appointed to the administrator [tion].

SECTION Three hundred and seventy-six. When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue, and sale of real estate be made and confirmed without any bond, unless the court, for good cause, require one to be executed but the executor may at any time afterwards if it appear from any cause necessary or proper, be required to file a bond, as in other cases.

SECTION Three hundred and seventy-seven. Any person interested in an estate may, by verified petition, represent to the probate judge that the sureties of the executor or administrator thereof, have become or are becoming insolvent, or that they have removed, or are about to remove from the Territory, or from any other cause the bond is insufficient, and ask that further be required.

SECTION Three hundred and seventy-eight. If the probate judge is satisfied that the matter requires investigation citation must be issued to the executor or administrator, requiring him to appear, at a time and place specified, to show cause why he

should not give further security. The citation must be served personally on the administrator or executor, at least five days before the return day. If he has absconded, or cannot be found, it may be served by leaving a copy of it at his last place of residence, or by such publication as the court or judge may order.

SECTION Three hundred and seventy-nine. On the return of the citation, or at such other time as the judge may appoint he must proceed to hear the proof and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time not less than five days.

SECTION Three hundred and eighty. If the executor or administrator neglects to comply with the order within the time prescribed, the judge must by order revoke his letters, and his authority must thereupon cease.

SECTION Three hundred and eighty-one. When it comes to his knowledge that the bond of any executor or administrator is from any cause insufficient the probate judge without any application, must cause him to be called to appear and show cause, why he should not give further security, and must proceed thereon as upon the application of any person interested:

SECTION Three hundred and eighty-two. The application, and acts, authorized by the foregoing sections may be heard and determined in term time, or in vacation. All orders made therein must be entered upon the minutes of the court.

SECTION Eight hundred and eighty-three. Whenever the probate judge has reason to believe from his own knowledge, or from credible information, that [any] executor or administrator has wasted, embezzled or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge or has committed, or is about commit a fraud upon the estate, or is incompetent to act, or has permanently removed from the Territory, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must by order entered upon the minutes of the court suspend the powers of such executor or administrator, until the matter is investigated.

SECTION three hundred and eighty-four. When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show why his letters should not be revoked. If he fail to appear in obedience to the citation, or if appearing the court is satisfied that there exists cause for his removal, his letters must be revoked,

and letters of administration granted anew as the case may require.

SECTION Three hundred and eighty-five. At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed to which the executor or administrator may demur or answer.

SECTION Three hundred and eighty-six. If the executor or administrator, has absconded or conceals himself, or has removed or absented himself from the Territory, notice may be given him of the pendency of the proceedings by publication, in such manner as the court may direct, and the court may proceed upon such notice, as if the citation had been personally served.

SECTION Three hundred and eighty-seven. In the proceedings authorized by the proceedings section for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath touching his administration, and upon his refusal so to do, may commit him to jail, until he obey, or may revoke his letters, or both.

SECTION Three hundred and eighty-eight. There shall be kept in each of the probate courts of this Territory the following books of record, that is to say:

First, A journal in which shall be entered all orders decrees and judgments made by the courts or the judge thereof and the minutes of the proceedings of the courts.

Second, A record of wills in which shall be recorded all wills admitted to probate.

Third, A record of letters testamentary and of administration in which all letters testamentary and of administration shall be recorded.

Fourth, A records of bonds in which all bonds and obligations required by law to be approved by the probate court or judge shall be recorded.

Fifth, A record of petitions in which all petitions for orders of sale of real estate shall be recorded.

Sixth, A record of claims in which at least one page shall be given to each estate or case wherein shall be entered under the title of each estate or case in separate columns properly ruled:

First, The names of claimants against the estate.

Second, The date of filing proof of claim.

Third, The amount claimed.

Fourth, The amount allowed.

Fifth, The date of allowance.

Sixth, The nature of the claim.

Seventh, The amount paid.

Eighth, Number of the voucher for each payment.

Ninth, The date of filing the voucher.

Seventh, A memorandum of the files in which at least one page shall be given to each estate or case wherein shall be noted each paper filed in the case except proof of claims and vouchers noted in record of claims and the date of filing each paper.

Eight, A record of marriages in which certificates of all marriages solemnized in the county shall be recorded.

SECTION 5. This act shall take effect and be in force from and after the day of its approval by the Governor.

Approved, November 9th, 1877.

AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT, IN RELATION TO THE DUTIES OF PROBATE JUDGES" APPROVED NOVEMBER TWELFTH EIGHTEEN HUNDRED AND SEVENTY-FIVE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act of the Legislative Assembly approved November twelfth eighteen hundred and seventy-five, entitled an act in relation to the duties of probate judges, be and the same is hereby repealed.

SECTION 2. This act shall take effect and be enforced from and after its passage.

Approved, November 9th, 1877.

AN ACT

RELATING TO LIENS.

CHAPTER I.

LIENS ON STEAMERS, VESSELS, AND BOATS.

Be it enacted by the Legislative Assembly of the Territory of Washington.

SECTION 1. That all steamers, vessels, and boats, their tackle, apparel, and furniture, are liable:

First, For services rendered on board at the request of, or on contract with their respective owners, masters, agents, or consignees;

Second, For supplies furnished in this Territory for their use, at the request, of their respective owners, masters, agents, or consignees;

Third, For work done, or material furnished in this Territory for their construction, repair, or equipment;

Fourth, For their wharfage, and anchorage within this Territory;

Fifth, For non-performance or mal-performance of any contract for the transportation of persons or property between places within this Territory, or to or from places within this Territory, made by their respective owners, masters, agents, or consignees;

Sixth, For injuries committed by them to persons or property within this Territory or while transporting such persons or property to or from this Territory;

Demands for these several causes constitute liens upon all steamers, vessels, and boats; and their tackle, apparel, and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued.

SECTION 2. Such liens may be enforced by suit in admiralty *in rem* and the law regulating proceedings in admiralty shall govern in all such suits.

CHAPTER II.

LIENS ON LOGS, SPARS, PILES, LUMBER, AND TIMBER.

SECTION 3. Every person performing labor upon or who shall assist in obtaining or securing saw-logs, spars, piles, and similar timber, has a lien upon the same for the work or labor done upon or in obtaining or securing the same whether such work or labor was done at the instance of the owner of the same or his agent.

SECTION 4. Every person performing labor upon or who shall assist in manufacturing saw-logs into lumber, has a lien upon such lumber, while the same remains at the mill where manufactured whether such work or labor was done at the instance of the owner of such logs or his agent.

SECTION 5. Any person who shall permit another to go upon his timber land and cut thereon saw-logs, spars, piles, and other timber, has a lien upon such logs, spars, piles, and timber, for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price.

SECTION 6. The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any sawlogs, spars, piles, and other timber or manufactured lumber, shall divest the lien thereon as herein provided.

SECTION 7. The person rendering the service or doing the work or labor named in sections three and four of this act is only entitled to the liens as provided herein for services, work, or labor, for the period of eight calendar months, or any part thereof, next preceding the filing of the claim as provided in section nine of this act.

SECTION 8. The person granting the privilege mentioned in section five of this act is only entitled to the lien as provided therein for saw-logs, spars, piles, and other timber cut during the eight months next preceding the filing of the claim as provided in section ten of this act.

SECTION 9. Every person within sixty days after the close of the rendition of the services or after the close of the work or labor mentioned in sections three and four of this act claiming the benefit hereof must file for record with the county auditor

of the county in which such saw-logs, spars, piles, and other timber was cut, or in which such lumber was manufactured, a claim containing a statement of his demand and the amount thereof after deducting as near as possible all just credits and offsets with the name of the person by whom he was employed with a statement of the terms and conditions of his contract, if any, and in case there is no express contract the claim shall state what such service work or labor is reasonably worth, and it shall also contain a description of the property to be charged with the lien, sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true.

SECTION 10. Every person mentioned in section five of this act, claiming the benefit hereof must file for record with the county auditor of the county in which such saw-logs, spars, piles, and other timber was cut, a claim, in substance the same as provided in section nine of this act, and verified as therein provided.

SECTION 11. The county auditor must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds, or other instruments.

SECTION 12. No lien provided for in this chapter, binds any saw logs, spars, piles, or other timber or any lumber for a longer period than four calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court within that time, to enforce the same.

SECTION 13. The lien provided for in this chapter shall be enforced by a civil action in any of the district courts of this Territory, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that may be against it.

SECTION 14. Any person who shall bring a civil action to enforce the lien herein provided or any person having a lien as herein provided who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw-logs, spars, piles or other timber, or manufactured lumber upon which he has performed labor or which he has assisted in obtaining or securing, or which has been cut on his timber land during the eight months mentioned in sections seven and eight of this chapter, for all his labor upon or for all his assistance in obtaining or securing said logs spars piles or other timber or in manufacturing

said lumber during the whole or any part of the eight months mentioned in section seven of this chapter or for timber cut during the whole or any part of the eight months mentioned in section eight of this chapter.

SECTION 15. Any number of persons claiming liens under this chapter may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow as part of the costs the moneys paid for filing and recording the claim and a reasonable attorney's fee for each person claiming a lien.

SECTION 16. In such civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution and the court or judge shall apportion the proceeds of such sale to the payment of each judgment *pro rata*, according to the amount or such judgment.

SECTION 17. The court or judge may order any property subject to a lien as in this chapter provided to be sold by the sheriff, as personal property is sold on execution either before or at the time judgment is rendered as provided in section sixteen of this act and the proceeds of such sale must be paid into court to be applied as in said section directed.

SECTION 18. Any person who shall injure, impair, or destroy, or who shall render difficult, uncertain, or impossible, of identification, any saw-logs, spars, piles, and other timber upon which there is a lien as herein provided without the express consent of the person entitled to such lien, shall be liable to the lien holder for the damages to the amount secured by his lien which may be recovered by a civil action against such person.

CHAPTER III.

LIENS OF MECHANICS AND OTHERS, UPON REAL PROPERTY.

SECTION 19. Every person performing labor upon or furnishing materials to be used in the construction, alteration or repair, of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct, to create hydraulic power, or any other structure, or who perform labor in any mine or mining claim, has a lien upon

the same for the work or labor done or materials furnished by each respectively whether done or furnished at the instance of the owner of the building or other improvement, or his agent, and every contractor, subcontractor, architect builder or person having charge of any mining or of the construction alteration, or repair, either in whole or in part of any building or other improvement, as aforesaid shall be held to be the agent of the owner for the purposes of this chapter.

SECTION 20. Any person who at the request of the owner of any lot in any incorporated city or town grades, fills, in, or otherwise improves the same or the street in front of or adjoining the same has a lien upon such lot for his work done and materials furnished.

SECTION 21. The land upon which any building improvement or structure is constructed, together with a convenient space about the same or so much as may be required for the convenient use and occupation thereof to be determined by the court on rendering judgment, is also subject to the lien, if, at the commencement of the work or of the furnishing of the materials for the same the land belonged to the person who caused said building improvement or structure to be constructed altered or repaired, but if such person owned less than a fee simple estate in such land then only his interest therein is subject to such lien.

SECTION 22. The liens provided for in this chapter are preferred to any lien mortgage or other incumbrance which may have attached subsequent to the time when the building improvement or structure was commenced, work done or materials were commenced to be furnished; also to any lien, mortgage, or other encumbrance of which the lien holder had no notice and was unrecorded at the time the building improvement or structure was commenced, work done or the materials were commenced to be furnished.

SECTION 23. Every original contractor within sixty days after the completion of his contract or other termination thereof and every person save the original contractor, claiming the benefit of this chapter must within thirty days after the completion of any building improvement or structure or after the completion of the alteration or repair thereof, or after he has ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, or after the performance of any labor in a mine or mining claim file for record with the county auditor of the county in which such property or some part thereof is situated a claim containing a statement of his demand after deducting all just credits and offsets with the name of the owner or reputed owner if known and also the name of the person by whom he was employed or to whom he furnished the

materials with a statement of the terms time given and conditions of his contract and also a description of the property to be charged with the lien sufficient for identification which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the claim to be just.

SECTION 24. In every case in which one claim is filed against two or more buildings, mines, mining claims, or other improvements owned by the same person the person filing such claim must at the same time designate the amount due to him on each of such buildings, mines, mining claims, or other improvements, otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens by judgment, mortgage or otherwise upon either of such buildings or other improvements or upon the land upon which the same are situated.

SECTION 25. The county auditor must record the claim mentioned in this chapter, in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.

SECTION 26. No lien provided for in this chapter binds any building, mining claim, improvement, or structure for a longer period than four calendar months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien; or if a credit be given then four calendar months after the expiration of such credit; but no lien continues in force under this chapter for a longer time than two years from the time the work is completed by any agreement to give credit.

SECTION 27. Every building or other improvement mentioned in section nineteen of this chapter, constructed upon any lands with the knowledge of the owner, or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein and the interest owned or claimed shall be subject to any lien provided for under the provision of this chapter, unless such owner or person having or claiming an interest therein shall within three days after he shall have obtained knowledge of the construction alteration or repair, or the intended construction, alteration or repair, give notice that he will not be responsible for the same by posting a notice in writing to such effect in some conspicuous place upon said land or upon the building or other improvement situated thereon.

SECTION 28. The contractor shall be entitled to recover upon the claim filed by him only such amount as may be due

to him according to the terms of his contract after deducting all claims of other parties for work done and materials furnished as aforesaid; and in all cases where a claim shall be filed under this chapter for work done or materials furnished to any contractor he shall defend any action brought thereupon at his own expense; and during the pendency of such action the owner may withhold from the contractor the amount of money for which the claim is filed; and in case of judgment against the owner or his property upon the lien the said owner shall be entitled to deduct from any amount due or to become due by him to the contractor the amount of such judgment and costs and if the amount of such judgment and costs, shall exceed the amount due by him to the contractor or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor any amount so paid by him, the said owner in excess of the contract price, and for which the contractor was originally the party liable.

SECTION 29. In every case in which different liens are asserted against any property the court in the judgment must declare the rank of each lien or class of liens which shall be in the following order:

First, All persons other than the original contractors and sub-contractors,

Second, The sub-contractor.

Third, The original contractors.

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank and whenever on the sale of the property subject to the lien there is a deficiency of proceeds judgment may be rendered for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages.

SECTION 30. Any number of persons claiming liens may join in the same action and when separate actions are commenced the court may consolidate them. The court may also allow as part of the costs the moneys paid for filing and recording the claim and reasonable attorney's fee in the district and supreme court.

SECTION 31. Whenever materials shall have been furnished for use in the construction alteration or repair of any building or other improvement such materials shall not be subject to attachment execution or other legal process to enforce any debt due by the purchaser of such materials except a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration, or repair, of such building, mining claim, or other improvement.

SECTION 32. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done or materials furnished to maintain a personal action to recover such debt against the person liable therefor.

SECTION 33. The liens provided for in this chapter may be enforced in a civil action in the same manner, and under the same proceedings as govern in the foreclosure of a mortgage on real estate.

CHAPTER IV.

CERTAIN LIENS FOR SALARIES AND WAGES.

SECTION 34. In all assignments of property made by any person to trustees or assignees on account of the inability of the person at the time of the assignment to pay his debts or in proceedings in insolvency the wages of the miners, mechanics, salesmen, servants, clerks, or laborers, employed by such persons to the amount of one hundred dollars, each, and for services rendered within sixty days previously are preferred claims and must be paid by such trustees or assignees before any other creditor or creditors of the assignor.

SECTION 35. In case of the death of any employer the wages of each miner, mechanic, salesman, clerk, servant, and laborer, for services rendered within sixty days next preceding the death of the employer, not exceeding one hundred dollars; rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person.

SECTION 36. In cases of executions attachments and writs of a similar nature, issued against any person except for claims for labor done any miners mechanics salesmen, servants, clerks, and laborers, who have claims against the defendant for labor done may give notice of their claims and the amount thereof, sworn to by the person making the claim, to the creditor and the officer executing either of such writs at any time before the actual sale of property levied on; and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person out of the proceeds of the sale the amount each

is entitled to receive for services rendered within the sixty days next preceding the levy of the writ not exceeding one hundred dollars. If any or all the claims so presented and claiming preference under this chapter are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days for the recovery thereof and must prosecute his action with due diligence or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim until the determination of such action, and in case judgment be had for the claim or any part thereof, carrying costs, the costs, taxable therein shall likewise be a preferred claim with the same rank as the original claim.

CHAPTER V.

MISCELLANEOUS PROVISIONS.

SECTION 37. In construing the provisions of this act, words used in the masculine gender include the feminine and neuter, the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person, and the word writing includes printing.

SECTION 38. All acts relating to any kind or class of liens provided for in this act are hereby repealed, but no action or proceeding commenced before this act takes effect, and no right accrued is affected by such repeal but the proceedings therein must conform to the requirements of this act as far as applicable.

SECTION 39. This act establishes the law of this Territory respecting the subject to which it relates and its provisions and all proceedings under it are to be liberally construed with a view to effect its object.

SECTION 40. This act shall take effect and be in force from and after its passage and the approval thereof by the Governor.

Approved, November 8th, 1877.

AN ACT

TO REGULATE THE GOVERNMENT OF THE HOSPITAL FOR THE INSANE,

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the Territorial Asylum for the Insane and Idiotic, situated near the town of Steilacoom, in the county of Pierce, shall be hereafter styled and known as "The Hospital for the Insane in Washington Territory, and all statutes mentioning and referring to said asylum, heretofore enacted and not otherwise inconsistent with the provisions of this act, shall hereafter have the same operation as if they mentioned or referred to "The Washington Hospital for the Insane."

SECTION 2. That a board of three trustees shall be nominated by the Governor, and with the consent of the legislative council, by him be appointed, who shall be known as the Trustees of the Hospital for the Insane in Washington Territory. The said trustees shall hold office for two years from the second Monday in January 1878 and until their successors are appointed and qualified, subject to removal for good and sufficient cause, by the Governor at any time. The board at their first meeting shall elect one of their number president and may appoint as secretary one of their number, or if they prefer, they may appoint any person not a member of the board as such secretary. The secretary shall receive an annual salary of two hundred and forty dollars. Should a vacancy occur in the board of trustees the Governor shall appoint to fill the vacancy for such unexpired term. If at any meeting the president be absent, the board shall choose from their number a president *pro tempore*. Two of the board shall constitute a quorum for the transaction of business.

SECTION 3. Said board shall have power to make all necessary repairs and improvements as in their judgment may be necessary for the conduct of said hospital, and to hold, manage, dispose of and convey all real and personal property made over to them by gift, devise or bequest and the proceeds and increase thereof for the use of said hospital. Said board shall take charge of the general interests of the hospital and shall manage and conduct the same in such manner as may appear to them best and most economical. They shall employ a superintendent, and may ordain by-laws for the government of said hos-

pital and therein may prescribe, in a manner consistent with the laws of the Territory, the duties of all persons connected in any way with the management of said hospital. Said board shall furnish the Territorial auditor with a certified copy of such by-laws as they may adopt, and of any and all changes therein which from time to time said board may make.

SECTION 4. Each of said named trustees and their successors, shall before entering upon the duties of his office, give a bond of five thousand dollars approved by the Governor, and filed with the Territorial secretary, for the faithful performance of his duties.

SECTION 5. The superintendent shall be a skillful practicing physician, and shall reside upon the hospital grounds. He shall hold his office for such time as the trustees may deem wise and for the efficiency and economy of the institution; he shall have entire control of the medical, moral dietetic treatment of the patients, and, so far as is not inconsistent with the by-laws and regulations of the hospital of all other the internal government and economy of the institution and he shall, in such manner and under such restrictions and for such terms of time, as the by-laws may prescribe, appoint all subordinate employees, and shall have entire direction of them in their duties.

SECTION 6. The superintendent shall not be required to attend any court as a witness in a civil suit, but parties desiring his testimony can take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the judge of the court before which his testimony shall be desired, shall, upon being satisfied of the materiality of his testimony, require his attendance, and he and all other persons employed at the hospital, shall be exempt from serving on juries, working on roads, and in time of peace, from performing military duty.

SECTION 7. The necessary expenditures of the trustees, the salary of all employees and all other expenses incident to the conduct of the hospital, shall be examined by the trustees upon accounts rendered, and if approved by them, shall be so certified to the Territorial Auditor. Trustees shall, in the by-laws fix the days of their monthly visitations, and shall, at the hospital, on those days, receive and examine all accounts presented to them, and certify to the Territorial Auditor such as they approve.

SECTION 8. The trustees shall each be paid his actual and necessary traveling expenses, in going and returning from the meeting of said board, and in performing the necessary visitation required by this act, and shall be reimbursed all other necessary expenditures incurred in discharge of their official duties, and shall receive three dollars per day for the time actually spent in the discharge of such duties.

SECTION 9. No trustee shall be appointed to or employed in any office under authority of the board except as provided in section 2 of this act nor be directly or indirectly interested in any contract, debt or account to be made by said board for any purpose whatever.

SECTION 10. The trustees shall cause the accounts of said institution to be so kept and reported as to show the kind, quantity, cost and vendor of every article purchased for use therein.

SECTION 11. The trustees shall meet on, or within one month before the first day of the meeting of the Legislative Assembly at every biennial session thereof, and shall then prepare and lay before the governor and said assembly, a full and detailed, but concise report, exhibiting a particular statement of the condition of the hospital and all its concerns, an account of all contracts, expenditures and liabilities, with a list of the salaried officers and their salaries, and in a tabular form the value of the stock and supplies on hand.

SECTION 12. The accounts and books of the hospital shall at all times be open to inspection of the legal visitors of the institution.

SECTION 13. The governor, justices of the supreme court and members of the Legislature shall be *ex-officio* visitors of the institution.

SECTION 14. No person laboring under any contagious or infectious disease shall be admitted into said hospital as a patient.

SECTION 15. In admitting patients to and retaining them in the hospital, the indigent insane of this Territory shall always have precedence; and if at any time the provisions of the institution are not sufficient to meet the applications for admission, recent cases shall, for the time being, have precedence over those of a chronic character.

SECTION 16. The district courts of the Territory shall have power to commit to this institution any person, who, having been arraigned for an indictable offense, shall be found by the jury to be insane at the time of such arraignment, and the costs of such commitment shall be paid in the same manner as the costs of a commitment of an insane person out of a probate court.

SECTION 17. In conveying patients to the hospital, the sheriff, with the approval of the judge of the probate or district court from which the warrant of commitment issues, may employ one assistant for each patient.

SECTION 18. Any patient may be discharged from the hospital, when, in the judgment of the superintendent it may be expedient. Whenever a patient not cured, or any indigent patient shall be ordered discharged, the superintendent shall immediately give notice thereof to the probate judge of the county in which said patient resided, and if in the judgment of the superintendent, such patient so ordered to be discharged is in fit condition to be sent to his or her county unattended by any person, the superintendent may return the patient to the county from which he or she came, if indigent, at the expense of the said county, but if such patient so ordered to be discharged from said hospital and can, without endangering the health of such patient, is through or by any reason unfit to be alone sent to the county from which he or she was committed to said hospital, the superintendent shall so certify to the probate judge of said county; who shall immediately, upon receipt of the notice, issue his warrant to the sheriff, commanding him to remove the patient and return him or her to the county from which he or she came. If, within thirty days after the notice, the patient be not removed, the superintendent, if he think necessary, may return the patient to the county from which he or she came, at the expense of the county: *Provided*, That if any such patient is not in a condition to either go or be removed to said county he or she may, for the time being, be retained in said hospital at the expense of the county from which he or she was so committed.

SECTION 19. No pauper shall be discharged from the hospital without suitable clothing; and the trustees may furnish the same at their discretion, together with such sum of money not exceeding ten dollars, as they may deem necessary. To carry into effect the provisions of this section, the board of trustees are hereby authorized and empowered to make requisitions on the territorial auditor for such sum or sums as from time to time they may need for the purpose mentioned herein, not exceeding however the sum of two hundred dollars per annum; and said Territorial auditor on receipt of such requisitions signed by the president and secretary of said board shall issue the warrant on the Territorial treasury for the amount thereof with the limitations prescribed herein.

SECTION 20. The superintendent by and with the consent of the board of trustees may employ such assistants as is necessary for the effectual and economical management of the institution and the regular officers shall not receive salaries to exceed the following sums:

One superintendent, \$2,500 per annum.

One steward, \$1,000 per annum.

One head warden, \$650 per annum.

Four additional wardens, \$550 per annum, each.

Two cooks, \$1,200 per annum, in the aggregate.

Two matrons, \$900 per annum, in the aggregate.

One laborer, \$400 per annum, when required.

One carpenter, \$800 per annum, when required.

One teamster, \$550 per annum, when required.

All the officers and employees may be furnished subsistence, quarters, lights and fuel for one with quarters for a family in excess of salaries.

SECTION 21. It shall be the duty of the superintendent to ascertain by diligent inquiry and correspondence the history of each and every patient admitted to the hospital and whether such patients or their friends or families if any there be are able to defray the expenses of his or her care and report the facts to the board of trustees who shall use efficient means for the collections of all sums due the institution from those who are able to pay for such care.

SECTION 22. The retiring board of trustees and those constituting the board to be appointed during each session of the Legislature shall meet on the second Monday of January following when it shall be the duty of the retiring board to examine and vouch for all accounts and liabilities they may have contracted and then turn over all books and other property belonging to the institution to the new board of trustees.

SECTION 23. The board of trustees shall have power to make all purchases necessary to carry into effect the provisions of this act and shall during the months of January and February of each year advertise for four consecutive weeks in the paper having the largest circulation in Seattle and Olympia for bids for the furnishing of such supplies and other articles as they may deem expedient, and shall have power to make all needed repairs to the buildings of the institution.

SECTION 24. All itemized bills of purchases made, when having been examined by the board of trustees and found correct shall be certified by the president or the president *pro tem.* of the board then sitting and the same transmitted to the auditor who shall audit the same and draw his warrant on the Territorial treasurer for the amount, and the said treasurer is hereby authorized and required to pay the same out of any money in the treasury not otherwise appropriated: *Provided*, That there shall not be more than the sum of twenty-six thousand dollars appropriated for all purposes connected with the institution during each fiscal year.

SECTION 25. The fiscal year shall commence and end on the 16th of August and it shall be the duty of the trustees and superintendent to make out biennial reports of the institution and transmit the same to the auditor on or before the tenth day of September preceding each session of the Legislature with such recommendations as may seem proper.

SECTION 26. The Territorial auditor and treasurer shall not be eligible to the office of trustee for hospital for the insane.

SECTION 27. All acts and parts of acts conflicting with the provisions of this act are hereby repealed.

SECTION 28. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

REGULATING SALMON FISHERIES ON THE WATERS OF THE COLUMBIA RIVER.

WHEREAS, It is well known that the salmon of the Columbia river and tributaries are rapidly diminishing in numbers, to the injury of the public, and threatening if not averted to materially prejudice the interests of trade and commerce, therefore:

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall not be lawful to take or fish for salmon in the Columbia river or its tributaries by any means whatever in any year hereafter, during the months of March, April, August and September, nor at the weekly closetimes in the months of May, June and July, that is to say, between the hours of six o'clock in the afternoon of each and every Saturday until six o'clock of the afternoon of Sunday following. And any person or persons catching salmon in violation of the provisions of this section, or purchasing salmon so unlawfully caught, shall upon conviction thereof, be fined in a sum of not less than five hundred dollars, nor more than one thousand dollars for the first offense, and for each and every subsequent

offense upon conviction thereof, shall be fined not less than one thousand dollars to which may be added at the discretion of the court, imprisonment in the county jail for a term not exceeding one year.

SECTION 2. It shall not be lawful to fish for salmon in the said Columbia river or its tributaries during the said months of May, June and July, with gill-nets, the meshes of which are less than four and one-eighth inches square nor with seines whose meshes are less than three inches square, nor weir or fish-traps whose slats are less than three and one-half inches apart. Nothing herein contained shall prevent fishing in said river or its tributaries with dip-nets, during the fishing season as established and defined by section one (1) of this act. Every trap or weir shall have in that part thereof where the fish are usually taken, an opening at least three feet wide, extending from the bottom to the top of the weir or trap and the netting. Slats and other material used to close such apertures while fishing shall be taken out, carried upon shore, and there remain during the said months of March, April, August and September, and the weekly closetimes in the months of May, June and July as prescribed in section one of this act, to the intent that during said closetimes the salmon may have free and unobstructed passage through such weir, trap or other structure, and no contrivance shall be placed in any part of such structure which shall tend to hinder such fish, in case the enclosure where the fish are taken is furnished with a board floor, an opening extending from the floor to the top of the weir or trap shall be equivalent to extending the said opening from bottom to top. Any person or persons violating the provisions of this section, or encouraging its violation by knowingly purchasing salmon so unlawfully caught, shall be deemed guilty of misdemeanor and upon conviction thereof, shall be fined for the first offense not less than five hundred dollars nor more than one thousand dollars and for each subsequent offense shall on conviction be fined not less than one thousand dollars to which may be added imprisonment in the county jail for a term not exceeding one year.

SECTION 3. It shall not be lawful at any time during the year nor by any means whatever, to fish for salmon for the purpose of trade, barter or sale, on the waters of the Columbia river west of a line drawn northerly from the head of Sand Island in the Columbia river to the north line of the Military Reserve near Fort Canby in Washington Territory nor west of a line drawn southerly from the head of Sandy Island in the Columbia river to the wharf at Fort Stevens in the State of Oregon. And any person or persons bartering, selling or otherwise disposing for purposes of gain, any salmon so unlawfully caught below the line herein established or any person or per-

sons knowingly purchasing such salmon so unlawfully caught or otherwise unlawfully encouraging salmon fishing in such prohibited limits shall be fined in any sum not less than fifty or more than one hundred dollars, and justices of the peace shall have jurisdiction to try and determine all complaints for violation of the provisions of this section.

SECTION 4. The person or persons making complaint of any violation of the provisions of this act shall upon the conviction of the offender be entitled to one-half of the fine recovered, and any prosecuting attorney who shall upon complaint being made to him of the violation of this act fail to prosecute the party accused shall be deemed guilty of a misdemeanor in office and upon conviction thereof be fined in the sum of five hundred dollars for each and every such offense.

SECTION 5. This act shall not be so construed as to interfere in any way with any establishment or enterprise for the propagation of salmon whether by the United States government or any regularly organized company or society for that purpose located or operated upon said river Columbia or any of its tributaries.

SECTION 6. It shall be unlawful for the proprietor of any saw mill on the Columbia river or any of its tributaries, or any employee therein to cast the saw dust made by such saw mill, or suffer or permit such saw dust to be thrown or discharged in any manner into said river or its tributaries. For each and every willful violation of this section, the party guilty of such violation shall be liable to a fine of fifty dollars for each and every offense to be recovered before a justice of the peace of the proper county.

SECTION 7. Any party convicted of any violation of the provisions of this law, shall be sentenced to pay the fine and costs adjudged and in default of paying or securing the payment thereof he shall be committed to the county jail until such fine or costs shall be paid or secured until he shall have been imprisoned one day for every two dollars of such fine and costs. But execution may at any time issue against the property of the defendant for whatever sum may be due of such fine or costs. Upon payment of such fine and costs or the balance after deducting the commutation by imprisonment or securing the same the party shall be discharged. All fines and penalties collected for violation of this act shall constitute a fund for the maintenance of hatching houses for the propagation of salmon and be disbursed in accordance with the provisions of an act entitled an act to encourage the establishment of hatching houses for the propagation of salmon in the waters of the Columbia river.

SECTION 8. No section proviso or part of this act shall be

considered as valid or operative until the Legislature of the State of Oregon shall enact a similar section proviso or act in whole or in part, and from and after the passage of such a law by the State of Oregon, such parts hereof as shall be so enacted, shall immediately go into full force and effect, and the governor of this Territory is hereby requested to transmit an attested copy of this act to the governor of the State of Oregon, requesting him to submit it to the Legislature of that State.

Approved, November 8th, 1877.

AN ACT

IN RELATION TO GRAND AND PETIT JURORS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all qualified electors shall be competent to serve as petit jurors, and all qualified electors and householders shall be competent to serve as grand jurors within the county in which they reside, and within any county or district to which such county may be attached for judicial purposes: *Provided,* That civil officers of the United States, justices of the peace, judges of the probate court and judges of the supreme court, attorneys at law, ministers of the gospel or priests, school teachers, practicing physicians, sheriffs and their deputies, constables, clerks of courts, county and Territorial officers, millers, ferrymen, and all persons over sixty years of age, shall not be compelled to serve as jurors, and in preparing jury lists the county commissioners shall omit the names of such persons; but no act of a grand or petit jury shall be invalid by reason of such persons, or persons aforesaid serving thereon qualified in other respects. Nor shall any disqualification of any member of a grand or petit juror affect the indictment or verdict, unless the juror for that cause was challenged or excepted to before the rendition of their finding.

SECTION 2. Every board of county commissioners on or before the first Monday of May in each year, shall cause to be prepared, and thereafter shall keep in the office of the county auditor, two (2) jury lists, one of which shall contain the names of all persons qualified to serve in their county as petit jurors,

and the other the names of all persons qualified to serve then as grand jurors. As soon as said lists are prepared and said commissioners are met, they shall select therefrom the names of twenty-five persons qualified to serve as petit jurors and the names of twenty-five other persons qualified to serve as grand jurors and shall certify the same in separate lists to the clerk of the district court of the judicial district in which the county may be.

SECTION 3. Biennially on or before the first Monday of May next after the election of a delegate to Congress, the secretary of the Territory shall transmit to the clerk of the district court in each judicial district a statement of the whole number of votes cast for delegate in such county of such district at the said election. Upon receipt of such statement, the clerk shall submit the same to the judge of the district, who shall thereupon from time to time proportionally according to the number of said votes cast in the several counties respectively of each sub-district allot and determine the number of grand and petit jurors to be summoned from the several counties to attend each term of the court respectively, until a new allotment is made; which number for each sub-district shall not be less than fourteen, nor more than twenty-three for grand jurors nor less than twelve nor more than twenty-five for petit jurors.

SECTION 4. Thirty days before each term of court unless the judge of the district shall by order otherwise direct the clerk of the court shall conformably to the last allotment and determination of the judge issue to the sheriff of each county for which the term is held two (2) venires one for grand and the other for petit jurors to attend at the said term. The venires shall be returnable at such time as the judge shall designate. The persons to be served therewith, shall as far as possible be named in the venires and their names shall be taken from the lists last furnished by the county commissioners in the order in which they occur on said lists: *Provided*, That no person shall serve twice as a grand juror or twice as a petit juror within two years.

SECTION 5. When from any cause there are no qualified grand or no qualified petit jurors, or not a sufficient number of either in attendance, the court may without naming them in the venire order as many as may be necessary to be summoned from any county or counties in the district.

SECTION 6. Until the apportionment and selection of jurors as provided in this act, the judge of the district court in each district, shall apportion to each county the number to be furnished by each county, and the clerk of the district court shall issue venires to the sheriff of each of the several counties commanding him to summon from his county the requisite

number of qualified grand and petit jurors, returnable as the judge shall direct.

SECTION 7. Any person neglecting to perform any duty imposed upon him by this act shall be punishable as for a contempt of court.

SECTION 8. This act shall take effect from and after its passage, and the act entitled an act in relation to grand and petit jurors passed January 24th 1863 and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved November 9th, 1877.

AN ACT

TO PROVIDE FOR THE CODIFICATION OF THE LAWS OF WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That his excellency, the governor of this Territory be, and hereby is, authorized and requested to nominate and by and with the advice and consent of the Legislative Council of said Territory, to appoint a code commissioner who shall be a resident practicing attorney or judge of the supreme court of the Territory.

SECTION 2. The said code commissioner so appointed, is hereby authorized and required to collate and thoroughly revise and codify all the statute laws of the Territory of Washington which are, or may be, in force at the close of the present session of the Legislature. For this purpose, it is hereby made the duty of said code commissioner to group together all correlative and similar statutes, classifying and arranging the various subjects under appropriate titles; to bring together and correctly incorporate the various amendments into the original acts, rejecting all repealed, redundant, inoperative and obsolete sections, laws, or parts of laws; and furthermore, to make such alterations and [a]mendations as shall reconcile all contradictions, correct and supply omissions in figures, letters, words and sentences; and, to do and perform all other needful acts as shall enable the said code commissioner effectually to reduce and

bring into a written, intelligible and systematic form, the statute laws of this Territory.

SECTION 3. That it shall be the duty of the said code commissioner in codifying and arranging the laws under proper parts, titles, divisions and subdivisions, under the provisions of this act, to complete and perfect the same, that such code of law shall be made to cover and embrace the whole body of substantive law of the Territory of Washington. The said code shall be arranged and presented by the said code commissioner under four general parts, or divisions, substantially, as follows:

- I. The Political Code of Washington;
- II. The Civil Code of Washington;
- III. The Code of Civil Practice;
- IV. The Penal Code, embracing the Code of Criminal Procedure.

SECTION 4. The said code commissioner is hereby further authorized and empowered to prepare a brief syllabus to each of the several laws, and subdivided titles of law, in said codification, together with such concise and appropriate marginal notes for, and to, the various sections, as shall afford easy and ready reference to all distinctive points and subjects embraced therein; and furthermore, to prepare such annotation, or "foot notes," furnishing references to decisions, and correcting seeming contradictions in the laws, as shall be deemed useful and expedient.

SECTION 5. The laws so revised, codified and arranged by the code commissioner appointed in pursuance of the provisions of this act, shall, when published, be embraced in one or more volumes of convenient size, and shall be known as the "Washington Code" and no other title by legal reference shall be necessary for their designation.

SECTION 6. The said code commissioner shall report the result of his labors to the governor of this Territory on or before the first day of July A. D. 1879. The governor shall, during the first ten days of the next biennial session of the Legislature, A. D. 1879, submit to that body the report and code of laws presented by the code commissioner together with such suggestions and recommendations as he may deem advisable to make in the premises. The code commissioner shall receive such compensation for his services, and all mileage and the expenses incident to his labors and duties, as such commissioner, as the Legislative Assembly shall hereafter fix upon, to be paid out of the general fund of the Territory.

SECTION 7. Said commissioner shall have power to employ a clerk for a period not longer than six months at a salary

not exceeding seventy-five dollars per month, and the Territorial auditor is hereby authorized to draw a warrant on the Territorial treasurer for the amount, which the said commissioner may certify as due to said clerk for the service by him performed.

SECTION 8. Before entering upon his duties as provided in this act, the code commissioner shall take and subscribe to an oath before the secretary of the Territory faithfully to perform the duties and obligations of said code commissioner, should any vacancy occur in the office of commissioner first appointed from any cause, and before the commissioner shall have completed his labors, the governor of the Territory is hereby authorized to fill such vacancy by appointment, and the person so appointed, shall have full power and authority to act in fulfillment of the provisions of this act, and shall be subject to all the obligations and requirements herein imposed.

SECTION 9. This act to take effect and be in force from and after its passage and approval by the Governor.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR CALLING A CONVENTION TO FRAME A CONSTITUTION
FOR A STATE OF WASHINGTON AND SUBMITTING THE SAME TO
THE PEOPLE FOR RATIFICATION OR REJECTION.

WHEREAS, In pursuance of an act of the Legislative Assembly of the Territory of Washington approved November ninth (9) one thousand eight hundred and seventy five the legal voters of said Territory by a decided majority determined that a convention shall be holden to frame and submit for ratification or rejection, a constitution for the future state of Washington; And

WHEREAS as it is incumbent upon the representatives of the people, promptly and without delay to provide the means of carrying the public will into immediate effect, Therefore

Be it enacted by the Legislative Assembly of the Territory of Washington,

SECTION 1. That an election shall take place in the various precincts in the several counties in this Territory on the ninth (9) day of April A. D. one thousand eight hundred and seventy eight for the choice of delegate to a convention to frame a form of a State constitution to be submitted to the legal voters in this Territory for their approval or rejection.

SECTION 2. The number of delegates chosen at said election shall be fifteen (15) who shall be chosen from the districts, as follows:

Three (3) delegates shall be elected by the legal voters of the Territory at large.

One delegate shall be elected by the legal voters of the counties comprising the first judicial district of this Territory.

One delegate shall be elected by the legal voters of the counties comprising the second judicial district of this Territory.

One delegate shall be elected by the legal voters of the counties comprising the third judicial district of this Territory.

One delegate shall be elected by the voters of the county of Walla Walla.

One delegate shall be elected by the voters of the county of King.

One delegate shall be elected by the voters of the counties of Thurston and Lewis.

One delegate shall be elected by the voters of the counties of Clark, Skamania Klickitat and Yakima.

One delegate shall be elected by the voters in the counties of Cowlitz, Pacific, and Wahkiakum.

One delegate shall be elected by the voters of the counties of Pierce Chehalis, and Mason.

One delegate shall be elected by the voters of the counties of Clalam Island, Jefferson and San Juan.

One delegate shall be elected by the voters of the counties of Kitsap, Suohomish and Whatcom.

One delegate shall be elected by the voters of the counties of Columbia, Stevens and Whitman.

SECTION 3. The delegates required to be elected by the provisions of this act shall possess the qualifications of electors, and no person shall be chosen a delegate to represent any other district than that in which he has so resided for at least two (2) years next preceding the election.

SECTION 4. For the purpose of choosing the delegate or delegates aforesaid, polls shall be opened on said ninth day of April A. D. one thousand eight hundred and seventy-eight in the various precincts in all the counties in this Territory in the manner directed for holding general elections in this Territory and it shall be the duty of the commissioners of each county in this Territory at their regular meeting next preceding said ninth (9th) day of April one thousand eight hundred and seventy-eight to appoint one inspector and two judges for each election precinct in their respective counties whose duty it shall be to attend at the usual hour and place of holding general election in the precinct on said ninth day of April one thousand eight hundred and seventy-eight and receive tickets either written or printed from all legal electors qualified to vote at general election and to deposit [deposit] such ballots in ballot boxes to be provided them for that purpose. And said electors[ions] shall in all respects be conducted and returned[s] thereof made and transmitted as now provided by law in case of general electors for delegate in Congress, prosecuting attorneys and councilmen such returns shall be canvassed and returns made thereof as returns of general electors[ions] are now required to be canvassed by law, and the auditor in the several counties shall certify the names of all persons who shall have been voted for, at said election for delegate, with the number of votes cast for each person, to the secretary of the Territory and the person or persons who shall receive the largest number of votes in any of said districts as provided in this act shall be declared elected delegate for such district. And the secretary is hereby required to issue a certificate of election to such persons.

SECTION 5. It shall be the duty of the delegates elected as aforesaid to assemble at the City of Walla Walla, on the second Tuesday of June, A. D. one thousand eight hundred and seventy-eight at twelve o'clock m. and organize by [by] electing one of their number president. And after said convention shall have so organized, they may elect such other officers as they shall deem necessary for the convention [convenient] transaction of their business, and they shall determine what shall be the duty of such officers, and shall make all necessary rules and regulations proper for their government and the transaction of any business of said convention. Said convention shall be the final judge of the election, returns and qualifications of its own members and shall cause a record of all its proceedings to be kept. A majority of the whole number of delegates elected and sworn shall constitute a quorum to do business and if a vacancy shall occur in any district after said election, by death, resignation or otherwise, the convention shall fill the same by appointing the person having the next highest vote to the person first chosen in said district.

SECTION 6. Every delegate to said convention shall, before entering upon the discharge of his duties take an oath that he will faithfully discharge the duties of his office (office) to the best of his ability.

SECTION 7. When the convention shall have assembled, organized and been duly sworn, shall proceed to frame a form of a constitution for a State which constitution shall be submitted to the Territory for ratification or rejection and said convention shall if it see fit frame and propose any article for separate submission to said electors and may provide that such articles shall constitute a part or parts of said proposed constitution if approved by a majority of electors but if any such article shall not be approved by said electors they shall not become a part of said constitution.

SECTION 8. The form of constitution framed by said convention as aforesaid and any separate articles which may be proposed by said convention as aforesaid, shall be submitted to the legal voters of this Territory for their adoption or rejection in such manner as the convention shall provide at the next general election to be held in this Territory for Delegate to Congress, and all ballots cast with the words "For Constitution" written or printed thereon shall be counted in favor of adopting the same, and all ballots cast with the words "Against Constitution" shall be counted of rejection [as rejecting] the same, and all votes cast for or against said constitution shall be counted and returned to the Secretary of the Territory in the same manner as the votes for delegate in Congress is to be made. And he shall canvass and make known the result within sixty days after said election.

SECTION 9. It shall be duty of the governor of the Territory to issue a proclamation calling a special election for delegate to a constitutional convention, as provided in this act, which proclamation shall be issued not less than sixty days before the ninth (9th) day of April one thousand eight hundred and seventy-eight, and the governor is required to declare the result of the vote cast and returned on the adoption or rejection of the Constitution by proclamation when the same is certified to him by the secretary of the Territory.

SECTION 10. The delegates elected and qualified under the provision of this act shall receive for their services the sum of five(\$5.00)dollars per day while engaged in the transaction of the business of said convention, and actual traveling expenses from their respective homes to and from said convention, and the officers of the convention shall receive such compensation as the convention may deem just and for incidental expenses of said convention which amounts shall be certified to the Territorial auditor by the president of said convention. And the

auditor is hereby required to draw a warrant for said amounts certified as aforesaid in favor of such persons, on the Territorial treasurer and the treasurer is hereby required to pay the same out of any money not otherwise appropriated.

SECTION 11. That the counties of Idaho, Shoshone and Nez Perces, in the Territory of Idaho are requested to elect a delegate to said convention, who shall be a member of said convention, with the privilege of the floor but shall not be entitled to a vote, and the sum of two hundred dollars (\$200) is hereby appropriated as the compensation of said delegate.

SECTION 12. This act shall take effect and be in force from and after its approval by the Governor.

Approved, November 9th, 1877.

AN ACT

TO APPROPRIATE MONEY FOR THE UNIVERSITY OF WASHINGTON AND
TO PROVIDE FOR FREE SCHOLARSHIPS IN SAID UNIVERSITY.

Be it enacted by the Legislative Assembly of the Territory of Washington,

SECTION 1. That the sum of one thousand five hundred dollars, is hereby appropriated out of any moneys in the Territorial treasury not otherwise appropriated for the purpose of defraying the expenses of tuition in the Territorial University of Washington Territory for the year ending on the thirty first day of December in the year one thousand eight hundred and seventy eight and one thousand five hundred dollars more appropriated for purposes of tuition in said Territorial University out of any moneys in the Territorial treasury not otherwise appropriated for the year ending on the thirty first day of December one thousand eight hundred and seventy nine.

SECTION 2. There shall be forty-five free scholarships in said University the holders of which shall be at the time of appointment not under sixteen years of age nor over twenty-one years of age and shall be bona fide residents of the Territory for six months prior to their appointment. They shall be appointed as follows to wit, each councilman of the Legislative

Assembly shall appoint one from his district, each representative in the house of representatives of the Legislative Assembly shall appoint one from the county or district represented by him if two or more counties are joined together for purposes of representation each district judge of the three judicial districts of the Territory shall appoint one from some county in his district and three shall be appointed by the Governor of the Territory: *Provided*, That no two scholars be so appointed by the Governor from any one county.

SECTION 3. Before the Territorial auditor shall draw his warrant in favor of the board of regents of the university for any moneys appropriated under the provisions of this act it shall be the duty of the secretary of the board of regents to file in the office of the Territorial auditor a verified statement that at least thirty of the holders of the free scholarships created by this act are in regular attendance as pupils at said university and receiving tuition under the course of study prescribed by the faculty thereof. The said statement shall contain in tabular form first the name of each pupil so appointed second the county in which he or she resided at date of such appointment third the names of his or her parents or guardians fourth the name of the councilman representative judge or governor by whom such pupil or scholar was appointed in accordance with this act fifth the district or county represented by such councilman representative or judge where the appointment be not made by the governor sixth the date of his or her appointment on file in the office of said secretary and the date of his or her arrival at the university and upon filing of such certificate in his office the Territorial auditor shall draw his warrant in favor of said board of regents of the said university for the sum of thirty-three dollars and thirty-three cents per annum for each and every pupil so certified by said secretary to have been appointed and received as a pupil in said university.

SECTION 4. No appointment made under the provisions of this act shall be held valid unless made within ninety days after the approval of this act and every two years thereafter nor shall any money be drawn by the Territorial auditor for any scholar so appointed unless the date of arrival of the appointee at the university be within four months after the approval of this act, and every two years thereafter.

SECTION 5. A scholarship under the provisions of this act shall entitle the holder thereof to two years of free tuition in said university of not less than nine months in each year, in separate terms of three months each. The course of tuition shall be academic for the first year and collegiate for the second year of such attendance.

SECTION 6. Any vacancy by death or expulsion or removal

from the Territory, of any scholar appointed under the provisions of this act, may be filled by appointment for the unexpired term of said scholarship by the councilman, representative district judge or governor, making such appointment of decedent expelled or removed scholar.

SECTION 7. The moneys appropriated by this act are only appropriated for the payment of the salaries of professors and tutors; for the protection of the treasury it is therefore made the duty of the secretary of the board of regents to file in the Territorial auditor's office vouchers for the payment of the wages of all teachers and professors employed in said university for the year ending on the thirty-first day of December one thousand eight hundred and seventy eight; and if said secretary of the board of regents shall fail to file such vouchers for the year aforesaid, the Territorial auditor shall refuse to draw his warrant for any moneys herein appropriated for the use of said university for the year ending on the thirty-first day of December eighteen hundred and seventy-nine.

SECTION 8. Every appointment of scholars made under the provisions of this act shall be made in duplicate form, one copy of which shall be sealed and addressed to the Territorial auditor and the other to the secretary of the board of regents of the university, within ninety days after the passage and approval of this act.

SECTION 9. This act shall take effect from and after its approval by the Governor.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR THE PURCHASE OF THE REPORTS OF THE DECISIONS OF THE SUPREME COURT OF WASHINGTON TERRITORY AND RESPECTING THE CUSTODY AND DISTRIBUTION OF THE SAME.

WHEREAS, The supreme court of Washington Territory at its July term, A. D. eighteen hundred and seventy-seven, by an order duly entered of record designated John B. Allen, Esq. as a suitable person to report and publish such of the decisions of the said court from its organization to the present time, as the judges of said court think advisable. And

WHEREAS, The said Allen proposes to publish said decisions under the title of "Washington Territory Reports," "Vol. 1. new series" if a sufficient number of said volumes are subscribed for, by said Territory to justify the publication thereof. And

WHEREAS, The public interests require the publication of said decisions therefore;

Be it enacted by the Legislative Assembly of Washington Territory,

SECTION 1. That in the event the said Allen publish said decisions he be permitted to copyright the same and that the Territory of Washington, subscribe for two hundred volumes of said "Washington Territory Reports." And hereby undertakes to pay them for, at the rate of six dollars per volume.

SECTION 2. That when the said John B. Allen shall deliver, or cause to be delivered to the clerk of the said supreme court, said two hundred volumes of said reports, said clerk shall therefore deliver to said Allen his executors, administrators, or assignees, a receipt for the same. Stating therein the number of volumes of said reports received by him, and upon presentation of said clerk's receipt to the Territorial auditor, said auditor shall forthwith draw a warrant on the Territorial Treasurer for the amount due for said reports at the rate aforesaid in favor of the said Allen, his executors, administrators or assigns, to be presented, endorsed and paid in the same manner, and order as other warrants drawn upon said treasurer.

SECTION 3. That said reports shall be distributed by the said clerk under the direction of the judges, of the supreme court as follows: To the library of each State and Territory one volume: To each of the heads of departments at Washington City one volume: To each of the judges of the supreme court of the United States one volume: To the library of Congress two copies: To each of the judges of the United States circuit and district courts in the States of Nevada California, Oregon and in the Territory of Washington, one copy: To the governor, secretary, treasurer auditor and United States attorney for Washington Territory, each one copy: To each district attorney and judge of probate in said Territory one copy. Said clerk shall also from time to time distribute said reports to such literary and scientific institutions publishers, authors, and such other persons and institutions as the judges of said supreme court shall direct, and in such manner as they shall prescribe for the purpose of securing an interchange of such books and publications as may properly be placed in the Territorial library of said Territory. A sufficient number of copies of said reports shall be retained by said clerk to supply

each member of the Territorial Legislature with one copy— during the sessions of the Legislative Assembly.

SECTION 4. All reports distributed to the Territorial, district, and other officers in this Territory shall be for the use of the respective offices, and shall be by the person receiving the same turned over to his successor in office or returned to the clerk of said supreme court who shall give proper receipts for the same.

SECTION 5. Any officer receiving a copy of said reports and failing to turn the same over to his successor in office or return the same to the said clerk, shall be liable to a penalty of twenty dollars to be secured [recovered] from such persons in an action begun in the name of the Territory of Washington. And all monies so collected shall be expended by said clerk for books for the Territorial library under the direction of the said judges of the supreme court.

SECTION 6. This act shall take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

IN RELATION TO PROSECUTING ATTORNEYS DEFINING THEIR DUTIES AND FIXING THEIR COMPENSATION.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the general election in one thousand eight hundred and seventy-eight for delegate to Congress, and every two years thereafter, there shall be elected by the qualified voters of the several counties in each judicial district of this Territory, one prosecuting attorney who shall be a practicing attorney-at-law, and have the qualifications of an elector, and shall reside in and be an inhabitant of the district for which he is elected.

SECTION 2. Such prosecuting attorney shall continue in office for the term of two years from and after January first one thousand eight hundred and seventy-nine and until his successor is elected and qualified.

SECTION 3. Prosecuting attorneys heretofore elected and

now exercising the duties of their offices in each of the judicial districts of this Territory shall continue in office until the first day of January one thousand eight hundred and seventy-nine and until their successors are elected and qualified, and they shall be governed by, and compensated as in this act provided.

SECTION 4. The county auditors of the several counties shall make out under their hand and the seal of their office, a certificate showing the number of votes given in their respective counties, for each person for prosecuting attorney, and transmit the same to the secretary of the Territory, and said votes shall be canvassed by said secretary, and he shall issue a certificate to the person receiving the highest number of votes in each judicial district, and the person so receiving the highest number of votes in a judicial district shall be the prosecuting attorney of said district and he shall be commissioned by the governor. The county auditor shall transmit the certificate of the votes herein required, to said secretary within four weeks after said election.

SECTION 5. Every prosecuting attorney before entering upon the duties of his office, shall take and subscribe an oath faithfully to discharge the duties of his office as prosecuting attorney for the district, for which he was elected; such oath shall be in writing, certified by an officer authorized to administer oaths, and it shall be filed in the office of the secretary of the Territory, and moreover, said prosecuting attorney shall give to the Territory of Washington a bond in the sum of two thousand dollars with good and sufficient surety, conditioned that he will faithfully discharge the duties of his office according to law, which bond shall be approved by the judge of the district, for which he was elected, and filed in the office of the secretary of this Territory with said oath of office.

SECTION 6. Each prosecuting attorney shall be the legal adviser of the boards of county commissioners of the several counties in his judicial district; he shall also prosecute all criminal and civil actions, in which the Territory or any county within his district may be a party; defend all suits brought against the Territory or any county composing his district, and prosecute all forfeited recognizances bonds and actions for the recovery of debts, fines, penalties and forfeitures accruing [accrning] to the Territory or any county within his district.

SECTION 7. The prosecuting attorney of any judicial district from which an appeal or writ of error is taken to the supreme court shall appear on behalf of the Territory or county in supreme court in all cases in which the Territory or any county in his district is interested, and prosecute or defend the same as the case may be.

SECTION 8. Each prosecuting attorney shall, when required by the board of county commissioners of any county in his district, or by the president of such board, give to such board of county commissioners, in writing, if so required, his legal opinion touching any subject, which such board of county commissioners may be called or required to act upon, relating to the management of county affairs.

SECTION 9. The prosecuting attorney in each judicial district is hereby required to give legal advise when requested, to all county and precinct officers and directors and superintendents of common schools, in all matters relating their official business; and when so required, he shall draw up in writing all contracts, obligations, and like instruments of an official nature, for the use of said officers.

SECTION 10. It shall be the duty of the prosecuting attorney to visit once in each year the offices of the county auditors of the several counties in his district; and he shall then examine the official bonds of all county and precinct officers, on file in such offices, and it is made his duty to report to the board of county commissioners of their respective counties any defect in the bonds of any public officer in such county. He shall also once in each year examine the public records and books of the auditor, assessor, treasurer, superintendent of common schools, and sheriff of each county in his district and report to the board of commissioners of their respective counties any failure, refusal, omission or neglect, of such officers to keep such records and books as required by law. He shall also report to the grand jury having been selected in whole or in part from such county, any failure, refusal, omission, or neglect, of any auditor, treasurer, assessor, superintendent of common schools, or sheriff, to keep the records and books required by law.

SECTION 11. Whenever a petition for divorce remains undefended, it shall be the duty of the prosecuting attorney to resist such petition; but no such petition shall be heard by the court, nor shall said prosecuting attorney be required to appear and defend the same, until the sum of fifteen dollars be deposited by the plaintiff in such petition with the clerk of the court, as the fee of such prosecuting attorney.

SECTION 12. No prosecuting attorney shall be employed in, or allowed to conduct any suit for a divorce on the part of the petitioner or applicant, in the courts of this Territory nor shall any prosecuting attorney be allowed to resist a petition for a divorce in any case remaining undefended, if the attorney for the petitioner is a partner in the practice of law or keeps his office with such prosecuting attorney; but in all such cases the court, or judge before whom the case is to be heard, shall appoint

an attorney to resist the petition who shall be entitled to the compensation allowed by law to prosecuting attorneys in such cases.

SECTION 13. No prosecuting attorney shall receive any fee or reward from any person or persons on behalf of any prosecution for any of his official services, except as provided in this act. Nor shall he be engaged as counsel for a party in any civil action depending upon the same facts as a criminal prosecution.

SECTION 14. Each prosecuting attorney shall on the thirty-first day of December in each year, make to the governor of the Territory a report setting forth the amount and the nature of business transacted by him in that year with such other statements and suggestions as he may deem useful.

SECTION 15. When any prosecuting attorney fails, from sickness or other cause, to attend a term of the district court of the district, for which he was elected, or is unable to perform his duties at such term, the court or judge may appoint some qualified person to discharge the duties for such term; and the person so appointed shall receive a compensation to be fixed by the court to be deducted out of the Territorial salary of such prosecuting attorney, not exceeding, however, one-fourth of the quarterly salary of such prosecuting attorney.

SECTION 16. When a vacancy occurs in the office of prosecuting attorney in any district in the Territory, it shall be the duty of the governor to appoint some qualified person to discharge the duties of the office, until the next general election, for delegate to Congress and until another prosecuting attorney shall be elected and qualified: *Provided*, That the person so appointed shall be duly qualified as provided in section one of this act.

SECTION 17. Each prosecuting attorney shall receive a salary for his services in prosecuting and defending criminal and civil actions in which the Territory is a party at the rate of fifteen hundred dollars per annum, to be paid out of the Territorial treasury quarterly, out of any funds in the treasury not otherwise appropriated, upon the presentation to the Territorial treasurer of the proper warrant therefor, which warrant shall be paid in its regular numerical order.

SECTION 18. Each prosecuting attorney shall receive for his services in prosecuting and defending civil actions for any county within his district and for legal advice to boards of county commissioners and county and precinct officers and for such other duties as may be required in sections nine and ten of this act; and any other duties imposed by law, the following sums annually to be paid out of the county treasury of such

county within his district on the order of the board of county commissioners of any such county, that is to say: in counties where the population is one thousand, or less the sum of fifty dollars, and for any additional number of inhabitants above one thousand at the rate of twenty-five dollars per thousand out of any moneys in the general fund of the county not otherwise appropriated.

SECTION 19. No other or greater fees or salary than herein provided, shall be allowed or paid to any prosecuting attorney in this Territory.

SECTION 20. For the purposes of this act, there shall be but three districts; and in all cases where a district court is or shall be held under a special act in counties within a district, said counties shall compose a part of the district to which it belongs for judicial purposes.

SECTION 21. All acts and parts of acts in any manner conflicting with the provisions of this act, be and the same are hereby repealed: *Provided however*, That nothing herein contained, shall be construed as repealing any act or part of an act imposing other and additional duties on any prosecuting attorney.

SECTION 22. This act shall take effect, and be in force from and after its passage.

Approved, October 31st, 1877.

AN ACT

PROVIDING FOR THE PROPER CONFINEMENT OF TERRITORIAL CONVICTS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the governor be and he is hereby authorized for and in behalf of the Territory to enter into a contract with William Billings sheriff of Thurston county for the confinement, custody and maintenance of all Territorial convicts under such restriction and limitations as are hereinafter stated.

SECTION 2. Such contract shall be in force for the term of

six years from the time it is entered into and no longer but the same shall be subject to renewal unless otherwise provided by law.

SECTION 3. The said William Billings shall stipulate in said contract that he will prior to the thirtieth of June A D 1878 erect or cause to be erected at some suitable place in said county of Thurston at his own expense a strong, substantial building or buildings to be used as a penitentiary, with cells and all other appurtenances properly belonging to a penitentiary and so as to make it a safe and secure place of confinement and of sufficient capacity to properly accommodate all persons convicted of offenses punishable by law by imprisonment in the penitentiary.

SECTION 4 The said Billings shall further stipulate in said contract that he will properly confine all such Territorial convicts in said penitentiary according to their respective sentences during the period of his contract and that he will at his own cost and expense furnish said convicts with proper food clothing bedding and all necessary medicine and medical attendance and also furnish at his own expense all guards and other employes of said prison and the proper keeping of said convicts therein.

SECTION 5. The said contractor shall also before the thirtieth day of June 1878 take an oath before some officer authorized to administer oaths that he will faithfully discharge the duties imposed upon him by the provisions of this act, which oath shall be filed in the office of the secretary of the Territory and he shall be liable to the same penalties and punishments in case of escape, prison breach, willful inhumanity or oppression to prisoners, as sheriffs, jailors and other officers are under the law and all laws and parts of laws defining such offenses and proscribing [prescribing] their punishment shall apply to such contractor as though he were a public officer.

SECTION 6. The said contractor shall also before the said thirtieth day of June 1878 execute a bond to the Territory in the sum of ten thousand dollars with sufficient sureties to be approved by the governor, conditioned for the faithful performance of all the conditions of his said contract, as mentioned in the 3d and 4th sections of this act, which bond after approval shall be filed in the office of the secretary of the Territory.

SECTION 7. The said contractor shall receive from the Territory as a compensation the sum of seventy cents per diem for each prisoner confined in said prison under the provisions of this act payment to be made quarterly upon the presentation of his account verified by oath and approved by the Governor to the Territorial auditor who shall draw his warrant on the treasury for the payment of the amount due. He shall

also be entitled to receive and have all the proceeds of the labor of the convicts therein and the profits and emoluments from the operation of said prison, and the said contractor shall transport from the place of their conviction to said prison all Territorial convicts who shall be sentenced during the term of said contract and all Territorial prisoners now confined whose term of imprisonment does not expire before the 1st day of July A. D. 1878, and he shall receive therefor from the Territorial treasury the sum of five hundred dollars annually and no more.

SECTION 8. Convicts shall be confined strictly within the enclosure of said prison, except in the daytime when at work under the charge of a guard.

SECTION 9. The governor, judge and prosecuting attorney of the 2d judicial district, auditor and treasurer shall be ex-officers[ex-officio] commissioners for the prison and shall have power to proscribe [prescribe] such general rules for the discipline of the prison as they may deem proper for the proper government of said prison which rules shall be reasonable and in harmony with this act, and must be strictly obeyed by the said contractor his guards and employes. The said commissioners shall also have the right to inspect and visit the said prison as often as they may deem it necessary and also to designate a respectable physician to examine into the health and condition of each convict from time to time who is to report to the Governor which physician shall have access at all reasonable hours to said prison.

SECTION 10. When the building provided for in the 3d section of this act shall have been completed the said commissioners shall cause the same to be examined by one or more disinterested and skilful builders with reference to its security and adaptation for the purposes contemplated in this act and if the said commissioners after such examination shall be satisfied that the same has been erected and furnished as proscribed in the contract. They shall issue their certificate to the said contractor stating the said facts and shall also forward a similar certificate to each judge of the supreme court in this Territory and the six years provided for in section 2 of this act shall commence to run from the date of said certificate.

SECTION 11. After the granting of such certificate the said contractor is entitled to demand and to receive into his custody every prisoner convicted of a felony in this Territory prior to such time. When term of imprisonment shall not have expired and every sheriff or other officer having the custody of such prisoners, shall upon production of the said certificate deliver every such prisoner and the proper warrant of commitment to said contractor of said prison taking his receipt for the

same and after the granting of such certificate each person convicted of any offence punishable by law by imprisonment in penitentiary shall be sentenced by the court having jurisdiction to imprisonment in the prison provided for in this act and shall be confined therein and said prison for all purposes shall be deemed and held to be the penitentiary of the Territory of Washington during the period of said contract.

SECTION 12. The said contractor shall also be entitled to demand and receive all handcuffs irons and shackles and the right to manufacture the same which may be now owned by the Territory and also all blankets owned by the Territory and used in any of the jails thereof for Territorial convicts and also all such Territorial arms and ammunition as may be necessary to properly guard said prison and an inventory of such articles shall be taken by the contractor and filed in the office of the secretary of the Territory and the said contractor at the expiration of his contract shall account for all such articles to the Territory.

SECTION 13. At the request of any regular minister of the gospel in charge of any established congregation in the Territory the said contractor shall permit divine worship to be held in said prison by such minister as often as once each sabbath day.

SECTION 14. No assignment of the said contract or any interest therein shall be held as binding without the written consent of the said commissioners or a majority of them.

SECTION 15. In the event of the failure of the contractor to perform his said contract the said commissioners are authorized to contract with any other suitable persons for the keeping of said prisoners under the limitations and restrictions of this act which temporary contract shall be in force until the next ensuing meeting of the Legislative Assembly.

SECTION 16. The Governor shall be chairman of the board of commissioners herein provided for. He shall convene all meetings of said board of which two members shall constitute a quorum a majority of the board shall be necessary to decide all matters before them.

SECTION 17. 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.

SECTION 19. [18]. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

IN RELATION TO NOTARIES PUBLIC.

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.

SECTION 2. Every notary public shall be appointed for the county in which he resides, and shall hold his office for four years unless his appointment is sooner revoked.

SECTION 3. Before a commission shall issue to the person appointed, he shall:

First, Pay into the territorial treasury the sum of five dollars, taking the territorial treasurer's receipt therefor.

Second, Procure a seal, on which shall be engraved the words "Notary Public," "Notarial Seal," or words of equivalent import, and "Washington Territory," with his surname in full, and at least the initials of his christian name.

Third, Take and subscribe the oath of office required of all Territorial or county officers.

Fourth, Append to the said oath a clear impression of his official seal, which seal shall be approved by the governor.

Fifth, File the said oath of office, impression and approval of seal, and Territorial treasurer's receipt, in the office of the secretary of the Territory.

SECTION 4. When the secretary of the Territory is satisfied that the requirements of the foregoing section has [have] been fully complied with, he shall so inform the governor, who shall issue, or cause to be issued a commission to the person appointed, who shall thereupon be authorized to enter upon the duties of his office.

SECTION 5. Every duly qualified notary public is authorized, in any county in this Territory:

First, 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.

Second, To take acknowledgements of all deeds and other instruments of writing, and certify the same in the manner required by law.

Third, To take depositions and affidavits, and administer all oaths, required by law to be administered, and every attorney at law who is 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.

SECTION 6. It shall be sufficient for any notary public to certify an oath to be used in this Territory, in any of the courts, or in any matter whatsoever, to say simply in addition 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.

SECTION 7. Every notary public is required to keep a true record of all notices of protest given or sent by him, with the time and manner in which the same were given or sent, and the name 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.

SECTION 8. On the death, resignation or removal from office, and at the expiration of the term of office, of any notary public, his records and all his official papers, shall within three months therefrom be deposited in the office of the auditor of the county, for which such notary shall have been appointed, 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.

SECTION 9. Every notary public is entitled to demand and receive the fees herein enumerated:

For every protest of a bill of exchange or promissory note, one dollar.

Attesting any instrument of writing under seal, one dollar.

Noting a bill of exchange or promissory note for non-acceptance or non-payment, one dollar.

Taking acknowledgement of any legal instrument, one dollar.

Registering protest of bill of exchange or promissory note seventy-five cents.

Certifying an affidavit, and all other certificates under seal, one dollar.

Each oath or affirmation without seal, twenty-five cents.

Being present at demand, tender, or deposit, and noting the same besides mileage at ten cents per mile, fifty cents.

For any instrument of writing drawn by a notary public, for each hundred words twenty-five cents.

SECTION 10. After the delivery of a commissison to a notary public, appointed and qualified as heretofore provided, the secretary of the Territory, shall make a certificate of such appointment with the date of said commission, and file the same in the office of the clerk of the district court of the district or sub-district where such notary resides, who shall file and preserve the same, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public, during the time such commission is in force.

SECTION 11. All official acts heretofore done and performed by notary publics [notaries public] in this Territory, and attested by their official seals, shall be taken as valid and of full force and effect, if such seals were approved by the governor of the Territory at the time of commissioning said notaries public.

SECTION 12. The Territorial treasurer shall keep all moneys received by him under the provisions of this act, as a special fund and pay the same out, only upon warrants drawn by the Territorial auditor against the said fund, and whatever of the said fund shall remain in his hands, unappropriated as hereinafter provided, at the end of each fiscal year shall be transferred to the general fund.

SECTION 13. The Territorial auditor shall, upon presentation to him by the secretary of the Territory, of bills or vouchers for postage, the purchase or printing of blanks, commissions, circulars, letters, instructions, acts, etc., to be used or distributed by the said secretary of the Territory in matters pertaining to the appointment or commissioning of notaries public, audit the same, and draw his warrant upon the Territorial Treasury, against the said special fund for the amount allowed by him, in favor of the secretary of the Territory, and the Territorial treasurer shall pay the same out of the said special fund only.

SECTION 14. All acts and parts of acts heretofore passed in relation to notaries public, be and the same are hereby repealed.

SECTION. 15. This act to take effect and be in force from and after its passage.

Approved, October 31st, 1877.

AN ACT

(AN ACT) DÉFINING THE RIGHTS OF JURORS IN WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of Washington Territory,* That no judge of the district court, judge of probate, justice of the peace or recorder in this Territory wherever any jury shall be engaged in the trial of any cause in their respective courts and shall retire to consider upon their verdict, shall deprive said jury after retiring as aforementioned of food as they may desire for a longer period than six hours at any one time and it is the intention of this act that such jury be furnished with food at intervals of not more than six hours while in consideration of their verdict.

SECTION 2. Any judge of the district court, judge of probate, justice of the peace or recorder in this Territory who shall violate the provisions of section first (1) of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00) for each offense, said fine to be collected in the same manner as fines of a like nature are now collected by the statutes of Washington Territory in such cases made and provided.

SECTION 3. All fines collected in accordance with the provisions of this act shall be paid into the school fund of the county in which the offense shall be committed.

SECTION 4. All parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

SECTION 5. This act to take effect and be in force from and after its passage and approval by the governor.

Approved, November 6th, 1877.

AN ACT

IN RELATION TO COMMISSIONERS OF DEEDS.

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, who shall continue in office for a term of four years, who shall have power to administer oaths, and to take depositions and acknowledgments and affidavits to be used in this Territory.

SECTION 2. Before a commission shall issue to any commissioner appointed as aforesaid, the appointee shall:

First, Take and subscribe an oath before some officer authorized to administer the same in the State or Territory for which such commissioner is appointed, that he will faithfully discharge the duties of his office, and forward a copy thereof to the secretary of the Territory;

Second, Pay into the Territorial treasury the sum of two dollars and fifty cents, taking the Territorial treasurer's receipt therefor;

Third, File the said Territorial treasurer's receipt in the office of the secretary of the Territory.

SECTION 3. When the provisions of section two shall have been complied with, the secretary shall so inform the governor, who shall issue a commission to the said appointee, upon receipt of which, the said commissioner may enter upon the duties of his office. The governor may at any time revoke any appointment.

SECTION 4. The Territorial treasurer shall keep all moneys received by him, under the provisions of this act, as a special fund, and pay the same out, only upon warrants drawn by the Territorial auditor against the said fund; and whatever of the said fund shall remain in his hands unappropriated as hereinafter provided, at the end of each fiscal year, shall be transferred to the general fund.

SECTION 5. The Territorial auditor shall, upon presentation to him by the secretary of the Territory, of bills or vouchers for postage, the purchase or printing of blanks, commissions, circulars, letters, instructions, acts, etc., to be used or distributed by the said secretary of the Territory, in matters per-

taining to the appointment or commissioning of commissioners of deeds, audit the same, and draw his warrant upon the Territorial treasury, against the said special fund for the amount allowed by him, in favor of the secretary of the Territory, and the Territorial treasurer shall pay the same out of the said special fund only.

SECTION 6. All acts and parts of acts heretofore passed, in conflict with any of the provisions of this act, be, and the same are hereby repealed.

SECTION 7. This act to take effect and be in force from and after its passage.

Approved, November 6th, 1877.

AN ACT

RELATING TO THE IMPROVEMENT OF TIDE LAND.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That persons owning or desiring to improve contiguous tracts of tide marsh or swampy lands exposed to the overflow of the tide and capable of being laid [made] dry may separate their respective tracts by a dike or ditch, which shall make and designate their common boundary. In all such cases said dike or ditch shall be constructed at the equal cost and expense of the respective parties, and either party failing to pay his contributive share of such expense shall be liable to the party constructing the dike or ditch for such contributive share, or so much thereof as may remain due and unpaid, to be recovered in a civil action in a court of competent jurisdiction and the party constructing such dike shall also be entitled to a lien upon the tract of the party failing to pay his contributive share for the construction of said dike, or so much thereof as shall be due, which lien shall be secured and enforced as liens of materialmen and mechanics are now by law enforced.

SECTION 2. Any person or persons who may hereafter take a tract of tide land or marsh and shall desire to adopt as his boundary line any dike or ditch heretofore constructed upon and entirely within the boundary line of a neighboring contiguous tract he may join on to said tract and adopt said dike as his boundary

by paying to the owner of the tract upon which said dike is constructed one-half of the cost and expense of the construction thereof, and any person as [so] adopting the dike or ditch of another without contributing his half share of the cost or expense thereof shall be liable for his said half share, which may be recovered in a civil action in any court of competent jurisdiction, or the owner of the dike or ditch as [so] used, may secure a lien upon the tract of land bounded by said dike for the amount due for the use of said dike in accordance with the provisions of the law securing a lien to materialmen and mechanics: *Provided always*, That when such dike has become the common boundary of two adjacent tracts, it shall be and remain the common boundary, and the persons owning the said tracts shall be mutually liable for the expense of keeping it in repair, share and share alike.

SECTION 3. This act to take effect from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE A SYSTEM OF COMMON SCHOOLS.

TITLE I.

SUPERINTENDENT OF COMMON SCHOOLS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That a superintendent of public instruction shall be appointed by the governor, by and with the advice and consent of the Legislative Council, and shall enter upon the duties of his office on or before the twentieth day after his appointment, and shall hold his office for the term of two years, or until his successor is appointed and qualified, and shall execute a bond in the penal sum of two thousand dollars, with two good and sufficient sureties, to be approved by the secretary of the Territory, conditioned upon the faithful discharge of his or her official duties.

SECTION 2. The superintendent shall have general supervision of public instruction, especially of the county and dis-

trict school officers and the public schools of the Territory, and shall report to the governor biennially, on or before the first day of October of the years in which the regular sessions of the Legislature are held. The governor shall transmit said report to the Legislature, and whenever it is ordered printed, a sufficient number of copies shall be delivered to the superintendent of public instruction to furnish two copies to be deposited in the Territorial library, and one copy to each county superintendent of common schools, to be held by him as public property, and delivered to his successor in office, and one copy to each local school officer within the Territory. Said report shall contain a statement of the condition of the Territorial university and public schools in the Territory, full statistical tables, by counties, showing among other statistics the number of school children in the Territory, the number attending public schools and the average attendance; the number attending private schools, the amount raised by county and district taxes or from other sources of revenue for school purposes, the amount expended for salaries of teachers and for building and furnishing school houses, and the statement of the plans for the management and improvement of schools.

SECTION 3. The superintendent of public instruction shall superintend the printing and transmitting of such blanks, forms, rules and regulations for the use and government of the public schools, school officers and teachers as the board of education may authorize.

SECTION 4. It shall be the duty of the superintendent of public instruction to travel in the different counties of the Territory where common schools are taught, so far as possible without neglecting his other official duties as superintendent of public instruction, during at least three months in each year, for the purpose of visiting schools, of consulting with county superintendents and addressing public assemblies on subjects pertaining to public schools.

SECTION 5. The superintendent of public instruction shall keep his office at some place where there is a post-office, and he shall receive a salary of six hundred dollars per annum, which shall be paid quarterly out of the Territorial treasury. He shall also submit, quarterly, a statement of expenditures for traveling expenses, stationery, postage and other necessary expenses connected with his office, which shall be audited by the Territorial auditor, who shall issue a warrant on the Territorial treasurer for the payment of such amounts as shall be found to have been properly incurred: *Provided*, That said expenditures shall not exceed three hundred dollars in any one year.

SECTION 6. The superintendent of public instruction shall, at least once a year, hold a Territorial teacher's institute, over

which he shall preside, at such time and place as may be determined upon, either by the institute or Territorial board of education, and he shall, so far as practicable, aid in establishing county institutes.

SECTION 7. The superintendent of public instruction shall be *ex-officio* President of the board of education.

SECTION 8. Before entering upon the discharge of the duties of his office the superintendent shall subscribe, before an officer duly authorized to administer oaths, the following:

I do solemnly swear (or affirm) that I will support the Constitution of the United States, the Organic Act of the Territory, and that I will faithfully discharge the duties of the office of Territorial superintendent of schools, according to law and the best of my knowledge and ability; so help me God.

Subscribed and sworn before me this——day of———
A. D. 187—.

Which being duly attested, shall be filed with the secretary of the Territory.

SECTION 9. The superintendent shall, at the expiration of his term of office, deliver over, on demand, to his successor, all property, books, documents, maps, records, reports and other papers belonging to his office, or which may have been received by him for the use of his office.

TITLE II.

BOARD OF EDUCATION.

SECTION 10. The governor shall appoint, by and with the advice and consent of the Legislative Council, one suitable person from each judicial district, who, together with the Territorial superintendent, shall constitute the Territorial board of education, who shall hold their offices for two years. They shall be notified of their appointment in the same manner as may be prescribed by law for giving notice to other Territorial officers, and within twenty days after receiving such notice, shall qualify by taking a similar oath to that which is required by this act to be administered to the superintendent of public instruction. They shall serve until their successors are appointed and qualified.

SECTION 11. The meetings of the board shall be held annually, at Olympia, on the first Monday of April.

SECTION 12. Said board shall have power:

First. To adopt a uniform series of text-books throughout the Territory whenever they can secure the exchange of the books now in use for new ones, without cost or expense to the people, and the series of text-books so adopted shall not be changed until the expiration of five years from their adoption, unless the publishers of such books shall, after such adoption, cause the prices thereof to be increased above the prices charged by other publishers for books of corresponding grades, or shall thereafter publish the books of the series adopted of an inferior quality, either in material, workmanship, or otherwise. Said board shall, before adopting any series of text-books, give notice that they will examine all text-books submitted to them, and said examination shall be by a public discussion of the merits of said books, in open board; and the series of books exhibiting the highest merit, shall be adopted as the series to be used in all the schools in this Territory, and notice of the time when such competition shall take place, shall be published in one paper of general circulation in each judicial district, for a period of six weeks prior to the date when such public competition shall occur.

Second. To prescribe rules for the general government of the public schools that shall secure regularity of attendance, prevent truancy, secure efficiency and promote the true interests of the schools; they shall prepare or cause to be prepared, blank forms for reports of teachers, directors, county superintendents and for other necessary purposes. The board shall have the general supervision of the Territorial Normal School whenever the same shall be established by law.

Third. To use a common seal.

Fourth. To order all printing that may be necessary to carry into effect the provisions of this act.

Fifth. To sit as a board of examination at their semi-annual meetings and grant Territorial certificates. A Territorial certificate shall entitle the holder to teach in any public school for the period of three years, subject to be revoked for cause. The fees charged for Territorial certificates shall be six dollars. The fees collected shall constitute a fund for paying the expenses of the board of education. The board of education may, at their discretion, grant, without examination, certificates to persons presenting authenticated diplomas, or certificates from other States, of the like grade and kind as those granted by the board of education for the Territory: *Provided*, They have been actually engaged in teaching, three years.

SECTION 13. It shall be the duty of the board of education to prepare, semi-annually, a uniform series of questions to be used by the county boards of examination in the examination of teachers.

SECTION 14. All certificates granted by the board of education may be revoked for immoral or unprofessional conduct.

SECTION 15. All needed stationery for the use of, and any printing authorized by the board, as well as all necessary traveling expenses of the members of the board incurred in going to or returning from the place of meeting, shall be paid out of the Territorial treasury, the accounts for the same to be presented by direction of the board, duly certified by the Territorial superintendent to the Territorial auditor, to be first audited and allowed by him and then certified to the Territorial treasurer for payment: *Provided*, The expenses of the whole board shall not exceed the sum of two hundred dollars.

SECTION 16. Whenever any vacancy in the board shall occur, whether by death, removal, resignation or otherwise, the governor shall fill the vacancy by appointment.

TITLE III.

COUNTY SUPERINTENDENT.

SECTION 17. A county superintendent of common schools shall be elected in each county of the Territory at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter, who shall take the office on the first Monday in January next succeeding his election, and hold for two years, or until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond to the county in a sum to be fixed by the board of county commissioners of said county. The county commissioners of each county shall fill any vacancy that may occur in the office of county superintendent until the next general election.

SECTION 18. The county superintendent shall, on or before the first Monday in September of each year, apportion all school moneys to the school districts in accordance with the provisions of this act. He shall certify to the several district clerks and to the county treasurer the amounts so apportioned to the several districts and the directors shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrants shall show for what purpose the money is required, and no warrant shall be drawn unless there is money in the treasury to the credit of such district.

SECTION 19. County superintendents shall have the power and it shall be their duty.

First, To visit each school in his county at least once a year.

Second, To distribute, promptly, all reports, laws, forms, circulars and instructions which he may receive for the use of the schools and teachers from the superintendent of public instruction.

Third, To report to the superintendent of public instruction, annually, during the month of September, for the school year ending August thirty-first next receding[preceding,] such statistics as may be required of him.

Fourth, To enforce the course of study adopted by the board of education.

Fifth, To enforce the rules and regulations required in the examination of teachers.

Sixth, To keep on file and preserve in his office the biennial report of the superintendent of public instruction.

Seventh, To keep in a good and well bound book, to be furnished by the county commissioners, a record of his official acts.

Eighth, To carefully preserve all reports of school officers and teachers, and at the close of his term of office, deliver to his successor, all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county auditor.

SECTION 20. If the county superintendent fails to make a full and correct report to the superintendent of public instruction, of all statements required to be made by law, he shall forfeit the sum of one hundred dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

SECTION 21. The county superintendent shall have power to administer oaths and affirmations to school directors, collectors, teachers and other persons, in all official matters connected with or relating to schools, but shall not make or collect any charge or fee for so doing.

SECTION 22. The county superintendent shall have the power, and it shall be his duty, to appoint directors and district clerk for any district which, from any cause, fails to elect at the regular time; to appoint directors and district clerk to fill vacancies, to appoint directors and district clerk for any new district: *Provided however*, That when a new district is organized, such of the directors and district clerks of the old district as

reside within the limits of the new one, shall be directors and district clerk of the new one, and the vacancies in the old district shall be filled by appointment; that the county superintendent shall have power to call a school meeting at the request of a majority of the legal voters, when in his opinion the interests of education require it: *Provided*, That said request for such school meeting be first laid before the directors of the district, and action thereon be refused by them.

SECTION 23. It shall be the duty of the county superintendent to inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the county commissioners, and if such boundaries are not plainly described on such records, then it shall be his duty to furnish to said board of county commissioners accurate boundaries of all school districts, and he shall keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting or incorrectly described, he shall change, harmonize and describe them, and make a report of such actions to the county commissioners, and on being ratified by the county commissioners, the boundaries and descriptions so made shall be legal boundaries and descriptions of the district [districts] of the county. The county superintendent shall furnish the district clerks with descriptions of the boundaries of their respective districts.

SECTION 24. Every county school superintendent shall receive a salary of forty dollars per annum and when the number of scholars shall exceed five hundred (500) then he shall receive the sum of three dollars for each additional one hundred, and five dollars for each school visited during the year, together with the same mileage for going to and returning from said school that sheriffs receive in the county in which they reside, all to be paid quarterly out of the general treasury of said county in the same manner as the salaries of other county officers, upon his certifying to the county commissioners that he has actually discharged the duties required of him.

SECTION 25. Each county superintendent shall call to his assistance two persons holding the highest grade certificates in his county, and such persons with the county superintendent, shall constitute a board of examination for the examination of teachers. It shall be the duty of the county board of examination to be at the county seat on the first Wednesday of May and November for the purpose of examining teachers; the superintendent shall give ten days notice of the same by posting up hand bills or otherwise; the superintendent shall also at such time and place transact such other business as properly appertains to his office. 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, not exceeding the sum of two dollars. A proper allowance shall be made out of the county treasury for the necessary books, stationery and postage of the county superintendent's office.

SECTION (Twenty) 26. There shall be three grades of county certificates, first, second and third. Unless revoked for cause, a first grade certificate shall entitle the holder to teach for three years; second grade for two years and third grade for one year. Those holding first grade county certificates, and who shall have been actually engaged in teaching for three years, shall be eligible to examination for first grade Territorial certificates: *Provided*, That the county superintendent may grant permits to such persons who may desire to teach in his county, who were not residents of the county, or who were unavoidably absent from the meeting of the county board of examination, and all permits so granted shall be good until the next meeting of the board.

TITLE IV.

SCHOOL DISTRICTS.

SECTION 27. For the purpose of organizing a new district, or for the subdivision of, or change in the boundaries of an old one, except as provided in section twenty-three, at least five heads of families must present a petition to the county superintendent, setting forth the boundaries of the new district asked for, or the change of the boundaries desired, with the reason for the same. The county superintendent shall, after giving due notice to all parties interested, transmit the petition to the board of county commissioners, with his approval or disapproval, and such changes in the boundaries as he may deem necessary or advisable. The commissioners shall establish the district as approved by the county superintendent: *Provided*, That by vote of the board they may establish the district in accordance with the original prayer of the petition, or such other modification as they may choose to make, or may reject it. In any case of alleged hardship, any head of a family, parent or guardian may make a statement of the facts to the board of commissioners, and if, in the judgment of the board, good cause be shown for such transfer, he may be transferred to another district.

SECTION 28. No new district formed by the subdivision of an old one shall be entitled to any share of the public money belonging to the old district until a school has been actually commenced in such new district; and unless within eight months from the action of the county commissioners a school is opened, the action making a new district shall be void, and all elections or appointments of directors made in consequence of such action, and all rights and office of the parties so elected or appointed, shall cease and determine; and all taxes which may have been levied in such old district, shall be valid and binding upon the real and personal property of the new district, and shall be collected and paid into the school fund of the district.

SECTION 29. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district, after the payment of all outstanding debts at the time when school was actually commenced in such new district, and the county superintendent shall divide and apportion such remaining moneys, and such as may afterwards be apportioned to the old district according to the number of census children resident in each district for which purpose he may order a census to be taken.

SECTION 30 Whenever a district is formed lying in two adjoining counties, the clerk of the district shall report to each county superintendent the number of children in the district residing in his county. In the same manner the directors and teachers shall make a distinct and separate report of all school statistics, and a teacher's certificate granted by the county superintendent of one county shall be valid for both.

SECTION 31. No school district shall be entitled to receive any apportionment of county school moneys unless the teachers employed in the schools of such district shall hold legal certificates of fitness for the occupation of teaching, in full force and effect.

SECTION 32. No school district shall be entitled to receive any apportionment of county school moneys which shall not have maintained public school for at least three months during the preceding year: *Provided*, That any new district formed by the division of an old one, shall be entitled to its just share of school moneys where the time that school was maintained in the old district before division, and in the new one after division shall be equal to at least three months.

SECTION 33. Districts having less than fifteen scholars between the ages of four and twenty-one years, shall be exempted from the requirements of the preceding section, and may, by organizing and reporting to the superintendent according to law, draw their school money without being required to comply

with the provisions of the school law any further than the said organization, necessary report and regular enumeration of children are concerned; and in such district, two legal voters shall constitute a quorum to do business: *Provided*, That no warrant shall be drawn on the county treasurer for any money except for the payment of teachers, and if no school be kept in any such district during the period of two years, for at least three months, the money so apportioned to the district shall revert to the general school fund of the county.

TITLE V.

SCHOOL DIRECTORS.

SECTION 34. The board of directors of each school district shall have custody of all school property belonging to the district and shall have power in the name of the district, or in their own names, as directors of the district, to convey by deed all the interest of their district in or to any school house or lot directed to be sold by vote of the district, and all conveyances of real estate made to the district, or to the directors thereof, shall be made to the board of directors of the district and to their successors in office; said board in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

SECTION 35. An annual school meeting for the election of school directors and district clerk shall be held in each district on the first Saturday in November of each year at the district school house if there be one, and if there be none, at a place to be designated by the board of directors. The directors shall post written or printed notices thereof, specifying the day, time, and place of meeting, in at least three public places in the district, one of which shall be the school house or other place of meeting at least six days previous to the time of meeting. All elections shall be by ballot and the directors shall have power to determine the hours in which the ballot box shall be kept open, having given due notice thereof in the posted notices of election. Every inhabitant male or female, over the age of twenty-one years, who shall have resided in the school district for three months immediately preceding any district meeting and who shall have paid or be liable to pay any tax except poll or road tax in said district, shall be a legal voter

at any school meeting and no other person shall be allowed to vote. Any person offering to vote may be challenged by any legally qualified elector of the district and the chairman of the board of directors shall thereupon administer to the person challenged an oath, in substance as follow: You do swear (or affirm) that you are a citizen of the United States or have declared your intention to become such; that you are twenty-one years of age, according to the best of your information and belief that you have resided in this district ninety days next preceding this election and that you are a taxable resident of this school district, exclusive of road or poll tax and that you have not before voted this day. If he shall refuse to take the oath his vote shall be rejected and any person guilty of illegal voting shall be punished as provided in the general election law of this Territory. The directors shall be the judges and inspectors of the election, and if they are not present at the time of opening the polls, then the electors present may appoint the officers of the election. A poll and tally list shall be kept by the clerk of the board of directors and with the exceptions mentioned in this section the election shall be conducted as far as practicable in the form and manner of the general election. Any on [one] of the old directors shall have power to administer to any director elect, the oath of office, and the clerk of the election shall issue the certificate of election to any director elect, who shall forward it with the oath attached or endorsed thereon, to the county superintendent of public schools.

SECTION 36. In all organized districts in which elections have been previously held one, director shall be elected for the term of three years, and if any vacancies are to be filled, a sufficient number to fill them for the unexpired term and the ballot shall specify the respective terms for which each director is to be elected. In new districts acting under directors appointed by the county superintendent three directors shall be elected for one two and three years respectively. Directors elect shall take office immediately after qualifying and shall hold office until their successors are elected and qualified. Any director elect who shall fail to qualify within ten days after being elected, shall forfeit all right to the office, and the county superintendent shall appoint to fill the vacancy.

SECTION 37. Whenever a new district is formed by order of the board of county commissioners, within thirty days thereafter, a special school meeting may be called by notice of any three legal voters of said district, and such meeting shall be conducted in a manner and form prescribed in this act, for the annual school meeting for the election of directors. Such new district shall be considered organized whenever two of the directors shall have qualified, and the record of the district clerk

shall be *prima facie* evidence of the legal organization of the district, and the district shall be designated by number.

SECTION 38. Every board of directors unless otherwise specially provided by law, shall have power and it shall be their duty:

First, To employ and for sufficient cause dismiss, teachers, mechanics, and laborers; and to fix, alter, allow, and order paid their salaries and compensation.

Second, To enforce the rules and general regulations of the Territorial board of education for the government of schools, pupils, and teachers, and to enforce the course of studies adopted by the board of education.

Third, To provide and pay for school furniture and apparatus and such other articles—materials and supplies—as may be necessary for the use of the school or for the use of the school board.

Fourth, To suspend or expel pupils from school, and in cities or towns to exclude from school all pupils under six years of age, when the interest of the school require such exclusion.

Fifth, To rent, repair and furnish school houses.

Sixth, To build or remove school houses, purchase and sell school lots when the directors are directed by a vote of the district so to do.

Seventh, To purchase personal property, and to receive, lease and hold in fee, or in trust for their district any or all real or personal property, for the benefit of the school thereof.

Eighth, To provide books for the indigent children, on the written statement of the teacher that the parents of such children are unable to purchase them.

Ninth, To require all pupils to be furnished with such books as may have been adopted by the Territorial board of education as a condition to membership to the school.

Tenth, To exclude from school and from school libraries, all books, papers, tracts, or catechisms of an infidel, sectarian or partisan character.

Eleventh, To require every teacher to keep a school register.

Twelfth, To require teachers to make an annual report as may be required by the superintendent of public instruction.

Thirteenth, To make an annual report during the month of August of each year for the school year next preceding, to the county superintendent in the manner and form and on the blanks prescribed by the board of education.

Fourteenth, To make a report whenever required, directly

to the Territorial superintendent of public instruction of the text books used in their schools.

SECTION 39. Any board of directors, shall be liable as directors, in the name of the district, for any judgment against the district, for any salary due any teacher, and for any debts legally due, contracted under the provisions of this act and they shall pay such judgment or liability out of the school funds only, to the credit of the district.

SECTION 40. Any board of directors shall have power to make arrangements with the directors of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school money due by apportionment to such children to the district in which they may attend school.

TITLE VI.

SCHOOL CLERKS.

SECTION 41. It shall be the duty of the district clerk to record all proceedings of the annual meetings, or of special school meetings, and to keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the district clerk must present his record book for public inspection, and shall make a statement of the financial condition of the district and of the action of the directors; and such record must always be open for public inspection.

SECTION 42. It shall be the duty of the district clerk to take annually between the twentieth and thirtieth of July, of each year, an exact census of all children and youth between the ages of four and twenty-one years of age, residing in the district, and shall specify the number and sex of such children and the names of their parents or guardians. He shall state specifically and separately a census of all children under four years of age, and shall specify the number and sex of such children; but all children who may be absent from home, attending boarding schools or any public or private schools or seminaries of learning shall not be included by the school district clerk in the census list of the city, town or district where they may be attending such private institutions of learning. He shall make a full report thereof on blanks furnished for that purpose, under oath, to the county superintendent, on or before the first day of August thereafter, and deliver a copy to

the school directors. The directors shall make a reasonable allowance to the clerk of the district for the services rendered by him in accordance with the provisions of this act, and order the same paid out of the district school fund.

SECTION 43. The district clerk of each district shall provide all school supplies authorized by this act, and shall keep the school house in repair, and shall keep an accurate record of all expenses incurred by him on account of the school, which account shall be audited by a majority of the board of directors, and paid out of the district school fund.

SECTION 44. It shall be the duty of every district clerk to report to the county superintendent at the beginning of each term, the name of the teacher and the proposed length of the term.

TITLE VII.

DISTRICT MEETINGS.

SECTION 45. No district school meeting, annual or special, shall be organized before nine o'clock A. M., or close before twelve o'clock M., or be kept open less than one hour, and in all districts where the number of youths and children, between four and twenty-one years of age, equals or exceeds three hundred, the polls shall be kept open from two o'clock P. M. till six o'clock P. M.

TITLE VIII.

TEACHERS.

SECTION 46. Every teacher employed in any public school shall make an annual report to the county superintendent, on or before the first day of September after the close of each school year in the form and manner and on the blanks prescribed by the board of education. A duplicate of said report shall be furnished to the district clerk. Any teacher who shall end any school term before the close of the school year, shall make a report to the county superintendent immediately after the close

of such term; and any teacher who may be teaching any school at the close of the school year shall, in his or her annual report, include all statistics from the school register for the entire school year, notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as may be required, in pursuance of the law, by the board of education. No board of directors shall draw any order or warrant, for the salary of any teacher for the last month of his or her services, until the reports herein required shall have been made and received.

SECTION 47. Every teacher shall keep a school register, in the manner provided therefor, and no board of directors shall draw any warrant for the salary of any teacher for the last month of his or her services in school, at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and statistics entered, or until by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce in school the course of study and the regulations prescribed by law; and if any teacher shall willfully refuse, or neglect to comply with such requisitions, then the board of directors shall be authorized to withhold any warrant for salary due, until such teacher shall comply therewith. No teacher shall be entitled to draw for salary on school moneys unless such teacher shall be employed by a majority of the directors, nor unless the holder of a legal teacher's certificate or permit in full force and effect.

SECTION 48. In every contract whether written or verbal, between any teacher and board of directors, a school month shall be construed to be twenty school days or four weeks of five days each, and no teacher shall be required to teach school on Saturdays, the first day of January, Christmas day, the Fourth of July, or any other legal holiday, and no deduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught, [nor shall] any deduction be made from the salary of a teacher during the time he or she is attending the annual county teacher's institute, including time necessarily occupied in traveling, upon production of the certificate of the president of such institute certifying to the number of days of such [attendance.] Any contract made in violation of the provisions this section shall have no force or effect, as against the teacher.

SECTION 49. Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to or from school or on the grounds of the school, or during intermission or recess; to suspend from school

any pupil for good cause, provided that such suspension shall be reported to the directors as soon as practicable, and their decision shall be final, and no teacher shall administer any punishment on or about the head of any scholar.

SECTION 50. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice and patriotism; to teach them to avoid idleness, profanity and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties and dignity of American citizenship.

TITLE IX.

SCHOOLS.

SECTION 51. Every school, not otherwise provided for by special law, shall be open for the admission of all between the age of five twenty-one years, residing in that school district, and the board of directors shall have power to admit adults and children not residing in the district, whenever good reason exists for such exception.

SECTION 52. All schools shall be taught in the English language, and instruction shall be given in the following branches, viz: reading, writing, orthography, arithmetic, geography, English grammar, physiology and history of the United States, and such other studies as may be authorized by the directors of the district. Attention shall be given during the entire course, to the cultivation of manners, morals, to the laws of health, physical exercises, ventilation and temperature of the school room.

SECTION 53. No books, tracts, papers, catechism or other publications of a partisan, denominational character shall be used or distributed in any school, neither shall any political, sectarian, denominational or infidel doctrine be taught therein; and any teacher who shall violate these provisions shall forfeit his permit or certificate for the period of one year.

SECTION 54. The school day shall be six hours in length exclusive of any intermission at noon, but any board of directors may fix as the school day, a less number of hours than six: *Provided*, That it be not less than four, for any primary school under their charge, and any teacher may dismiss any or all scholars under eight years of age, after an attendance of four

hours a day, exclusive of an intermission at noon. No teacher or scholar shall be allowed to attend school from any house in which smallpox, vari[o]loid or scarlet fever is prevalent. No teacher or scholar shall be permitted to return to school from any house where the above mentioned diseases have prevailed until three weeks shall have elapsed from the beginning of convalescence of the patient. In case several individuals have been affected with such disease within the same house the period of time must be reckoned from the beginning of convalescence of the last case. No teacher or scholar shall be allowed to attend school who is affected with dip[h]theria or measles, or whooping cough.

SECTION 55. All pupils who may attend public schools shall comply with the regulations established, in pursuance of the law, for the government of such schools, shall pursue the required course of study, and shall submit to the authority of the teachers, of such schools. Continued and willful disobedience, and open defiance of authority of the teachers, shall constitute good cause for expulsion from school. Any person who shall in any way cut, deface, or otherwise injure any school house, furniture, fence, or out building thereof, shall be liable to suspension and punishment, and the parents or guardian of such pupil shall be liable for damage on complaint of the teacher or any director.

SECTION 56. The school year shall begin on the first day of September and end on the last day of August.

TITLE X.

SUPPORT OF SCHOOLS.

SECTION 57. The principal of all moneys accruing to the Territory from the sale of any lands, which have been, 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 in each between the ages of four and twenty-one years, for the support of common schools and for no other purpose whatever.

SECTION 58. For the purpose of establishing and maintaining public schools, it shall be the duty of county commissioners of each county to levy an annual tax not less than three

and not more than six mills on the dollar on all taxable property within their respective counties, as shown by the assessment roll 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 said tax in the same manner as the other taxes are collected, and the said money so collected shall be paid over to the county treasurer, to be drawn in the manner prescribed in this act. It shall not be lawful for any county treasurer to receive county orders in payment of school tax, nor to pay out any school money or [on] county orders. For the support of common schools, there shall be set apart by the county treasurer, all moneys paid into the county treasury arising from fines for a breach of any law regulating license for the sale of intoxicating liquors, or for keeping of bowling alleys, or billiard saloons, or of any penal laws of the Territory. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

SECTION 59. It shall be the duty of the auditors of the several counties of the Territory to make a report to the county superintendent of common schools within the counties, the first Monday in August of each year, of the school tax levied, and the assessed valuation of their counties for that year, and it shall be the duty of the clerk of the district court at the close of every term thereof, to report to the county superintendent of the county in which said term, shall have been holden, whether or not any fines, and if any, what, with the date at which the same were paid to the county treasurer, and all officers mentioned in this act, who shall fail or neglect to perform any of the duties required by this act, shall be deemed guilty of misdemeanor, and upon conviction before any court having competent jurisdiction, shall be fined in any sum not less than twenty dollars and not more than one hundred dollars for each neglect, and such fine shall be paid into the county treasury for the benefit of common schools in said county.

TITLE XI.

UNION OR GRADED SCHOOLS.

SECTION 60. Whenever the inhabitants of two or more school districts may wish to unite for the purpose of establishing a graded school, in which instruction shall be given in the

higher branches of education, the clerks of the said districts shall upon a written application of five voters of their respective districts, call a meeting of the voters of such districts at some convenient place by posting up written notices, in like manner as provided for calling district meetings, and if a majority of the voters of each [of] such districts shall vote to unite for the purpose herein stated, they shall at that meeting, or at an adjourned meeting, elect three directors and a clerk for such a union district.

SECTION 61. The board of directors provided for in the preceding section shall, in all matters relating to graded schools possess all the power, discharge all the duties, and be governed by the laws herein provided for district directors.

SECTION 62. The union district thus formed shall be entitled to an equitable share of the county school fund, to be drawn from the county treasury in proportion to the number of children attending such graded school for each district.

SECTION 63. The said union district may levy taxes for the purpose of purchasing or furnishing proper buildings for the accommodation of the school, or for the purpose of defraying necessary expenses and paying teachers, but shall be governed in all respects by the law herein provided for levying and collecting district taxes.

SECTION 64. The clerk of the union district shall discharge all the duties of clerk in like manner as a clerk of a common school district, and shall report to the county superintendent the number of scholars attending the graded school, from his district their sex and the branches studied, and the county superintendent shall apportion the amount of school money due the union district.

SECTION 65. Any single district shall possess power to establish graded schools, subject to the provisions of this act, in like manner as two or more districts united.

SECTION 66. The annual meeting of union, or graded, school districts shall be held on the last Saturday of October, at such hour as may be indicated by the board of directors.

TITLE XII.

SCHOOLS IN CITIES OR TOWNS.

SECTION 67. The public schools of any city, town or village which may be regulated by any special law, set forth in

the charter of such city, town or village, shall be entitled to receive their proportion of the public money: *Provided*, That the clerk of the board of education in such city, town or village, shall make due report, within the time and manner prescribed in this act to the county superintendent.

SECTION 68. Any city, town, village or district reporting more than five hundred (500) children between four and twenty-one years of age shall be, and is required by this act to establish graded schools, under such rules and regulations as may be prescribed by the board of education.

SECTION 69. In any city, town or village containing more than four hundred inhabitants every parent, guardian or other person residing therein having control or charge of any child or children between the ages of eight and sixteen, shall be required to send any such child, or children to public school, for a period of at least six months in each school year, at least six weeks of which shall be consecutive, unless the bodily or mental condition of such child or children has been such as to prevent his or their attendance at school or application to study for the period required, or unless he or they are engaged in labor necessary for their own support, or that of others depending on them, or unless such child or children are taught in a private school, in such branches as are usually taught in primary schools, or have already acquired the ordinary branches of learning taught in the public schools.

TITLE XIII.

SCHOOL OFFICERS.

SECTION 70. When any school officer is superseded by election, or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office, and every such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply any moneys intrusted to him by virtue of his office, shall be deemed guilty of a misdemeanor and shall be punished by a fine, in the discretion of the court, not to exceed one hundred dollars.

SECTION 71. Every person elected or appointed to any office mentioned in this act shall, before entering upon the discharge of the duties thereof, take an oath to support the constitution of the United States, the organic act of the Territory, and to promote the interests of education and faithfully dis-

charge the duties of his office according to the best of his abilities. In case such officer has a written appointment, or commission, his oath shall be endorsed thereon and sworn to before any officer authorized to administer oaths. School officers are hereby authorized to administer all oaths appertaining to their respective offices without charge or fee. •

SECTION 72. No school director or other school officer shall be directly or indirectly, interested in any contract that may be made by a board of which he is a member, and any contract made in violation of this provision shall be null and void.

SECTION 73. All fines and penalties not otherwise provided for in this act shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

SECTION 74. Any parent, guardian, or other person, who shall upbraid, insult, or abuse any teacher in the presence of the school, shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten dollars nor more than one hundred dollars.

SECTION 75. Any person who shall willfully disturb any public school, or any public school meeting shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten nor more than one hundred dollars.

SECTION 76. In case any district clerk shall fail to take the census provided for in this act, at the proper time, and if through such neglect, the district shall fail to receive its apportionment of school moneys, said district clerk shall be individually liable to the district for the full amount so lost, and it may be recovered in a suit brought by any citizen of such district, in the name of and for the benefit of such district.

SECTION 77. All cases of disputes in relation to school matters, not properly belonging to courts of justice may be referred first to the county school superintendent, and appealed to the Territorial superintendent, whose decision shall be final.

TITLE XIV.

TEACHERS' INSTITUTES.

SECTION 78. Each county superintendent of the common schools in this Territory [of any county] containing ten or more

organized districts shall hold annually a teacher's institute at such time as may be agreed upon between him and the Territorial superintendent, and such institute shall continue in session not less than one nor more than five days. He shall give at least ten days' notice of the time and place of holding such institute by publication in some newspaper published in the county. If there be no paper published in the county, then by posting notices in three public places.

SECTION 79. It shall be the duty of all teachers in the county to attend such institute, and participate in the exercises thereof; and all teachers who may have charge of schools at the time of holding the institute shall adjourn their schools for the time during which the institute shall be held.

SECTION 80. Each county superintendent shall have authority to appoint a deputy for the purpose of examining teachers in remote districts.

TITLE XV.

SPECIAL TAXES.

SECTION 81. The board of directors of any district may, when in their judgment it is advisable, submit to the qualified school electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to maintain any school or schools in such district, or for building one or more school houses, or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference and other appliances or apparatus for teaching, or for any or all of these purposes: *Provided*, Such election shall be called by posting notices in three public places in the district for at least twenty days, said meeting to be held on or before the first Monday of July in each year; said notices shall contain the time and place of holding the election, the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used. The directors shall act as judges to conduct the election, and it shall be in all other respects, as nearly as practicable, in conformity with the general election law. At such elections the ballots shall contain the words "tax, yes" or "tax, no." If the majority of the votes cast are "tax, yes," the officers of the election shall certify the fact to the district clerk, who shall, at once proceed to copy from the last assessment roll of the county

assessor the list of property liable to taxation, situated in or owned by residents of the district, and shall deliver the same to the board of directors, who may allow him a reasonable compensation therefor out of the proceeds of said tax; said compensation not to be more than four dollars per day. The directors shall upon receiving the roll, deduct ten per centum therefrom for anticipated delinquencies, and then dividing the sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent. required, and the rate so ascertained (using the full per cent. on each one hundred dollars instead of the fraction) shall be, and is hereby, levied and assessed to, on or against the persons or property named or described in said roll, and it shall be a lien on all such property until the tax is paid, and the said tax, if not paid within the time limited by the next section for its payment, shall be recovered by suit in the same manner and with the same costs as delinquent Territorial and county taxes. The directors upon receiving any assessment roll from the district clerk, shall give five days' notice thereof, by posting notices thereof in three public places in the district, and shall sit for at least one day as a board of equalization, at such time and place as shall have been name[d] in said printed notices, and they shall have the same power as county boards of equalization to make any change in said assessment roll: *Provided*, That there shall be but one tax levied in each year, under this section, and that (that) the tax so levied shall not exceed ten mills on the dollar: *Provided further*, That not more than two meetings shall be held in any one year under the provisions of this section.

SECTION 82. As soon as the rate of taxation has been determined, as provided in the last preceding section, the directors shall certify the same to the county auditor, who shall extend the same upon the general assessment roll of the county and certify the same to the county treasurer, who shall proceed to collect the tax in the same manner and at the same time, and with the same power and authority to enforce payment of the same as in the case of county and Territorial taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs, and shall receive, as compensation for collecting the same, such sum, not more than two per cent. of the tax collected, as may be allowed by the county commissioners, such compensation to be paid from the amount of said district tax so collected.

SECTION 83. All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school children between four and twenty-one years of age, as shown by the returns of the district clerk for the preceding year: *Provided*,

That Indian children, who are not living under the guardianship of white persons, or American citizens, shall not be included in the apportionment list, excepting those whose parents have severed their tribal relations or own real estate in the district subject to taxation.

SECTION 84. County school money may be used by the county superintendent and directors for various purposes authorized and provided in this act, and for no other purpose.

TITLE XVI.

COUNTY TREASURER.

SECTION 85. It shall be the duty of the county treasurer of each county,

First. To receive and hold all school moneys, as a special deposit, and to keep a separate account of their disbursement to the school districts which shall be entitled to receive them, according to the apportionment of the county superintendent of common schools.

Second. To notify the county superintendent of common schools of the amount of county school fund in the county treasury whenever required, and to inform said superintendent of the amount of school money belonging to any other fund subject to apportionment.

Third. To pay the amount of the county school tax levied, and such other moneys paid into the school fund on the warrants of the directors whenever such warrants are countersigned by the district clerk, and properly endorsed by the holders.

Fourth. To make, annually, on the first of September of each year, a financial report for the last preceding school and fiscal year ending with August thirty-first, to the county superintendent of common schools in such form as may be required by law.

TITLE XVII.

MISCELLANEOUS.

SECTION 86. Whenever the word he or his occurs in this

act, referring to either superintendents, directors, or teachers, it shall be understood to mean also she or her.

SECTION 87. Any series of text books adopted by the board of education shall remain in use not less than five years.

SECTION 88. Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment which shall have an injurious effect upon the health of said pupil, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars.

SECTION 89. All applicants for certificates shall be examined in reading, writing, orthography, arithmetic, geography, English grammar, physiology, history of the United States, constitution of the United States, school law of the Territory and theory and practice of teaching.

SECTION 90. This act shall be known as the Washington school law, and no other title or reference shall be necessary.

SECTION 91. All acts and parts of acts upon any subject matter contained in this act, shall be, and the same are hereby repealed.

SECTION 92. This act shall be in force from and after the 31st day of December, one thousand eight hundred and seventy-seven.

Approved, November 9th, 1877.

AN ACT

AUTHORIZING THE GOVERNOR OF THE TERRITORY TO OFFER A
STANDING REWARD FOR THE ARREST OF CERTAIN CLASSES OF
CRIMINALS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Governor shall offer a standing reward of two hundred dollars (\$200,) for the arrest of each person who shall place any obstruction on any railroad track or who shall misplace any switch rail, or ties on any such road, whereby the life of any person passing over said road may

be endangered; and for the arrest of each person engaged in the robbing or attempting to rob any person upon, or having in charge, in whole or in part, any stage coach, wagon, rail-road train, or other conveyance engaged in carrying passengers, or any private conveyance within this Territory, the reward to be paid to the person making such arrest out of any money in the treasury not otherwise appropriated immediately upon the conviction of the person so arrested, but no reward shall be paid except after such conviction.

SECTION 2. The auditor of the Territory shall draw a warrant upon the treasurer for the amount of the reward upon presentation to him of a certificate of the clerk of the court where the conviction was had of such conviction and the finding of the court that the satisfactory proof was made that the person claiming the reward is entitled thereto, under the provision of this act.

SECTION 3. This act shall take effect, and be in force from and after its passage.

Approved, October 18th, 1877.

AN ACT

RELATING TO PROBATE OF FOREIGN WILLS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That wills probated in any other State or Territory of the United States, or in any foreign country or State, shall be admitted to probate in this Territory on the production of a copy of such will and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probate was made; or if there be no clerk, by the attestation of the judge thereof, and by the seal of office of such officers, if they have a seal.

SECTION 2. All provisions of law relating to the carrying into effect of domestic wills after probate, shall, so far as applicable, apply to foreign wills admitted to probate in this Territory as contemplated in the preceding section.

Approved, October 20th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT IN RELATION TO DISCHARGING BALLAST, APPROVED NOVEMBER 11TH, 1873.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That every master or 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 twenty fathoms deep, shall on conviction thereof be fined in any sum not less than seventy-five dollars (\$75.00) nor more than five hundred dollars (\$500.00): *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 ordinary high 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.

SECTION 2. All acts and parts of acts heretofore passed in relation to ballast are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved, October 27th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT RELATING TO MORTGAGES ON PERSONAL PROPERTY.

Be it enacted by the Legislative Assembly of the Territory of Washington, That subdivision number one section three of an act entitled an act relating to mortgages on personal property approved November, 12th 1873, be amended so as to

read: it is accompanied by the affidavit of the mortgagor and mortgagee that it is made in good faith without any design to hinder delay or defraud creditors: *Provided*, That if the mortgagor, or mortgagee is a corporation or joint stock company said affidavit may be made by the president secretary or agent of said corporation or joint stock company and if the mortgagor or mortgagee is a firm by one of the members of said firm in lieu of all members of such firm.

Approved, November 9th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT RELATING TO MORTGAGES ON PERSONAL PROPERTY," APPROVED NOVEMBER TWELFTH ONE THOUSAND EIGHT HUNDRED AND SEVENTY-FIVE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the act approved November twelfth one thousand eight hundred and seventy-five, entitled "an act relating to mortgages on personal property," be and the same is hereby amended as follows: Section one of said act shall read as follows after the enacting clause: That mortgages may be made upon: locomotive engines and the other rolling stock of a rail road; steam machinery, and machinery used by machinists, foundrymen and mechanics; steamboats, engines and boilers; mining machinery, milling machinery of every kind and nature; printing presses and materials, professional libraries, instruments of a surgeon, physician or dentist; upholstery and furniture used in hotels and boarding houses, growing crops, vessels of more than five tons burden, and upon all other kinds of personal property.

Section three of said act shall read as follows:

SECTION 3. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and encumbrances of the property in good faith and for value unless it is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors.

Section five of said act shall read as follows:

SECTION 5. A mortgage of personal property must be recorded in the office of the county auditor of the county in which the mortgagor resides and also of the county in which the property mortgaged is situated or to which it may be removed: *Provided*, That mortgages required to be recorded in the custom house by section four of said act or by the laws of the United States need not be recorded elsewhere:

Section eleven of said act shall read as follows:

SECTION 11. When personal property mortgaged is thereafter by the mortgagor removed from the county in which it is situated it is as except between the parties to the mortgage exempted from the operation thereof unless either:

First. The mortgagee within thirty days after such removal causes the mortgage to be recorded in the county to which the property has been removed; or

Second. The mortgage be recorded in the custom house; or

Third. The mortgagee within thirty days after such removal takes possession of the property, as prescribed in section twelve of said act.

SECTION 2. This act shall take effect and be in force from and after the day of its approval by the Governor.

Approved, October 20th, 1877.

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 for the Legislative Assembly shall be as follows: For composition eighty (80) cents per thousand ems, printer's measurement; for press work eighty (80) cents per token; for paper actual cost; paper binding actual cost.

SECTION 2. That L. G. Abbott, J. M. Murphy, and the Territorial auditor be, and they are hereby appointed and con-

stituted a board to audit the accounts of C. B. Bagley [for] incidental printing.

SECTION 3. That the Territorial auditor shall draw his warrant on the Territorial treasury in favor of C. B. Bagley for incidental printing as audited by said board or a majority thereof, which amount shall be paid out of any money in the treasury not otherwise appropriated.

SECTION 4. That L. G. Abbott, J. M. Murphy and the Territorial auditor, be and they are hereby allowed for their services the sum of five dollars per diem each for the time actually employed upon said board, to be audited and paid in the same manner that other accounts against the Territory are audited and paid: *Provided*, The total amount shall not exceed twenty dollars.

SECTION 5. All acts and parts of acts conflicting with this act be and the same are hereby repealed.

SECTION 6. This act to take effect from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR PRINTING CERTAIN PAMPHLETS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That C. B. Bagley is hereby employed to print five thousand copies of the address delivered by Hon. Elwood Evans at the Centennial Exhibition, for distribution as hereinafter provided.

SECTION 2. That on delivery to the Territorial librarian, by the said C. B. Bagley of five thousand copies of said address, printed on good book paper, in pamphlet form with paper covers, in type and style as the report of superintendent of common school[s] of this session is printed, the Territorial librarian, shall certify the same to the Territorial auditor, and the Territorial auditor upon receipt of such certificate shall draw a warrant in favor of said C. B. Bagley on the Territorial treasurer in the sum of four hundred and forty (\$440) dollars and the Territorial treasurer is hereby required to pay such warrant out of any money in the treasury not otherwise appropriated.

SECTION 3. The Territorial librarian shall distribute said pamphlets as follows:

He shall deliver to the Immigration Society of Washington Territory one thousand copies.

He shall deliver to the secretary of this Territory three hundred copies for the use of the executive department of the Territory.

He shall distribute twenty-five hundred copies among all the counties of this Territory in proportion to the representation of each county in the house of representatives by sending to the auditor of each county the number that each county is entitled to, and the auditor in each county shall dispose of the same at not less than 20c @ the proceeds therefrom to be added to the general school fund of the county.

He shall deposit the remaining twelve hundred copies in the Territorial library and there safely keep the same until distributed by future act of legislature.

SECTION 4. The Territorial librarian shall be held liable on his official bond for the safe keeping of said twelve hundred copies and for the discharge of all duties imposed upon him by this act.

SECTION 5. This act to take effect and be in force from and after its approval by the governor.

Approved, November 9th, 1877.

AN ACT.

TO PROVIDE AND PAY FOR THE DISTRIBUTION AND PUBLICATION OF CERTAIN LAWS.

Be it enacted by the Legislative Assembly of the Territory of Washington,

SECTION 1. That immediately after the adjournment of the present session of the Legislative Assembly the Territorial auditor be and he is hereby authorized and directed to cause to be compiled and published three thousand copies of the school law of this Territory, also one thousand copies of the election laws and two thousand copies of the road laws.

SECTION 2. The auditor shall advertise in some newspaper published at the seat of government for at least two weeks for sealed proposals to do said work, and shall let the contract to the lowest responsible bidder. He shall audit the accounts of the person who performs the work and draw his warrant in favor of such person and the Territorial treasurer shall pay the same out of any funds in the treasury not otherwise appropriated.

SECTION 3 The laws aforesaid when published shall be delivered to the secretary of the Territory who shall forward the same to the several county auditors in the Territory, making the distribution according to population.

SECTION 4. This act shall take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR AN EQUITABLE SETTLEMENT BETWEEN THE TERRITORY AND THE SEVERAL COUNTIES THEREIN.

WHEREAS, The books of the Territorial auditor show balances, aggregating over twenty-on[e] thousand dollars due the Territory from the several counties therein, on account of prior tax levies; and

WHEREAS, It has been ascertained to be impossible for the Territorial auditor and the several county officers to make satisfactory settlement through the medium of correspondence and under existent laws; and

WHEREAS, It is necessary and proper that an equitable and just settlement of such balances due the Territory should be had at the earliest practicable period, therefore,

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That within the year next ensuing after the passage of this act, the Territorial auditor is hereby authorized and directed to make out a verified transcript of the accounts of each and every county in the Territory which by the books of the Territorial auditor is shown to be in arrears to

the Territory on account of prior tax levies in the sum of one hundred dollars and more such transcripts of such counties' account shall be as it stands in the books of his office. He shall forward the transcripts of each county to the prosecuting attorney of the district in which such county is and the prosecuting attorney on the receipt of such transcript shall carefully and minutely compare said transcript with the books of the county treasurer and county auditor of such county touching any and all matters and things relating to the collection and paying over of moneys collected as Territorial taxes and of delinquencies occurring in the collection thereof and of all sums due to the Territory from such county legally or equitably.

SECTION 2. It shall be the duty of the board of county commissioners and of the treasurer and auditor of such county to submit their books, records, and accounts, connected with or in anywise appertaining to Territorial taxes to the inspection of the Territorial auditor and to afford him the necessary facilities to enable him to obtain all necessary information; and it shall be the duty of said board of county commissioners, county treasurer, and county auditor to make with said Territorial auditor a correct and just settlement between such county and the Territory.

SECTION 3. Should the board of county commissioners, auditor and treasurer of any county fail, neglect, or refuse to make the settlement with the Territorial auditor as contemplated with this act, it shall be the duty of the Territorial auditor immediately to commence suit against such county for the recovery of any balance which may appear to be due to the Territory from such county by the books of the Territorial auditor: and for any other amount which may be due to the Territory from such county.

SECTION 4. When the Territorial auditor shall have examined the books, records, and accounts of such county and compared them with the verified transcript of the Territorial auditor he shall without unnecessary delay proceed to adjust and settle with the board of county commissioners and county auditor and treasurer on a just and equitable basis the accounts of such county with the Territory, and in such settlement shall report to the Territorial auditor the credits for such sums as in his judgment are right and just to which such county is entitled and the said auditor shall give credit on the books of his office to such county claiming the same for such sum so reported.

SECTION 5. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

REGULATING THE TIME AND MANNER OF TRANSFERRING TERRITORIAL FUNDS FROM COUNTY TO TERRITORIAL TREASURY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of all county treasurers to remit on or before the tenth day of each and every month, all moneys due the Territory (providing the same exceeds one hundred dollars), to the Territorial treasurer in such manner as he may direct.

SECTION 2. The Territorial treasurer is hereby authorized to contract with any responsible persons or companies at a rate not to exceed one-half of one *per centum* in the aggregate, for the transfer of all moneys as provided in section one of this act, and to pay for the same out of such moneys, receipting to the county for the full amount remitted and charging the said expense to the incidental expenses of the Territory.

SECTION 3. All acts or parts of acts in conflict with this act, are hereby repealed.

SECTION 4. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

FOR THE PROTECTION OF THE SALMON FISHERIES OF PUGET SOUND AND TRIBUTARY WATERS.

Be it enacted by the Legislative Assembly of the Territory of Washington,

SECTION 1. For the purpose of more clearly defining the provisions of this act, all that portion of the tide waters emptying into the Straits of Fuca at Cape Flattery and the bays and

estuaries thereof, shall be known and designated in this act as Puget Sound.

SECTION 2. All salmon caught, and cured by salting for sale within the said waters of Puget Sound or any tributary thereof, shall be put up in packages marked with the name of "Puget Sound Salmon" in plain letters as [at] least two inches long, also, the place at which they are so cured and packed and the name or names of the parties so curing them and offering them for sale. A violation of this section shall subject the offender to a fine of not less than ten nor more than one hundred dollars for each and every offense to be recoverable in any court having jurisdiction of misdemeanors.

SECTION 3. All salmon caught within the waters hereinbefore made [named] and prepared for sale, and exort [export] by being hermetically sealed in cans made of tin or other metal shall be labeled with labels bearing the words "Puget Sound Salmon," together with the name of the persons engaged in the business of such preparation for export and sale by hermetically sealing in cans as aforesaid, together with the name of their place of business. The cans shall likewise be packed in cases marked in a similar manner to the manner prescribed by the second section of this act for packing salmon in barrels. A failure to comply with the provisions of this act shall be deemed a misdemeanor and subject the offender to a fine of not less than ten dollars nor more than one hundred dollars for each and every offense recoverable in any court of competent jurisdiction.

SECTION 4. The erection or construction of traps and weirs in any of the tributaries or estuaries of Puget Sound, for the purpose of catching salmon during any season of the year shall be deemed a misdemeanor and subject the offender to a fine of not less than two [hun]dred nor more than five hundred dollars, in the discretion of the court: *Provided*, Traps or weirs may be put in rivers or streams if such traps or weirs are so constructed that they shall not extend to a greater distance across any stream than three-fourths of the width of such stream.

SECTION 6. Any person exploding, cartri[d]ges, of giant powder, hercules powder dynamity[e] nitroglycerine or other explosive matter, for the purpose of catching, killing, or destroying fish within the waters named in the foregoing section, or any tributary thereof shall be deemed guilty of misdemeanor and fined not less than one hundred nor more than three hundred dollars.

SECTION 7. This act shall be in force and take effect from and after its approval by the governor

Approved, November 9th, 1877.

AN ACT

TO ENCOURAGE THE ESTABLISHMENT OF HATCHING-HOUSES ON THE WATERS OF THE COLUMBIA RIVER, FOR THE PROPAGTION OF SALMON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a fish commissiouer for the Columbia river and its tributary waters be appointed by the governor by and with the advice and consent of the council who shall hold his office for two years, and until his successor is appointed and qualified who shall be a resident of one of the counties bordering upon the said river, said commissiouer shall exercise a general supervision over the fisheries of said river within this Territory, consider and report upon the introduction, production and culture of food-fish, especially the salmon, co-operate with the fish commissioner of the State of Oregon, make report to the Legislative Assembly at each biennial session thereof, as hereinafter more particularly prescribed and perform such other duties as may be hereinafter imposed. Before entering upon his duties he shall execute a bond to the Territory of Washington with two or more sureties to be approved by the judge of the second judicial district in the sum of ten thousand dollars, (\$10,000) conditioned for the faithful performance of his official duties and the disbursement according to law of all moneys coming into his hands, said commissiонер may appoint deputies, not to exceed one for each county bordering upon said Columbia river, for whose acts he shall be responsible upon his official bond.

SECTION 2. It shall not be lawful to take or fish for salmon for traffic, barter or sell [sale] in the waters of the Columbia river and its tributaries with either of the appliances, regulated and prescribed by the act entitled an act regulating salmon fisheries in the waters of the Columbia river without first having obtained a license therefor. The rates of said licenses shall be as follows: The owner or owners of each and every boat engaged in taking or catching salmon upon said river and its tributaries with a gill-net shall pay ten dollars (\$10.00) for a license for one season. For each and every seine used in fishing for salmon upon said waters, the owner or owners shall pay for such license for one season ten dollars (\$10.00) for every weir or trap used for catching or taking salmon on said river or its tributaries, the owner or owners shall pay for a license for a season fifty

dollars (\$50.00) for each and every dip-net used for fishing for salmon in said river and its tributaries the owner or owners shall pay an annual license of two dollars (\$2.00) each and every net, tender or fisherman fishing or taking salmon with a gill-net shall be required to pay five dollars (\$5.00) for a license for the season. Licenses issued under this act shall be untransferable and shall be good for the whole season upon any of the waters of the said Columbia river.

SECTION 3. The licenses aforesaid shall be prepared by said fish commissioner, attested by his official seal. The commissioner shall register the number thereof to whom issued and for what purpose. Owners of boats receiving license shall cause to be painted in plain conspicuous figures upon both sides of the outside of the stern of their respective boats, three inches below the washboard, the number borne upon the license of said boat. A failure or neglect to paint such register number upon such boat as herein prescribed shall subject the owner or owners thereof to a penalty of ten dollars (\$10.00) to be recovered in an action before a justice of the peace. The commissioner shall be entitled to charge the following fees "viz:" Twenty-five cents for each license to a fisherman, fifty cents for a boat, one dollar for a seine or fish trap of any kind and twenty-five cents for a dip-net, which fees shall be reserved out of the moneys by him received for the licenses issued.

SECTION 4. Any person or persons who by the foregoing provisions of this act shall be required to take out a license shall do such act or use such boat, seine, gill-net, weir or trap dip-net or fish with gill-net without having first taken out such license therefor as herein required shall be liable to a penalty of fifty dollars (\$50.00) for each and every offense and shall moreover be required to pay the license fee required by law, to be recovered before a justice of the peace or other court of competent jurisdiction.

SECTION 5. Any proprietor managing agent, foreman, or employer in charge of any cannery upon the said Columbia river employing a fisherman, to whom no license has been issued or knowingly purchasing salmon from any person using a boat, seine, net or fish-trap for which a license is required without first having taken out said license shall be liable to a penalty of fifty dollars (\$50.00) for each and every offense, to be recovered before a justice of the peace.

SECTION 6. All moneys received for license herein referred to excepting the fees for issuing the same shall constitute a fund and be exclusively applied to the assistance of a hatching-house or houses on the said Columbia river or its tributaries. Any person or persons or any incorporated company who shall

furnish satisfactory evidence to the said fish commissioner that a hatching house or houses has or have been established by said person or persons or company and have actually hatched salmon with which said Columbia river is or has been stocked and supplied, the said commissioner shall forthwith pay over to such person or persons or company the said funds: *Provided*, If there be two or more such hatching-houses, in operation by different persons or companies, then such funds shall be distributed *pro rata* according to the number of hatched salmon.

SECTION 7. The person or persons, making complaint of any violation of the provisions of this act by the failure to take out a license as herein required or to do and perform other acts as herein prescribed shall upon the conviction of the party accused be entitled to one-half of the penalty recovered. All fines and penalties hereby or herein imposed shall be enforced and collected as other fines and penalties or [are] by law enforced or collected and justices of the peace or other officers receiving such fines or penalties after payment of one-half of such penalty so collected to the complainant shall forthwith pay the remaining half to the fish commissioner, to be applied to the establishment or assistance of hatching-houses as provided in section six of this act.

SECTION 8. The said fish commissioner shall biennially on the fifteenth day of September make a report to the governor to be submitted to the Legislative Assembly which report shall exhibit the amount of money received from licenses, penalties and other sources and how applied, the condition, progress, success, "etc" of the hatching-houses all hints, suggestions or information on the subject of food-fish propagation and such matter as may be valuable in legislation for the protection or preservation of food-fishes and the salmon fisheries of the Columbia river.

SECTION 9. No section, proviso or part of this act shall be considered as valid or operative until the Legislature of the State of Oregon shall enact a similar section, proviso or act in whole, or in part and from and after the passing of such law by the State of Oregon, such parts hereof as shall be so enacted, shall immediately go into full force and effect, and the governor of this Territory is hereby requested to transmit an attested copy of this act to the governor of the State of Oregon, requesting him to submit it to the Legislature of that State.

Approved, November 6th 1877.

AN ACT

TO AMEND AN ACT CREATING A BOARD OF PILOT COMMISSIONERS AND PILOTS ON THE COLUMBIA RIVER AND BAR, APPROVED NOVEMBER 29TH, 1871.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section one of the act to which this is amendatory shall be amended to read as follows:

“SECTION One. It shall be the duty of the governor to appoint three suitable persons who shall constitute a board of commissioners for the purpose of examining candidates for the pilotage of the Columbia river and bar and the said board of commissioners shall on application appoint one or more suitable persons if they deem it necessary to be pilots on the Columbia river and bar, giving each of such pilots a branch or warrant for the execution of his office, with an authority to appoint deputies in the cases to be specified in such branch or warrant: *Provided,* Each pilot shall report his said deputies for the approbation of said board of commissioners: *Provided also,* That whenever there shall be a vacancy in said board of commissioners such vacancy shall be filled by appointment made by the governor, said commissioners before entering upon the duties of their office shall qualify by oath or affirmation for the faithful discharge of their duties and shall be entitled to hold said office of commissioner for the term of two years from the date of their appointment, and after said board of commissioners shall have organized they shall forthwith notify the governor thereof, and they shall make a report of their proceedings to the governor at least once in every year thereafter.

SECTION 2. Section thirteen (13), of the act to which this act is amendatory shall be amended by adding to the seventh line after the word fault “and for every day the said board of commissioners are in actual session except when engaged in adjusting or settling disputes between pilots and shipmates or owners they shall be entitled to receive the sum of five dollars per day and mileage at the rate of three dollars for every twenty miles traveled in coming to and going from the place where the sessions of said board are held: *Provided, however,* That they shall not receive pay for more than three days time at any one session and all money received for the execution of any branch, warrant or warrants shall constitute a fund to defray

the incidental expenses of the said board of pilot commissioners and the secretary of said board shall at the end of each regular session make a written statement of the number of days and the amount of mileage for which each commissioner is entitled to receive pay which statement shall be signed by the secretary and the chairman of the said board of commissioners and the Territorial auditor if he shall find said statement correct as herein provided shall draw a warrant on the Territorial treasurer for the amount which each commissioner is entitled to receive pay and the Territorial treasurer is hereby authorized to pay the same out of any money not otherwise appropriated.

SECTION 3. This act shall take effect and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR THE TRAINING OF INDIGENT MUTE AND BLIND CHILDREN.

WHEREAS, This Territory is wholly unprovided with proper schools for the education of the blind and of deaf mutes and

WHEREAS, There are residing in the Territory a number of these unfortunates who need instruction in such institutions to enable them to earn their living and

WHEREAS, The State of Oregon has established at Salem an excellent school for deaf mutes, and a similar school for the blind and has provided by law for the instruction therein upon proper terms of deaf, mute and blind persons residing outside the State, therefore,

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

SECTION 1. That the governor of this Territory be and he is hereby authorized to contract with the board of education of the State of Oregon for the tuition, board and lodging of deaf mutes and blind persons residing in this Territory over the age of eight years, in the schools heretofore established

by said State for the education of such persons: *Provided*, That the price of such instruction and maintenance shall not exceed two hundred and twenty-five dollars for each pupil, per-annum.

SECTION 2. That there be and hereby is appropriated out of any moneys in the treasury not otherwise appropriated the(m) sum of sixteen hundred dollars for the purpose of carrying out the provisions of this act.

SECTION 3. This act shall only apply to indigent deaf mutes, and blind persons, and to those whose parents have not sufficient pecuniary ability to pay the expenses herein provided for.

SECTION 4. This act shall take effect upon its approval by the governor.

Approved, November 9th, 1877.

AN ACT

DECLARING ROADS, STREETS AND ALLEYS IN TOWNS AND CITIES
PUBLIC HIGHWAYS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That whenever any city or town has been surveyed and platted and a plat thereof showing the roads, streets and alleys has been filed in the office of the auditor of the county in which such city or town is located, such plat shall be deemed the official plat of such city, or town, and all roads, streets and alleys in such city or town as shown by such plat, be and the same are declared public highways: *Providing* That nothing herein shall apply to any part of a city or town that has been vacated according to law.

SECTION 2. This act to take effect and be in force from and after its approval by the Governor.

Approved, November 9th, 1877.

AN ACT

(AN ACT) TO PROTECT FORESTS AND TIMBER LANDS FROM FIRES
AND CARELESS KINDLING OF FIRES.

Be it enacted by the Legislative Assembly of the Territory of Washington,

SECTION 1. That if any person shall kindle a fire in any field, pasture or enclosure, forest, prairie or timber land not his own without the consent of the owner and the same shall spread and do damage to any buildings, fences, crops, cord-wood, bark or other personal property or to any wood or timber land, he shall on conviction, be punished by a fine of not less than ten nor more than five hundred dollars, (\$500.00) and costs, according to the aggravation of the offense and shall stand committed till the fine and costs are paid.

SECTION 2. If any person shall maliciously, with intent to injure any other person, by himself or any other person kindle a fire on his own land, or the land of another person and by means of such fire the buildings fences, crops or other personal property or wooded timber lands, of any other person shall be destroyed or injured, he shall on conviction be punished by a fine not less than twenty dollars (\$20.00) nor more than one thousand dollars, (\$1,000.00) or by imprisonment in any of the jails of this Territory, not less than three months, nor more than twelve months according to the aggravation of the offense.

SECTION 3. If any person shall for any lawful purpose kindle a fire upon his own land he shall do it at such time and in such manner and shall take such care of it to prevent it from spreading and doing damage to other persons property as a prudent and careful man would do, and if he fail so to do he shall be liable in an action on the case to any person suffering damage thereby to the full amount of such damage.

SECTION 4. Any person who shall enter upon the lands of another person for the purposes of hunting or fishing and shall by the use of fire arms, or other means kindle any fire thereon shall be liable to the penalties of the first or second section of this act as the case may be.

SECTION 5. Persons engaged in driving lumber upon any waters or streams of this Territory, may kindle fires when necessary for the purposes in which they are engaged, but shall be.

bound to use the utmost caution to prevent the same from spreading and doing damage; and if they fail so to do, they shall be subject to all liabilities and penalties of this act, in the same manner as if the privilege granted by this action had not been allowed.

SECTION 6. The common law right to an action for damages done by fires, is not taken away or diminished by this act, but it may be pursued, notwithstanding the fines or penalties set forth in the first and second sections of this act; but any person availing himself of the provisions of the third section, be barred of his action at common law for the damages so sued for, and no action shall be brought at common law for kindling fires in the manner described in the fifth section; but if any such fires shall spread and do damage, the person who kindled the same and any person present and concerned in driving such lumber, by whose act or neglect such fire is suffered to spread and do damage shall be liable in an action on the case for the amount of damages thereby sustained.

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

Approved, Novebeanr 6th, 1877.

AN ACT

TO PROVIDE FOR THE APPOINTMENT OF IMMIGRATION AGENTS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the commissioners of immigration for the Territory of Washington may appoint immigration agents in the several counties of this Territory, and in any State or Territory, who shall act as such agents during the pleasure of such commissioners: *Provided,* That such agents shall receive no compensation directly or indirectly from the Territory.

SECTION 2. This act shall take effect from and after its approval by the governor.

Approved, November 9th, 1877.

AN ACT

PRESCRIBING PRISON REGULATIONS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* The judges of the district courts of the several judicial districts of this Territory, shall from time to time as they may deem necessary, prescribe in writing rules for the regulation and government of the jails in the several counties within their respective districts upon the following subjects:

First. The cleanliness of the prisoners.

Second. The classification of prisoners in regard to sex.

Third. Beds and clothing for persons sentenced for felonies.

Fourth. Warming lighting and ventillation of the prison.

Fifth. The employment of medical and surgical aid when necessary.

Sixth. Employment, temperance and instruction of the prisoners.

Seventh. The supplying of each prisoner with a bible.

Eighth. The intercourse between prisoners and their counsel and other persons.

Ninth. The punishment of prisoners for violation of the rules of the prison.

Tenth. Such other regulations as said judges may deem necessary to promote the welfare of said prisoners: *Provided,* That such rules shall not be contrary to or in any way impair laws now existing in this Territory.

SECTION 2. The said judges shall as soon as necessary cause a copy of said rules to be delivered to the county commissioners in the several counties in their respective judicial districts; and it shall be the duty of said commissioners forthwith to cause the same to be printed and to furnish the sheriff of their county with a copy of said rules for each and every room or cell of said jail and also to forward a copy of said rules to the secretary of the Territory who shall file away and preserve the same.

SECTION 3. The sheriff shall on the receipt of said rules cause a copy thereof to be posted up and continued in some conspicuous place in each and every room or cell of said jail.

SECTION 4. The judges aforesaid may from time to time as they may deem necessary revise alter or amend said rules and such revised rules shall be printed and disposed of by said commissioners and sheriff in the same manner as is directed by sections two and three of this act.

SECTION 5. The sheriff or in case of his death removal or disability, the person appointed by law to supply his place shall have charge of the county jail of his proper county and of all persons by law confined therein and such sheriff or other officer is hereby required to conform in all respects to the rules and directions of said district judge above specified or which may from time to time by such judge be made and communicated to him by said commissioners.

SECTION 6. The sheriff or other officer performing the duties of sheriff of each county in this Territory shall as soon as necessary after the passage of this act procure at the expense of the proper county a suitable book to be called the jail register in which the said sheriff by himself or his jailer shall enter

First. The name of each prisoner with the date and cause of his or her commitment together with a list and value of property taken from said prisoner or delivered to the sheriff or other officer at the time of the commitment of said prisoner.

Second. The date or manner of his or her discharge.

Third. What sickness if any has prevailed in the jail during the year and if known what was the cause of such disease.

Fourth. Whether any or what labor has been performed by the prisoners and the value thereof.

Fifth. The practice observed during the year of whitewashing and cleaning the occupied cells or apartments and the times and seasons of so doing.

Sixth. The habits of the prisoners as to personal cleanliness diet and order.

Seventh. The means furnished prisoners of literary moral and religious instruction.

Eighth. All other matters required by said rules or in the discretion of such sheriff deemed proper; that the said sheriff or other officer performing the duties of sheriff shall carefully keep and preserve the said jail register in the office of the jailer of his proper county and at the expiration of said office shall deliver the same to his successor in office.

SECTION 7. The sheriff or other officer performing the duties of the sheriff shall on or before the first day of October

in each year make out in writing from said jail register a jail report one copy of which said report he shall forthwith file in the office of the clerk of the district court of the proper district, one copy with the county auditor of his county for the use of the commissioners thereof, and one copy of said report he shall transmit to the secretary of the Territory and it shall be the duty of said secretary to communicate the report of the several sheriffs of this Territory to the Legislative Assembly on or before the tenth day of its session.

SECTION 8. It shall be the duty of the district court to give this act in charge of the grand jury once each term of said court and lay before them any and all rules plans or regulations established by the district judge relating to county jails and prison discipline which shall then be in force.

SECTION 9. That the grand jury of each sub-district shall once at each term of the district court while in attendance visit the jail of the county where the court is held examine its state and condition; examine and inquire into the discipline and treatment of prisoners, their habits diet and accommodation and it shall be their duty to report to said court in writing whether the rules of the said district judge have been faithfully kept and observed or whether any of the provisions of this act have been violated. It shall also be the duty of the prosecuting attorney of each district once in each year to visit the jails not accessible to the grand jury and he shall make a report to the district court to the same effect as required of the grand jury. It shall also be the duty of the county commissioners of each county of this Territory to visit the jail of their county once during each of their regular meetings of each year.

SECTION 10. The sheriff shall visit the jail in person and examine into the condition of each prisoner at least once each month and once during each term of the district court and it is hereby made his duty to cause all the cells and rooms used for the confinement of prisoners, to be thoroughly whitewashed at least three times in each year.

SECTION 11. Whenever any person committed to prison for any cause whatever shall be unruly or shall disobey any of the regulations established for the management of prisons the sheriff or keeper may order such (such) prisoner in solitary confinement and fed on bread and water only unless other food shall be necessary for the preservation of his health, and no intercourse shall be allowed with such prisoner during such confinement except for the conveyance of food and other necessary purposes, but such period of confinement shall not exceed twenty days for each offense.

SECTION 12. The keeper of any prison may upon the com-

mitment after judgment of a person convicted of a felony punishable by imprisonment cause the hair on the head of said prisoner to be closely crop[p]ed and so kept during his term of imprisonment.

SECTION 13. The jailer or keeper of the jail shall unless the sheriff elect to act as jailer in person be a deputy appointed by the sheriff and such jailer shall take the necessary oath before entering upon the duties of his office and shall be paid by the sheriff for his services as jailer and not by the county: *Provided*, The sheriff shall in all cases be liable for the negligence and misconduct of the jailer as of other deputies.

SECTION 14. This act shall take effect and be in force from and after its passage and approval by the governor.

Approved, November 9th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT DEFINING NUISANCE AND SECURING REMEDIES" APPROVED NOVEMBER 12, 1875.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section thirteen of the act of the Legislative Assembly approved November twelfth one thousand eight hundred and seventy-five entitled "an act defining nuisance and securing remedies" be so amended as to read as follows:

SECTION Thirteen. Houses of ill fame, kept for the purpose, in which are embraced all squaw dance houses, or squaw brothels, otherwise called mad houses all houses, rooms, saloons, booths scows boats, or other structures used as a place of resort where women are employed to draw custom, dance, or for purposes of prostitution; all public houses, or places of resort where gambling is carried on, or permitted, all houses, or places within any city, town, or village, or upon any public road, or highway where drunkenness, gambling, fighting or breaches of the peace are carried on, or permitted; all opium dens or houses or places of resort where opium smoking is permitted, are nuisances, and may be abated and the owners, keepers, or persons in charge thereof, and persons carrying on such unlawful business shall be punished as provided in this chapter.

SECTION 2. Prosecutions for offenses under the section

hereby amended, committed prior to the approval of this act shall not be in any manner affected by this act.

SECTION 3. This act shall take effect and be in force from and after its approval by the Governor.

Approved, November 6th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT TO ENCOURAGE THE CULTIVATION OF OYSTERS, APPROVED NOVEMBER 5TH 1873.

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 more than twenty (20) acres: *Provided,* 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.

SECTION 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 not occupied and claimed in accordance with law 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 so taken or taking the said premises shall cause his claim with a description thereof and affidavit as above required to be recorded by the county auditor of the county in which they may be situated.

SECTION 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.

SECTION 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 twenty (20) 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.

SECTION 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 manner as is, or may be required for deeds.

SECTION 6. It shall be the duty of the county auditor 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.

SECTION 7. From and after the approval of this act it shall not be lawful for any person who is not at the time an actual inhabitant and resident of this Territory, and who has not been for six months next preceding, an actual inhabitant or resident as aforesaid to take or gather oysters either on his own account or on account of others for sale or transportation in any of the rivers, bays or waters of this Territory, under a penalty not exceeding one thousand dollars (\$1,000.00) nor less than one hundred dollars (\$100.00) for each offense to be recovered from the person so offending by a civil action, in the name of the Territory, by any person competent to sell in the district court for the county in which the offense was committed.

SECTION 8. That it shall not be lawful for any person to rake for or gather oysters in any of the rivers, bays or waters of this Territory with a dredge or instrument so called or be employed upon any canoe, boat or vessel engaged in the taking of oysters by the process of dredging in any of the waters aforesaid which may be less than twenty feet in depth at the lowest ebb of the tide, under a penalty of fifty dollars (\$50.00) for each and every offense to be recovered from the person offending as prescribed in section one (1) of this act, in every [any] court of competent jurisdiction: *Provided*, That steam power shall be absolutely prohibited in its application to dredges, rakes and other appliances used in taking oysters from the natural beds.

SECTION 9. That it shall not be lawful for any person to

rake, scrape or gather oysters in any of the rivers, bays or waters of this Territory, for any purpose whatever from the fifteenth day of June until the first day of September of each year under a penalty of fifty dollars (\$50) for each offense to be recovered from the person so offending as prescribed in section one (1) of this act, in any court of competent jurisdiction.

SECTION 10. That it shall not be lawful for any person to destroy oysters by assorting or culling them on land or shore and leaving the small oysters there to die, but in all cases the small oysters shall be returned to their natural beds, or to private beds for cultivation; and if any person shall offend against provisions of this section he shall be liable to the penalties mentioned in the first section of this act, to be recovered as therein stated.

SECTION 11. That section three (3) of this act shall not apply to persons taking oysters from private beds over which they have control and for purposes of cultivation.

SECTION 12. That in all cases of recovery of penalties under the provisions of this act one moiety thereof shall go to the person instituting the proceedings and one moiety to the Territory.

SECTION 13. All acts and parts of acts of a general nature in conflict with the provisions of this act be and the same are hereby repealed.

SECTION 14. This act shall take effect and be in force from and after its approval.

Approved, November 6th, 1877.

AN ACT

TO PROVIDE FOR THE APPOINTMENT OF AN OFFICIAL SHORT-HAND
 •REPORTER FOR THE DISTRICT COURTS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the governor is hereby authorized and empowered to nominate, and by and with the advice and consent of the council to appoint a short-hand reporter for each of the several district courts in this Territory, who shall hold his office for the term of two years unless sooner removed by the governor.

SECTION 2. The person so appointed shall be considered, after his appointment and qualification as an officer of the court and shall be known as the "Official Short-hand Reporter."

SECTION 3. Before entering upon the discharge of his duties, he shall take an oath that he will faithfully and truly report the testimony of the witnesses as given in court upon their examination.

SECTION 4. Said reporter shall take in short-hand the evidence and rulings of the court and exceptions thereto in all cases of felony if the defendant require it and shall certify the same to the court or judge; and when said testimony is required by the defendant or the judge or court to complete a bill of exceptions, or for any other purpose, said reporter shall reduce the same to long-hand writing and certify the same, and he shall be allowed for such long-hand copy a compensation to be fixed by the court or judge, and taxed with the costs in the case: *Provided, however,* That if said short-hand reporter is not present and in attendance on said court, or unable from any other cause to report said testimony, the court shall appoint some suitable person to take the testimony.

SECTION 5. He shall take and report the evidence in cases of misdemeanor when the judge of the court shall direct, but not otherwise, and shall certify and reduce to long-hand writing said testimony when required as provided in section 4.

SECTION 6. In all chancery and divorce cases the judge in his discretion may order the evidence to be taken and reported in short-hand, and in all other civil cases he shall order the evidence to be taken in short-hand upon the demand of either party to the suit if the reporter be present, and if not present and either party require it the court or judge shall appoint some suitable person to take the evidence.

SECTION 7. For each day's attendance in taking testimony in all criminal cases, he shall receive the sum of ten dollars, to be taxed as costs in the case.

SECTION 8. In all civil cases he shall receive for each day's attendance in taking testimony the sum of ten dollars, to be paid in the first instance by the party or parties requesting the services of the reporter, or in like instance by both parties equally when the court orders the evidence to be taken and reported; and the reporter shall be paid when said evidence is taken and the same shall be taxed in all cases against either or both parties, or in such proportions against both as the court shall deem equitable, as costs in the case.

SECTION 9. The party requiring, or for whose benefit the short-hand report shall be transcribed into long-hand shall pay

therefor, for each folio so transcribed the same compensation that clerks of the district court receive for copying per folio.

SECTION 10. In all cases taken to the supreme court of the Territory by appeal, or writ of error when the evidence has been taken in the court below in short-hand the same shall be transcribed into long-hand writing certified by the reporter and filed with the clerk of the court, and when so certified as being a correct transcript of the testimony and proceedings in the case shall be *prima facie* a correct statement of such testimony and the same shall be transmitted as the evidence in the case, on the appeal or in a bill of exceptions on a writ of error to the supreme court.

SECTION 11. The official reporter shall before entering upon the discharge of his duties, enter into a bond to the Territory of Washington with sufficient sureties in such sum as the court making the appointment shall fix, conditioned for the faithful discharge of his duties. And if a transcript of the evidence in any case made and certified by the reporter, or the person appointed to report the same be incorrect in any material particular any person injured by such inaccuracy, may maintain an action on such bond, and may recover in such action damages to the extent of the injury not exceeding the amount of the penalty of such bond.

SECTION 12. This act shall be in force from and after its passage.

Approved, November 6th, 1877.

AN ACT

TO PROVIDE FOR TAKING THE CENSUS OF THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the assessors of the several counties of this Territory at the same time of making their annual assessments to take a full complete, and correct census of the inhabitants of their respective counties comprising a full and complete list of all white male inhabitants, their ages, occupation nationality, whether

married or single, citizens or aliens, also a list of all female inhabitants their ages, whether married or single, and also a list of all taxable half-breed Indians negroes, mulattoes, Kanakas and Chinamen and also all persons deaf, dumb and blind their ages and nationality.

SECTION 2. Said assessors shall return said census list to the county auditors of their respective counties at the same time they are required to return the assessment rolls and the county auditors aforesaid shall file said census rolls in their respective offices and shall forward within sixty days thereafter to the Territorial auditor the substance of said census which shall be embodied by said Territorial auditor in his report to the Legislative Assembly.

SECTION 3. The assessors aforesaid shall receive as compensation for their services in taking the census the sum of two dollars and fifty cents for every one hundred names thereof.

SECTION 4. Any assessor failing or neglecting to faithfully perform the duties imposed by the provisions of this act shall be liable to a penalty of not less than twenty-five dollars and not more than one hundred dollars to be recovered by civil action in the name and for the use of the county wherein such penalty is liable before any court of competent jurisdiction.

SECTION 5. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SECTION 6. This act to take effect and be in force from and after its passage and approval.

Approved, November 8th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT "TO FIX THE TIMES OF HOLDING THE SUPREME AND DISTRICT COURT," APPROVED, NOVEMBER 5TH, 1875.

SECTION 1. *Be it enacted by the Legislative Assembly of Washington Territory,* That an act entitled an act "to fix the times of holding the supreme and district court approved November fifth one thousand eight hundred and seventy-five be

so amended as that the district court holding terms at Vancouver be held on the third Monday of October and the third Monday of March in each year and to continue for three weeks unless sooner adjourned. And that the district court holding terms at Walla Walla shall hereafter be held on the first Monday of May and the third Monday of November in each year and continue for four weeks unless sooner adjourned.

SECTION 2. All acts and parts of acts heretofore enacted upon any matter contained in this act be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after the first day of January, A. D., one thousand eight hundred and seventy-eight.

Approved, November 9th, 1877.

AN ACT

RELATING TO DEEDS.

Be it enacted by the Legislative Assembly of the Territory of Washington,

SECTION 1. 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.

SECTION 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 acknowledgement of deeds.

SECTION 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 acknowledge that she did voluntarily, of her own free will execute the deed.

SECTION 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.

SECTION 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 or a notary public duly qualified according to law.

SECTION 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.

SECTION 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, or by the clerk of the court of record of said State or Territory or by a notary public or other officer having a seal of office, then such deed shall have attached thereto a certificate of the clerk of the court of record, under the seal of said court of said county or district, or a certificate of any other proper certifying officer of said district or county, within which said acknowledgment was taken, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he therein represents himself to be, that he is authorized by law to take acknowledgment of deeds and that he verily believes the signature of the person subscribed thereto to be genuine.

SECTION 8. All deeds, conveyances or incumbrances of real estate heretofore acknowledged according to the provisions of this act are hereby declared legal.

SECTION 9. A scroll at the end of a signature of a party to a deed shall within the meaning of this act be considered as equivalent to a seal.

SECTION 10. All acts and parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

SECTION 11. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

IN RELATION TO STREETS AND ALLEYS IN UNINCORPORATED TOWNS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all streets and alleys in any unincorporated towns in this Territory be and the same are declared public highways, anything in the acts in relation to roads and highways to the contrary notwithstanding.

SECTION 2. This act to take effect and be in force from and after its approval by the governor.

Approved, November 9th, 1877.

 AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO AUTHORIZE THE CONSTRUCTION OF DITCHES, DRAINS OR WATER COURSES, APPROVED, NOVEMBER 12TH, 1875.

Be it enacted by the Legislative Assembly of the Territory of Washington.

SECTION 1. That section second of said act be amended by adding to said section the following: "And it shall be necessary for the board of county commissioners in all other cases to have filed and recorded in the county auditor's office, in a book kept for that purpose, in the county where such ditch, drain, or water course is constructed, a plat of the survey of said ditch, drain, or water course, together with the notice and affidavit of the person or persons making the application to construct said ditch, drain or water course.

SECTION 2. Section six of said act shall be amended by adding thereto the following: "And such viewers shall deter-

mine from the nature of such survey and view, the time in which such ditch or ditches, drains or water courses shall be completed: *Provided*, Such time shall not exceed two years nor be less than one year from the date of notice.

SECTION 3. Section seven of said act shall be amended to read as follows: "Section seven" All parties after receiving notice of the amount of ditch assessed and set to them, shall proceed to clear the way and dig said ditch and have their said proportion of the same completed within the time determined by the viewers, when such view and survey was made, not exceeding two years: *Provided*, That if any person having a portion of said ditch assessed to him shall fail to clear the way and dig such portions of ditch by the time aforesaid, the applicant or applicants may proceed to clear the way and dig the ditch or cause the same to be done according to the plans and specifications of said viewers and the sum assessed to the owners, with legal interest thereon, may be recovered in an action in any court having jurisdiction, and shall be a just claim against and a lien upon the lands through which said ditch or ditches are located, which lien shall be prior to all other liens and incumbrances subsequent to the assessment. And parties owning lands not adjacent to nor affected by said ditch, drain or water course and wishing to drain their lands by cutting a ditch or ditches to intersect the same shall have the privilege of such intersection by first obtaining the consent in writing of a majority of the parties benefit[t]ed by said ditch.

SECTION 4. No ditch drain, or water course, shall connect with, or lead into the Columbia river in accordance with the provisions of the act of which this is amendatory, unless by the written consent or agreement, of the party or parties, whose lands lie along the immediate bank of said river, and through which any ditch, drain or water course may be desired to pass.

Approved, November 6th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT IN RELATION TO ROADS, FERRIES, BRIDGES, AND TRAVEL ON PUBLIC HIGHWAYS," APPROVED DECEMBER 2D, 1869 AND AMENDED AND APPROVED NOVEMBER 29TH 1871.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section twenty-four of an

act approved December second one thousand eight hundred and sixty-nine, entitled "An Act in Relation to Roads, Ferries, Bridges and travel on Public Highways" be amended to read as follows:

"SECTION Twenty-four. The supervisor must notify every person within his road district, subject to road labor as aforesaid, to perform the work assessed on the public roads within his district, and if any person subject to road labor as aforesaid shall after three days notice either personally or by writing left at his usual place of abode or sent by mail to his post-office address by the supervisor, or by any other person by his direction, neglect, or refuse to attend by himself or suitable substitute at the time and place designated by the supervisor, or, having attended, shall refuse to obey the directions, of the supervisor, or shall pass his time in idleness or inattention to the labor or duties assigned; every such delinquent shall thereby become liable to the supervisor for the amount of his or her road-tax in money, and such road supervisor shall proceed at once to collect the same by levy and sale of the property real and personal of such delinquent or sufficient thereof for that purpose and to pay the penalty for such delinquency and the costs and expense of the levy and sale. It shall be the duty of every person, firm, corporation, or company, or their agent who has or may have in his or their employ persons working for wages who are liable to perform road labor under the law whose names are not placed on the list of the road supervisors to furnish to such supervisor on demand, the names of such persons employed by whatever name, number or appellation they are known by such person, firm, corporation or company or by his or their agent and it shall also be the duty of such person firm, corporation, or company, to retain or caused to be retained, from the wages of such person or persons a sufficient amount to pay the tax due from them respectively, and if a sufficient amount is not due to the person or persons so employed, then such person, firm, corporation or company, shall pay to the supervisor on demand whatever sum may be due to such person or persons so employed and if a sufficient amount shall thereafter become due to such person or persons it shall be retained and paid to the road supervisor on demand: *Provided*. Such person or persons so employed neglect or refuse to perform their road labor as required by law and the provisions of this act.

SECTION 2. That if the said person, firm corporation or company or agent thereof shall fail neglect or refuse to furnish the list as herein provided, or shall fail neglect or refuse to pay the road tax due from such person or persons in his or their employ or who were in his or their employ at the time of the de-

mand made by the road supervisor the said person firm, corporation or company shall then and there become liable for the payment thereof and shall then and there and thereby become indebted to the county in the sum or sums which may be due from the person or persons in his or their employ which sum or sums, may be collected by suit in any court having jurisdiction of the sum involved within the judicial district or sub-district wherein said county may be situated, which suit shall be in the name of the county, and such suit may be commenced at any time after such person, firm, corporation or company shall have become indebted to the county, as provided in this act, if the board of county commissioners shall so order, and if the board of county commissioners neglect or refuse to order such suit to be instituted when the amount of such indebtedness shall be collected by the sheriff of the county at the times and in the manner as other delinquent Territorial and county taxes, are collected and the said sheriff is hereby authorized to levy upon and attach and sell, at public auction as upon execution sufficient of the property real, and personal of such person, firm, corporation or company to satisfy said indebtedness together with costs of levy and sale as aforesaid; and the amount of the indebtedness so collected by the sheriff, shall be paid into the county treasury there to remain subject to the order of the supervisor of the road district in which such road taxes were assessed, the order of such supervisor in all cases arising under the provisions of this act must first be approved by the board of county commissioners.

SECTION 3. The foregoing provisions of this act shall be understood and construed to include all al(l)iens employed between the age of twenty-one and fifty years; except those who are too infirm to perform labor, or who are a public charge.

SECTION 4. All al(l)iens between the age of twenty-one and fifty years, who are not a public charge or too infirm to perform labor are hereby declared to be liable to, and shall pay road tax and perform road labor in the same manner, and be subject to the same responsibilities relating thereto, which are, or may be imposed upon resident citizens, and all persons firms, corporations, or companies employing such al(l)iens as herein provided are hereby expressly bound by the terms and conditions of this act to pay the road tax due from such al(l)iens at the time and in the manner provided by the foregoing sections.

SECTION 5. This act shall take effect and be in force from and after its passage [and] approval.

Approved, November 9th, 1877.

AN ACT

PREScribing THE NUMBER OF MEMBERS COMPOSING THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Legislative Assembly of said Territory which by the provisions of the organic act is made to consist of a council and house of representatives, shall be composed of nine members of the council and thirty members of the house of representatives. The members thus composing the two branches of the Legislature shall possess all the qualifications of legal voters and their term of service shall be two years.

SECTION 2. The members of the council and house of representatives shall be elected in pursuance of law from the several districts and counties in this Territory upon such equitable apportionment as is now or may hereafter be provided by law.

SECTION 3. This act to take effect and be in force from and after its passage and approval by the governor.

Approved, November 6th, 1877.

AN ACT

TO ENABLE COUNTIES TO BORROW MONEY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That when any county of this Territory shall become indebted in an amount greater than can be provided for, and paid for out of the entire income of such county for the then current year, the board of county commissioners of such county, may, if it so elects, borrow money upon the credit of the county, sufficient to pay such indebtedness,

not exceeding the sum of fifteen thousand dollars: *Provided*, That this act shall apply to the counties of King and Snohomish only.

SECTION 2. All money borrowed pursuant to the provisions of this act, shall be payable in annual installments; the rate of interest paid thereon must not exceed ten per cent. per annum.

SECTION 3. When the board of commissioners of any county shall elect to borrow money pursuant to the provisions of this act, a resolution to that effect must be passed at a regular meeting of such board, and entered in the minutes of such meeting, and shall give notification to that effect for the period of four weeks in a weekly newspaper published in this Territory nearest said county, seat, and shall receive the lowest and best bid for the county. The board may reject any or all bids.

SECTION 4. When any money shall have been borrowed by any county pursuant to the provisions of this act, the board of commissioners of such county shall annually reserve and set apart sufficient of the income of such county to pay the interest, and each installment of principal on such loan as the same shall become due.

SECTION 5. This act shall take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO APPORTION THE REPRESENTATION 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 to wit:

The county of Walla Walla shall elect one.

The counties of Columbia, Whitman and Stevens shall elect one.

The counties of Clark, Skamania, Yakima and Klickitat shall elect one.

The counties of Cowlitz, Wahkiakum and Pacific shall elect one.

The counties of Thurston and Lewis shall elect one.

The counties of Pierce, Mason and Chehalis shall elect one.

The county of King shall elect one.

The counties of Kitsap, Snohomish and Whatcom shall elect one.

The counties of Jefferson, Clalem, [Clallam,] Island and San Juan shall elect one.

SECTION 2. The apportionment of representatives in the house shall be as follows, to wit:

The county [counties] of Cowlitz and Wahkiakum shall elect one.

The county of Cowlitz one.

The county of Clarke shall elect two.

The county of Columbia shall elect two.

The counties of Clarke Skamania and Klickitat shall elect one.

The county of Lewis shall elect one.

The county of Thurston two.

The counties of Pacific and Chehalis shall elect one.

The county of Pierce one.

The counties of Pierce and Mason one.

The county of King (3) three.

The county of Snohomish one.

The county of Kitsap one.

The counties of Kitsap and Jefferson shall elect one.

The county of Jefferson one.

The county of Whatcom one.

The counties of Clallam and San Juan shall elect one.

The county of Island shall elect one.

The county of Whitman shall elect one.

The county of Walla Walla shall elect (4) four.

The county of Yakima shall elect one.

The county of Stevens shall elect one.

SECTION 3. All acts or parts of acts inconsistent with this

act be and the same are hereby repealed. This act to take effect and be in force from after its passage.

Approved, November 9th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT IN RELATION TO ATTORNEYS AND COUNSELORS AT LAW" PASSED JANUARY 24TH, 1863.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section (1) of an act entitled "an act in relation to attorneys and counselors at law" passed January 24th 1863 be and the same is hereby amended to read as follows: "That the following persons are entitled to practice as attorneys and counselors in all the courts of this Territory:

First. All citizens of the United States who were duly admitted as attorneys and counselors of the supreme or district courts, before the passage of this chapter and whose names are still on the rolls of attorneys of those courts.

Second. All citizens of the United States who present to any court of record in the Territory a license from any court of record in any other State or Territory, showing that the person presenting the same has been duly admitted to practice in said court.

Third. All citizens of the United States who are over twenty-one years of age and who shall present to any court of record in this Territory a diploma or certificate from a law college or law school and are found upon examination under the direction of the court to possess the requisite qualifications of learning and ability.

Fourth. All citizens of the United States over the age of twenty-one years of good moral character and who possess the requisite qualifications of learning and ability and who shall be examined and admitted as hereinafter provided.

SECTION 2. That section second of the act to which this is amendatory be amended to read as follow: All citizens of the United States applying for admission to practice as attor-

neys and counselors in this Territory except those provided for in the first, second, and third clauses of the foregoing section, must apply to the supreme court or any district court of the Territory when in session and must show

First. That they are of the age of twenty-one years, which proof may be made by their own affidavit.

Second. That they are a person of good moral character which may be proved by certified or other evidence satisfactory to the court.

Third. That they have diligently studied the common law and the laws of this Territory for at least eighteen months previous to the date of their application under the direction of some practicing attorney within the Territory and is well versed in said laws, the proof of which shall be the certificate of the attorney under whose direction the applicant has studied.

SECTION 3. All acts or parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

• SECTION 4. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO AUTHORIZE THE GOVERNOR TO OFFER A REWARD FOR THE ARREST OF THE MURDERER OF OLE HAAGENSON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the governor of this Territory is hereby authorized to offer a reward of five hundred dollars for the detection and arrest of the person or persons guilty of the murder of one Ole Haagenson whose body was found near Seattle in King county on the twenty-third day of October one thousand eight hundred and seventy-seven.

SECTION 2. The Territorial auditor shall upon presentation to him of a certificate of the clerk of any court in this Territory of the conviction of any person or persons of said murder and the finding of the court that the person claiming said re-

ward is entitled thereto; under the provisions of this act shall draw a warrant on the Territorial treasurer in favor of the person so entitled to receive the same for the said sum of five hundred dollars, and said treasurer shall pay said warrant in its regular numerical order out of any funds in the treasury not otherwise appropriated.

SECTION 3. This act shall take effect and be in force from and after the day of its approval by the governor.

Approved, November 6th, 1877.

AN ACT

TO AUTHORIZE THE BOARD OF HEALTH OF PUGET SOUND TO PURCHASE A SUITABLE SITE OF LAND FOR THE PURPOSE OF A PEST HOUSE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the board of health created by an act entitled "an act in relation to the quarantine of vessels," approved November twenty-sixth, one thousand eight hundred and sixty-nine, be and they are hereby empowered to purchase a site for a pest house, or hospital for contagious diseases, which site shall consist of not less than five acres of land, to be selected by the health officer of said board, conditioned that a deed in fee simple absolute, be filed with the secretary of the Territory by said board, and the sum of two hundred and seventy-five dollars is hereby appropriated for the payment of the same, out of any money in the treasury not otherwise appropriated.

SECTION 2. Upon filing said deed, as above conditioned, it shall be the duty of the Secretary of the Territory to notify the Territorial auditor forthwith, who upon receipt of such notice, is hereby empowered to draw a warrant, at once on the Territorial treasurer, who is hereby authorized to pay the same.

SECTION 3. This act to take effect from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO AUTHORIZE THE COUNTY COMMISSIONERS OF THE SEVERAL COUNTIES OF THE TERRITORY TO OFFER BOUNTY FOR THE SCALPS OF SQUIRRELS, RABBITS AND SAGE RATS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners of the several counties of this Territory are hereby authorized to offer and pay out of the county funds of the county treasury a bounty for the scalps of squirrels, sage rats or wild rabbits as hereinafter provided.

SECTION 2. The bounty provided for in section 1 of this act shall not exceed five nor be less than one cent per scalp.

SECTION 3. Whenever in the opinion of the board of county commissioners it shall be necessary to offer a bounty as provided in this act, they shall so order in open court and cause the order to be spread upon the minutes of the session. Said order shall fix the rate to be offered by the county for scalps and may contain anything else necessary for carrying out and not inconsistent with the provisions of this act.

SECTION 4. It shall be the duty of the county auditor whenever the county commissioners shall order that a bounty shall be paid as provided in the preceding section to give notice of the order of the board by posting one notice in each precinct infested by squirrels, rabbits, or sage rats; said notice shall state the amounts fixed by the board per scalp and the manner in which said bounty may be obtained,

SECTION 5. Whenever any person shall have any squirrel, sage rat or rabbit scalps upon which they wish to obtain bounty they shall present the same to the county auditor whose duty it shall be to examine them and ascertain if they have both ears upon them, and such person shall also present to said auditor a bill verified by affidavit that the squirrels, rabbits or sage rats from which the scalps presented are obtained were killed within the county and that it is just and correct; said bill shall be audited by the county auditor and presented to the board of county commissioners whose duty it shall be to order the same paid out of the county treasury in like manner as other claims against the county. It shall also be the duty of the county

auditor to keep a book provided for the purpose in which he shall enter the names of all persons presenting scalps, the number presented and after allowance by the board the amount allowed to each person, which book shall be presented together with all the scalps in the office of the auditor, at each regular session for their examination and approval.

SECTION 6. It shall be the duty of the county auditor at each regular session of the board of the county commissioners and in their presence to destroy all scalps that he may have received during the preceding quarter.

SECTION 7. The county commissioners may at any regular term of court revoke their order offering bounty for scalps.

SECTION 8. This act shall take effect and be in force from and after its passage.

Approved, October 30th, 1877.

AN ACT

TO LEGALIZE AND MAKE VALID THE LOCATION OF COUNTY ROADS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That when the board of county commissioners of any county have upon petition appointed viewers who have viewed and located any public highway or county road and the same has been surveyed and the minutes of such survey have been recorded in the office of the auditor of the county in which such survey was made. The said public highways or county roads so surveyed as aforesaid, be, and the same are hereby declared to be lawful public highways and county roads to all intents and purposes regardless of any defect or omission in posting notices or defect in the appointment of such viewers or in their returns or reports of such view survey and location: *Provided,* That the minutes of any such survey and location have been recorded as herein specified.

SECTION 2. That in any cause wherein the legality of any county road or public highway shall be contested the introduction of the record or a certified copy thereof showing that the minutes of the survey of any such road have been recorded as specified in section one of this act—the same shall be sufficient

proof of the location survey and legality of such road or roads.

SECTION 7. This act shall take effect and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

ADOPTING THE COMMON LAW OF ENGLAND.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Common law of England so far as the same is not repugnant to, or inconsistent with the constitution, and laws of the United States, and laws of the Territory of Washington so far as the same is applicable to the situation and circumstances of this Territory, shall be the rule of decision in all cases and in all the courts of this Territory.

SECTION 2. This act shall take effect and be in force from and after the day of its approval by the governor.

Approved, October 31st, 1877.

AN ACT

TO PROVIDE FOR THE INCORPORATION OF WATER FLUME COMPANIES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That corporations for the building, equipping and managing water flumes for the transportation of wood and lumber may be formed according to the provisions of an act entitled "an act to provide for the formation of corporations" passed November thirteenth one thousand eight

hundred and seventy-three, and such corporations and the members thereof shall be subject to the conditions and liabilities therein imposed.

SECTION 2. That said corporations may appropriate lands for the construction of said flumes, and the right of way therefor according to the provisions of chapter three of the act of which this act is amendatory, and with all the rights and liabilities therein granted or imposed.

SECTION 3. This act to be in force from and after its passage.

Approved, October 25th, 1877.

AN ACT

(AN ACT) TO AMEND AN ACT ENTITLED "AN ACT TO REGULATE THE PRACTICE AND PROCEEDINGS IN CIVIL ACTIONS," APPROVED NOVEMBER 13TH 1873.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section 502 of an act entitled an act to regulate the practice and proceedings in civil actions approved November 13th 1873 be amended so as to read as follows:

SECTION 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 27th 1850 commonly called the donation law or the acts amendatory thereof, such party from the date of his settlement thereon as provided in said act 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 *prima facie*[e] pre-

sumed in favor of the party having or claiming under the elder certificate or patent as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. Any person in possession by himself or his tenant of real property and any private or municipal corporation in possession by itself or its tenant of any real property or when such real property is not in the actual possession of anyone, any person or private or municipal corporation claiming title to any real property under a patent from the United States or during his or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons corporations or associations claiming an interest in said real property or any part thereof or any right thereto, adverse to him, them or it for the purpose of determining such claim estate or interest, and where several persons or private or municipal corporations are in possession of, or claim as aforesaid sepe[ar]ate parcels of real property, and an adverse interest is claimed or claim made in or to any such parcels by any other person, persons, corporations or associations arising out of a question, conveyance statute, grant or other matter common to all such parcels of real estate, all or any portion of such persons, or corporations so in possession or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all persons corporations or associations claiming such adverse interest.

SECTION 2. This act shall take effect and be in force from and after its approval by the Governor.

Approved, October 31st, 1877.

AN ACT

TO PROTECT PERSONS SELLING SPIRITUOUS MALT OR FERMENTED LIQUORS FROM MISREPRESENTATION OF MINORS AS RESPECT THEIR AGES.

Be it enacted by the Legislative Assembly of the Territory of Washington, That any minor over the age of eighteen years and under the age of twenty-one years who shall repre-

sent to any person dealing in spirituous malt or fermented liquors that he is of lawful age, and by means of such misrepresentation procure from such dealer spirituous malt or fermented liquors shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars or less than twenty-five dollars or imprisoned in the county jail any length of time not exceeding three months.

This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

(HOUSE SUBSTITUTE FOR C. B. NO. 17.)

AN ACT

TO PROVIDE FOR THE REMOVAL OF THE BOOKS BELONGING TO THE
TERRITORIAL LIBRARY TO THE CAPITOL BUILDING.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the Territorial librarian is hereby required to cause to be removed the Territorial library from Tacoma Hall back to the library room in the Territorial capitol within five days from the date of the passage of this act.

SECTION 2. The said librarian is hereby required to cause the said library room in the capitol to be forthwith properly managed with shelving, using the shelves, counters, and other furniture and fixtures now in use at Tacoma Hall as far as practicable, for the reception and accommodation of said Territorial library.

SECTION 3. The sum of fifty dollars (\$50,) or so much thereof as shall be necessary is hereby appropriated out of any money in the Territorial treasury not otherwise appropriated to defray the expenses of carrying into effect the foregoing provision of this act.

SECTION 4. The said librarian is required to present as soon as practicable after such removal shall have been made proper vouchers to the Territorial auditor for the expenses incurred, particularly specifying the nature of service and verified

by the affidavit of the party performing the service and said auditor shall draw a warrant or warrants on the Territorial treasurer to the respective parties performing such service for their respective demands, and the treasurer shall pay the same as other warrants are paid: *Provided however*, The aggregate of said warrants shall not exceed the said sum of fifty dollars heretofore appropriated.

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

Approved, November 9th, 1877.

AN ACT

TO PRESCRIBE THE TENURE OF OFFICE IN WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the election of all Legislative, district, county and precinct officers shall hereafter be biennial, and shall be held at the same time as the election of delegate to Congress.

SECTION 2. That all district, county and precinct officers shall hold their offices for the term of two (2) years from and after the second Monday in January next after their election and until their successors are elected and qualified.

SECTION 3. That all officers nominated by the governor, and appointed by, and with the advice and consent of the Legislative Council of this Territory shall hold their offices for the term of two years from and after the second Monday in January next after their appointment, and until their successors are appointed and qualified: *Provided*, That this section shall not apply to notaries public or commissioners of deeds.

SECTION 4. All acts and parts of acts in conflict with this act are hereby repealed.

SECTION 5. This act shall be in force from and after its passage and approval by the governor.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR THE PAYMENT OF EXPENSES OF REGENTS OF THE
TERRITORIAL UNIVERSITY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the regents of the Territorial University, shall be paid for actual attendance upon a lawfully called or authorized meeting of the board of regents their actual and necessary traveling expenses between their place of residence and the city of Seattle by the usually travelled route. The secretary of the board of regents shall give to each regent a certified statement of the mileage due. On presentation of such certificate to the Territorial auditor he shall issue a warrant upon the Territorial treasurer for the amount therein named, and said treasurer shall pay the same as other Territorial warrants are paid.

SECTION 2. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO AMEND "AN ACT" ENTITLED "AN ACT TO PROVIDE FOR THE
PROTECTION OF GAME," APPROVED NOV. 12, 1875.

Be it enacted by the Legislative Assembly of the Territory of Washington.

SECTION 1. That section five of said act to which this is amendatory shall read as follows:

SECTION 2. Any owner or other legal occupant of any enclosed premises, used for meadow, pasture, cultivation, or other

use, may post, at the usual place or places of entering upon the same, written or printed notices, forbidding persons to trespass upon said enclosed premises, for the purpose of hunting or pursuing game; without first obtaining the consent of the owner or legal occupant thereof, he shall be deemed guilty of a misdemeanor, and for every such offense, the trespasser shall be liable to a fine of ten dollars, one-half of which shall be paid to the owner or legal occupant of such premises, and the other half into the school fund in the county in which the act of trespass is committed. For the carrying out of the provisions of this section, the owner or legal occupant of the premises may arrest the trespasser upon his premises, taken in the act, without a warrant, and take him before the nearest justice of the peace for trial, or may have a warrant issued as in other cases of misdemeanor; and any barrier, as river, lake, or other obstruction to the passage of stock, shall, for the purposes of this act constitute an enclosure.

SECTION 2. This act shall apply to the counties of Clarke and Pacific only.

SECTION 3. This act shall take effect and be in force from and after its approval by the governor.

Approved, November 9th, 1877.

AN ACT

TO REPEAL AN ACT ENTITLED AN ACT ESTABLISHING A UNIFORM STANDARD OF WEIGHTS AND MEASURES AND TO CREATE THE OFFICE OF SEALER THEREOF, APPROVED, DECEMBER 2D, 1869.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That an act establishing a uniform standard of weights and measures and to create the sealer thereof approved, December 2d 1869, be and the same is hereby repealed.

SECTION 2. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

DEFINING THE WORD MONTHS.

That the word "month" or "months" whenever the same occurs in the statutes of this Territory now in force, or in statutes hereafter enacted or in any contract made in this Territory shall be taken and construed to mean calend[ar].

SECTION 2. This act to take effect and be in force from and after its passage.

Approved, October 30th, 1877.

AN ACT

RELATING TO THE MEASUREMENT OF CHARCOAL.

SECTION 1. *Be it enacted by the Legislative Assembly of Washington Territory*, That all baskets for measuring charcoal, in this Territory, shall contain two bushels and shall be of the following dimensions: viz: Nineteen (19) inches in breadth in every part thereof, and seventeen and one half inches ($17\frac{1}{2}$) deep, measuring from the top of the basket to the highest part of the bottom and be well heaped—*Provided* That nothing in this act shall be construed so as to prevent the use of any basket, box or other measure in conformity with the standard of measurement as provided in this section.

SECTION 2. Any person or persons who shall violate the provisions of this act shall be liable to a fine of five dollars for each and every offence so committed to be collected in similar manner as other fines for similar cases are now collected and all fines collected as aforesaid shall belong to the school fund of the county in which such offense or offenses may have been committed.

SECTION 3. This act shall take effect and be in force from and after Jan. 1st, 1878.

Approved, November 9th, 1877.

AN ACT

TO DEFRAY THE INCIDENTAL EXPENSES OF THE OFFICE OF TERRITORIAL TREASURER.

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 annually to defray the expenses of the Territorial treasurer's office namely rent fuel, light, stationa[e]ry printing of blanks and postage and that the sum of fifty dollars shall be paid to the Territorial treasurer quarterly at the same time and in like manner as the salary of the Territorial treasurer is now paid.

SECTION. 2. This act shall take effect and be in force from and after its approval.

Approved, November 9th, 1877.

AN. ACT

(AN ACT) TO AMEND AN ACT, ENTITLED AN ACT RELATING TO WEIGHTS AND MEASURES APPROVED JANUARY 29TH 1863.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington* That the eighth line of section four of said act be so amended as to read as follows—

Thirty (36) pounds shall constitute a bushel of oats.

SECTION 2. All parts of acts in conflict with the provisions of this act are hereby repealed.

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

Approved, November 6th, 1877.

AN ACT

CONCERNING THE COLLECTION OF POLL TAXES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the poll tax of two dollars provided for in section twenty-seven (27) of an act approved Nov 12th 1875 entitled "An Act to Provide for the Assessing and Collecting of County and Territorial Revi[e]nue" shall be due and paid at the time of the assessment and shall be paid to the assessor who shall have the same power in collecting the same that the sheriff has in the collection of delinquent taxes on personal property. The money so collected shall be paid by the assessor, at the time of the return of his assessment roll, less his percentage for collection.

SECTION 2. The assessor shall be provided by the auditor with blank poll tax receipts, which shall be charged against him at the value of two dollars each, and he shall make a full and true return to the auditor of the names of all persons assessed for poll taxes and the amount collected from each, and he shall be allowed to retain ten per cent of the gross amount so collected as his compensation for such collection.

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

Approved, November 9th, 1877.

AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT TO AMEND AN ACT ENTITLED AN ACT IN RELATION TO QUARTZ MINING CLAIMS APPROVED NOVEMBER 12TH, 1875, SO FAR AS THE SAME APPLIES TO STEVENS COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of*

the Territory of Washington That an act entitled "An Act to Amend An Act Entitled "An Act in Relation to Quartz Mining Claims" approved November 12th 1875, be and the same is hereby repealed so far as it applies to Stevens county.

SECTION 2. This act to take effect and be in force from and after its approval by the governor.

Approved, November 9th, 1877.

OFFICE OF THE SECRETARY,
OLYMPIA, W. T., Jan. 1, 1878.

Many of the manuscript laws of the sixth biennial session of the Legislative Assembly appear defective in orthography and punctuation, in numbering of, and references to, sections and chapters, etc. It being my duty to have the printed copies conform with these laws, in no case has there been a departure from the original text in phraseology or punctuation. Suggested corrections in spelling and numbering of sections have been made by enclosing the matter in brackets and superfluous matter indicated in parentheses; but, in the civil practice act, the Arabic and Roman notation and the numbering of chapters and sections have been printed as found in the original law.

N. H. OWINGS, *Secretary*.

LOCAL AND PRIVATE LAWS.

LOCAL AND PRIVATE LAWS.

AN ACT

TO INCORPORATE THE TOWN OF OLYMPIA.

ARTICLE I.

ON BOUNDARIES AND GENERAL POWERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the town of Olympia shall be bounded as follows, to wit: Commencing at the north east corner of section 25, T 19, N. of R. 2 W., thence south along the section line 6 miles to S E corner of section 24, T 18, N. of R. 2 W., thence west along section lines 4 miles to S. W. corner of section 21, T 18, N. of R. 2 W., thence north along section line to the point on Eld inlet where said section line intersects the meander line of eastern shore of said inlet; thence along the said meander line to the point where it intersects the N. section line of section 28, T. 19, N. of R. 2 W.; thence east across Budd's inlet to the place of beginning.

SECTION 2. The inhabitants of said town of Olympia shall be and are hereby constituted a body politic and corporate, by the name and style of the "Town of Olympia," 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 town for public buildings, public works, and town improvements, and may dispose of the same in any manner for the benefit of the town, may purchase 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. The town shall be and is hereby divided into three wards, as follows:

All that part of the town lying and being west of the middle of the inlet of the Sound separating Swantown from the main town, and north of Fifth street, shall constitute ward number one.

All that part of the town lying west of the line of the middle of said inlet and of the middle of stream running into said inlet, and south of Fifth street, shall constitute ward number two;

And all that part of the town lying east of the middle of the channel of said inlet and stream of the Sound, dividing Swantown from the main town, shall constitute ward number three.

ARTICLE III.

SECTION 1. For the government of the said town of Olympia there shall be annually elected, in the manner hereinafter provided, a mayor and six trustees, and a town clerk, and a marshal(l), who shall hold their offices for one year or until their successors shall be duly elected and qualified: *Provided*, That the town clerk and marshal(l) may, for good cause show[n], be removed from office by a two-thirds vote of the trustees, at any regular meeting of the board; and in case of such removal, of said clerk or marshal(l), or both, the vacancy or vacancies may be filled by appointment, by the mayor and concurrence of the trustees, for the balance of the term for which said clerk or marshal(l) was elected.

SECTION 2. The mayor, the clerk, and the marshal(l), shall be elected by the whole town, and each ward shall elect two trustees.

SECTION 3. The present board of trustees, and their successors in office, shall appoint judges of election and provide all things necessary to hold a separate election in each ward, and if, for any cause, they fail to do so, any three legal voters of

the ward may organize a board of election judges and hold an election according to law.

SECTION 4. Trustees eligible in any ward, must be residents and legal voters in the ward in which they are elected.

SECTION 5. The present clerk of the board of trustees, and his successors in office, shall keep a book in his office in which all voters in the town shall register their names and the number of the ward in which they reside, at least thirty days before the annual election. And the said clerk shall provide the judges of election in each ward with a list of the registered voters in such ward, and none but voters thus registered shall be allowed to vote. *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.

ARTICLE IV.

SECTION 1. 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, a clerk and a marshal(1) for the whole town, each of whom must be qualified voters in the town.

SECTION 2. No person shall be entitled to vote at any election who shall not be an elector for Territorial officers, and who shall not have resided in the town thirty 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.

SECTION 3. At all elections for town officers, the vote shall be by ballot at the time and place in each ward designated by the board of trustees.

SECTION 4. That all elections shall continue for one day, during which time the polls shall be kept open from 10 o'clock A. M., to four o'clock P. M.

SECTION 5. The person who shall receive a plurality of votes for trustee or mayor, shall be declared elected, and the clerk shall issue to him a certificate of election, and on presentation of the same to the board of trustees shall be sworn into office.

SECTION 6. The judges of election in each ward shall designate one of the clerks of the election to make return of the vote in said ward to the clerk of the town within twenty-four

hours after the polls close, and the clerk of the town, in presence of and with the assistance of the said clerk of election from each ward, shall add up the vote of the three wards for mayor and shall issue a certificate of election to the candidate having the highest number of votes; and also to the two trustees in each ward having the highest number of votes, and in case of tie, it shall be decided by lot.

SECTION 7. All vacancies may be filled by the board until the next annual election.

SECTION 8. The mayor and trustees shall receive no compensation for their services.

SECTION 9. The mayor shall preside at the meetings of the trustees; may give the casting vote in case of a tie; shall have the veto power, but laws may be passed and business done by a two-third vote, notwithstanding the veto of the mayor.

SECTION 10. The clerk of the town board shall be *ex-officio* assessor. He shall perform the duties of his office in such manner as may be prescribed by ordinance.

SECTION 11. The board of trustees shall appoint a treasurer, who shall hold office at the pleasure of the board.

SECTION 12. The members of the board of trustees shall fix the time and place for holding their stated meetings, and may be convened by the mayor 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, and in the absence of the mayor the board shall appoint one of their number president *pro tem* who shall perform all the duties required of the mayor.

SECTION 13. Any ordinance which shall have been passed by the board of trustees shall, before it becomes a law, be signed by the mayor, or in the absence of the mayor, by the president *pro tem*.

SECTION 14. Said board of trustees shall have full power and authority:

First. To make all needful by-laws, ordinances and town regulations not repugnant to the constitution or laws of the United States and the laws of (the) this Territory.

Second. To levy taxes for municipal purposes not to exceed four mills on the dollar per annum upon all taxable property as is shown by the assessment made for Territorial and county purposes. But this shall not be construed as prohibiting said board from the addition of ten per centum penal(i)ty on delinquent tax payers, or such other penal(i)ty as may be prescribed by the laws of the Territory to secure the collection of taxes. Said board shall also regulate by ordinance the time of assess-

LOCAL AND PRIVATE LAWS.

ing and collecting said municipal taxes: *Provided*, That an additional tax of two and one-half mills may be levied in any one year, if such tax is voted by a two-third vote of the tax payers of the town, and the board of trustees shall have power to call a special election for that purpose.

Third. To prevent and restrain any disturbance or disorderly conduct, riot, drunkenness or any indecent and immoral practices within the limits of said town.

Fourth. To license, tax and regulate auctioneers, taverns, bankers, peddlers, brokers, pawnbrokers and all offensive or noxious trades or occupations.

Fifth. To license, tax and regulate hacks, cabs, hackneys, carriages, wagons, carts, drays or other vehic(k)les, and to fix the rates thereof.

Sixth. To make regulations to prevent the introduction of contagious diseases into the city, to remove persons affected with such or other diseases therefrom to suitable hospitals provided for the city for that purpose; to secure the protection of persons and property therein, and to provide for the health, cleanliness, ornament, peace and good order of the city.

Seventh. To prevent and remove nuisances.

Eighth. To provide for lighting the streets and furnishing the city with gas or other lights, and for the erection or construction of such works as may be necessary or convenient therefor.

Ninth. To provide for the support, restraint and employment of vagrants and paupers.

Tenth. To provide for the prevention and extinguishment of fires, and for the preservation of property endangered thereby, and for the appointment or election of officers required for such purposes.

Eleventh. To establish and maintain a day and night police or either of them.

Twelfth. To provide for the prevention or removal of all obstructions from the streets, cross and sidewalks, and for the cleaning and repairing of the same.

Thirteenth. To provide for the erection of a city jail, house of correction and work-house, and the government and management of the same.

Fourteenth. To establish and regulate the fees and compensation of all officers of this municipal corporation, except when otherwise provided.

Fifteenth. To provide for the punishment of a violation of any ordinance of the city, by fine or imprisonment, not exceed-

ing one hundred dollars, or thirty days, or both, or by a forfeiture or penalty not exceeding one hundred dollars, and for working any person sentenced to such imprisonment upon the streets or public squares during the term thereof.

Sixteenth. To appropriate money to pay the debts, liabilities and expenditures of the city, or any part or item thereof, from any fund applicable thereto: *Provided*, No appropriation shall be made for any purpose, in excess of the amount received by the treasurer for the current year.

Seventeenth. To provide for the survey of the blocks and streets of the city, and for making and establishing the boundary lines of such blocks or streets, and to establish the grades of such streets.

Eighteenth. To license, tax, regulate and restrain theatrical and other exhibitions, shows, public amusements, billiard tables and bowling alleys, and, to suppress bawdy houses, gaming and gambling houses.

Nineteenth. To make regulations and pass ordinances preventing domestic or other animals from running at large in the city limits.

Twentieth. To license, tax, regulate and restrain the keeping of dogs within the city limits.

Twenty-first. To construct and repair sidewalks, and to levy and collect a special tax or assessment, on the lots or parcels of land fronting on the sidewalk constructed, or repaired sufficient to pay the expense of constructing or repairing said sidewalk.

Twenty-second. They shall have power to make harbor regulations and rules; to regulate or prevent the discharge of ballast or other material in any harbor within the city limits; to assess and collect harbor dues from all vessels and water craft whatever, arriving at or departing from the city; to license and tax wharfingers; and to build, construct or authorize the construction of, and regulate wharfs, piers, and landing places at the foot of any street terminating on Budd's inlet within the city limits. And to regulate and prescribe the limits of the extension of wharfs into the waters of any harbors within the city limits.

ARTICLE V.

SECTION 1. The town clerk shall receive such compensation for his services as may be allowed him by ordinance.

SECTION 2. The town marshal(l) shall have and possess all the power and authority to serve any and all process, and he shall receive the same fees which constables now have under the general laws of the Territory; and for other services he shall receive such fees as may be provided by ordinance.

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.

ARTICLE VI.

OF THE POWERS AND DUTIES OF OFFICERS OF THE CORPORATION.

SECTION 1. The justices of the peace elected at the general election, for Olympia precinct shall be, the judicial officers of the corporation, and as such, they shall have jurisdiction of all crimes defined by any ordinance of the town of Olympia, and of all actions brought to enforce or recover any forfeiture or penal(i)ty declared or given by any such ordinance. They shall hear all complaints of the violation of town ordinances, and examine all parties arrested by the town marshal(l).

SECTION 2. All civil or criminal proceedings before such justice of the peace, including all proceedings for the violation of any ordinance, shall be governed and regulated by the general laws of the Territory applicable to justices of the peace and justice courts in similar cases.

SECTION 3. The treasurer is receiver of taxes, and must receive and keep all moneys that shall come to the city by taxation or otherwise, and pay out the same upon the warrant of the clerk of the common council, countersigned by the mayor.

SECTION 4. The treasurer must keep an account with the general fund and a separate account with each special fund that may be raised for any special object, and when a warrant is drawn on any particular fund it can only be paid out of such fund.

SECTION 5. The treasurer must make a report of the receipts and expenditures to the common council at the first regular meeting in the months of December and June of each year, which report shall be published in any newspaper published in the town of Olympia.

SECTION 6. The marshal is a peace officer, and must execute all process issued by the justice of the peace, or directed to him by any justice of the peace of the Territory; he must

attend regularly upon the sessions of the justices court and the meetings of the trustees; he has power, by and with the approval of the council, to appoint one or more deputies, who shall possess the same power; he shall make arrests for breach of the peace or the commission of a crime within the city limits, with or without a warrant, as a peace officer may do under the laws of the Territory.

SECTION 7. The marshal shall exercise a vigilant control over the peace and quiet of the city, and he is the keeper of the city prison or house of correction, unless otherwise prescribed by ordinances.

SECTION 8. As collector of taxes the marshal(l) [shall] collect all delinquent taxes and assessments when required by warrant, and pay the same to the treasurer monthly.

SECTION 9. It shall be the duty of the clerk to keep a fair and correct journal of the proceedings of the board, and to file and keep all papers and books connected with the business of the trustees.

SECTION 10. All demands and accounts against the town must be presented to the clerk, with the necessary evidence in support thereof, and he must submit the same to the trustees, who shall, by a vote, direct whether the same shall be paid or any part thereof, as they may deem it just and legal.

SECTION 11. When the board of trustees orders any demand or account to be paid, if money has been appropriated for that purpose, and not otherwise, the clerk must draw a warrant upon the treasurer for the amount ordered to be paid, which warrant must be drawn on the special or general fund appropriated therefor, and must be signed by the clerk and countersigned by the mayor.

SECTION 12. The clerk must keep proper books of account, showing therein all sums appropriated, the date thereof, and out of what fund; the date and amount of all warrants drawn thereon, and to whom payable, and all such other matters and things as may be prescribed by ordinance, or proper and necessary to a correct understanding of the finances.

SECTION 13. The official books and papers of all town officers are town property, and must be kept as such by such officers during their continuance in office and then delivered to their successors.

SECTION 14. The official books and papers of any officer mentioned in this chapter, may be inspected at any time by a committee of trustees appointed for that purpose.

SECTION 15. The clerk of the board of trustees is author-

ized to administer any oath required to be taken in connection with the duties of his office.

SECTION 16. The justices of peace must keep a proper account of all fines, costs or other moneys received by them or paid into their courts, 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.

SECTION 17. The marshal(l) must keep a correct record of all arrests made by him or his deputy, showing the time, cause or complaint upon which said arrest was made, and must make a full and complete report in writing each month to the board of trustees.

ARTICLE VII.

OF THE COLLECTION OF DELINQUENT TAXES.

SECTION 1. Whenever any municipal tax has been levied as provided and authorized, every part thereof shall bear interest at the legal rate from the time it becomes delinquent, and it shall be a lien upon all real estate so taxed, from the time of the levy thereof.

SECTION 2. The board of trustees must provide by ordinance within what time all taxes may be paid to the treasurer, and all taxes not paid to the treasurer within such time, are thereafter delinquent taxes and must be collected as such.

SECTION 3. Within five days from the expiration of the time limited for paying taxes to treasurer the treasurer must return the tax roll to the board, distinguishing thereon the taxes paid and those remaining unpaid.

SECTION 4. The board must thereafter order the clerk to deliver the tax roll to the collector, and issue and annex thereto a warrant directed to the collector, commanding him to proceed and forthwith to collect the delinquent taxes upon such roll in the manner provided by law, and pay the same to the treasurer and return the warrant, with his doings thereon, and the receipt of the treasurer for all moneys collected thereby and paid to the treasurer, to the clerk.

SECTION 5. Such warrant, for the purpose of collecting such delinquent taxes, shall be deemed an execution against property, and shall have the force and effect thereof against any person, firm or corporation against whom such taxes are levied

or charged on the tax roll, and shall be executed and returned in like manner, except as in this chapter otherwise provided.

SECTION 6. If no personal property be found whereon to levy the warrant, or if that levied upon be not sufficient to satisfy the same, it must be levied upon any real property of the person, firm or corporation against whom the tax is levied or charged or sufficient thereof to satisfy such warrant, including interest, fees of officers and all expenses of sale and executing the warrant.

SECTION 7. In case of a delinquent tax levied upon real property in the name of an owner unknown, the warrant shall be executed by levying upon each lot or part thereof of such property for the tax levied thereon, and selling it separately.

SECTION 8. When real property is sold for delinquent taxes, the person executing the warrant must immediately make a deed for such property to the purchaser, stating therein that the same is made subject to redemption as provided by law, and such sale shall have the same effect to convey to the purchaser, subject to redemption as hereinafter provided, all the estate or interest therein of the owner or owners, whether known or unknown, together with all the rights and appurtenances thereunto belonging.

SECTION 9. Real property, sold for delinquent taxes as provided in this chapter, may be redeemed by the owner or his successor in interest, or by any person having a lien by judgment, decree or mortgage on such property, or any part thereof separately sold, within three years from the date of the deed thereof, by the payment of the purchase money, and twenty-five per cent addition, together with interest upon the purchase money from the date of sale to the time of payment, at the legal rate, and the amount of any tax which the purchaser may have paid upon the property.

SECTION 10. Whenever any property, real or personal, sold for delinquent taxes, shall bring more than the amount of such taxes, with interest and costs and charges of collection, the surplus must be paid to the treasurer, and the person executing the warrant must take a separate receipt for such surplus and file the same with the clerk on the return of the warrant. At any time thereafter, the owner of the property sold, or his legal representatives, shall be entitled to a warrant upon the treasurer for such surplus.

SECTION 11. When any land or town lots cannot be sold for the amount of taxes, interest and charges thereon, such lands or town lots shall be passed over and re-offered for sale before the close of the sale, and if the same cannot then be sold

for the amount, such lands or town lots shall be purchased by the city treasurer, for the amount due thereon, for the city.

SECTION 12. The board of trustees may provide by ordinance within what time a warrant for the collection of delinquent taxes must be returned, and may order an alias warrant to issue for the collection of any such taxes not made on a previous one. All costs and charges for collecting delinquent taxes must be made on the warrant and collected as a part of the tax. The board of trustees may prescribe by ordinance the fees and compensation for collecting delinquent taxes, but the same shall in no case be paid out of the treasury.

ARTICLE 8.

SECTION 1. All officers required to be elected under this act shall, before entering upon the duties of their office, take an oath or affirmation of office before any person competent to administer oaths.

SECTION 2. All resolutions and ordinances calling for an appropriation for any sum exceeding three hundred dollars shall lie over two meetings,

ARTICLE IX.

SECTION 1. The town trustees shall not be the school directors of the common schools of the town, but the common schools of the town shall be governed by the Territorial school law.

SECTION 2. The town shall be and is hereby divided into two school districts.

All that part of the town lying and being west of the middle of the channel of the inlet, and of the stream emptying into said inlet, separating Swantown from the main town, shall be Olympia School District number one; and

All east of said middle of said inlet shall be Olympia School District number two; and the superintendent of schools of Thurston county may join other contiguous territory to school district number two.

ARTICLE X.

MISCELLANEOUS PROVISIONS.

SECTION 1. The roads, streets and alleys within said town limits shall be under the exclusive control of said board of trustees, who shall make all needful rules in regard to the improvement, repair, grading cleaning, etc., etc., thereof, and for the purposes of this act, said town shall not be included in any road district, but the road tax due by law within said town, shall be collected as provided by ordinance.

SECTION 2. The board of trustees shall have power by ordinance to prescribe the mode in which the charge on the respective owners of lots or lands, and on the lots or lands shall be assessed and determined, for the purpose authorized by section fourteen, sub-division twenty-one of this act; such charge when assessed shall be payable by the owner or owners at the time of the assessment personally, and shall also be a lien upon the respective lots or parcels of land from the time of the assessment. Such charge may be collected and such lien may be enforced by a proceeding in law or in equity, either in the name of the town of Olympia, or of the officer, to whom it shall have directed payment to be made. In any such proceedings it shall be sufficient to declare generally for work and labor done, and materials furnished. In any such proceeding when the court trying the same shall be satisfied that work has been done, or material furnished, judgment shall be rendered in favor of the town of Olympia, or the officer prosecuting therefor, for such sum as may be necessary to defray all costs for labor performed, or material furnished and all costs notwithstanding any irregularity, informality, or defect in the proceedings of the officers of the city: *Provided*, That whenever the board of trustees shall order any sidewalk to be constructed or repaired, the clerk of the board shall immediately in writing notify the owner of the lot or lots upon (upon) the side of the street, when the sidewalk is so ordered to be built or repaired of the order made by the trustees; and no assessment or charge of any kind shall be made against any lot or lots when the owner thereof, shall[1], within sixty days after being notified, as herein provided, build, or repair the sidewalk in pursuance to the order of the board of trustees, and in the manner provided by ordinance.

SECTION 3. All acts and parts of acts, upon any subject matter contained in this act, so far as they relate to the incorporation of said town of Olympia, and are inconsista[e]nt with the provisions of this act, be and the same are hereby repealed: *Provided*, That rights acquired, taxes levied, and ordinances passed, and now in force under existing laws shall not be affected by anything herein contained.

SECTION 4. This act to take effect, and be in force, from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

TO AMEND THE CHARTER, OF THE CITY OF SEATTLE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the act of the Legislative assembly, approved November twelvth one thousand, eight hundred, and seventy[-]five, entitled, "An Act, to amend an act entitled an act to incorporate the city of Seattle; approved December second, one thousand, eight hundred, and sixty nine, shall be, and the same is hereby amended as follows: that is to say: section seven of said act, shall be, and the same is so amended as to read as follows—

SECTION Seven—The city of Seattle shall have power, to provide for clearing, opening, graveling improving and repairing, of streets and highways and alleys; and for the prevention and removal of all obstructions therefrom, or from any cross or sidewalk; also to regulate cellar ways and cellar lights on sidewalks within the city; and to provide for clearing the streets; also for constructing sewers and clearing and repairing the same; and have power to assess, levy and collect each year a road, poll tax, of not less than four nor more than six dollars on every male inhabitant of the city, between the ages of twenty-one and fifty years, except persons that are a public charge; also a special tax on property of not less than two nor more than six mills on every dollar's worth of property within the city; which taxes shall be expended for the purposes specified in this section, and the officers of the county shall not levy or collect any road tax or poll tax upon the inhabitants

or property within the city. Section eight of said act, shall be, and the same is so amended as to read as follows.

SECTION Eight. The city of Seattle, shall have power to construct and repair sidewalks, and to curve, pave, grade, macadamize and gutter any street or streets, highway or highways, alley or alleys, therein or any part thereof; and to levy and collect a special tax or assessment, on lots and parcels of land fronting on such street or streets, highway or highways, alley or alleys or any part thereof, sufficient to pay the expense of such improvement, and for such purpose may establish assessment districts, consisting of a portion or the whole of any such street or streets, highway or highways, alley or alleys, or of several streets, highways, and alleys, as may be deemed advisable. But unless the owners of more than one half of the property subject to assessment for such improvement, petition the council to make the same, such improvement shall not be made until a majority of five-sevenths of all the members of the council, by vote, assent to making of the same, and the expense of improvements heretofore made in accordance with the provisions of this section, and not paid prior to the passage of this act, shall be assessed and collected as herein provided, notwithstanding any prior assessment upon any other or different basis than herein provided, and such prior assessment, or any attempt, to collect the same, shall be no bar to a recovery in any suit, or proceeding to collect the amount due, for such improvements upon the basis of assessments, herein provided. Section twenty of said act, shall be, and the same is so amended as to read as follows:

SECTION Twenty. The city of Seattle shall have power to establish and maintain a day and night police, or either of them, and to provide for the election or appointment of such number of police officers as may be necessary; which officers shall have full power and authority to make arrests with or without warrants, within or without the limits of the city; to summon aid; and to exercise all other powers necessary and requisite for the prevention of crime or apprehension of offenders. And in all cases where arrests are made for offenses tried under the general laws of the Territory, before justices of the peace or other Territorial courts, such police officers shall be entitled to receive the same fees as sheriffs or constables, for the same services. The following additional section shall be, and the same is incorporated into said act, the same to follow section twenty-one of said act, viz:

SECTION —. The city of Seattle shall have power to license, tax, regulate and restrain bar-rooms, saloons and all houses or places where liquors are sold or disposed of in quantities of less than one gallon; and all houses or places where wines and spirituous liquors are sold or disposed at wholesale,

or in quantities greater than one gallon, also breweries or groceries where lager beer is sold or disposed of, also all billiard tables, pigeon hole, Jend[n]y Lind and other gaming tables kept for hire within the city: *Provided*, That any person or persons who shall keep any billiard table or tables, pigeon hole, Jenny Lind, or other gaming tables, 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, s[c]igars, 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: *Provided*, The sale by apothecaries or druggists, of spirituous, malt, or fermented liquors or wine for medicinal purposes, upon the prescrip[tion] of a practicing physician, shall not be restricted, and no license shall be required therefor. No law or part thereof, authorizing any tribunal or officer of King county to grant licenses for any such houses or places or business, enumerated in this section, shall apply, or be held to authorize the granting of such licenses within the city, by county officers, and all such licenses paid to the city, shall be in lieu of the license required by the general laws of the Territory, for similar houses or business. The sum required for such license, shall, in no case exceed the amount required by the general laws of the Territory for houses, or business of like character. And bonds required to be given by keepers of saloons or drinking houses, shall not be fixed at more than one thousand dollars: *Provided, further* That no licenses authorized by this section, shall be issued by the city prior to the first day of January A. D. one thousand, eight hundred and eighty, and until said date licenses shall be granted by the county commissioners and the money paid therefor shall go into the treasury of King county, as provided by the general laws of the Territory. Section twenty-four of said act, shall be, and the same is so amended as to read as follows:

SECTION Twenty-four. The city of Seattle shall have power to borrow money on the credit of the city, for any purpose within the authority of the corporation, including the payment of any existing debt; but the indebtedness of the city must never exceed in the aggregate the sum of twenty thousand dollars, and any debt or liability incurred in excess of said sum, of twenty thousand dollars shall be invalid and void: *Provided*, That all debts heretofore contracted by the city shall be valid. Section twenty-six of said act, shall be, and the same is so amended as to read as follows:

SECTION Twenty-six. The city of Seattle shall have power to make harbor regulations and rules; to regulate or prevent the discharge of ballast or other material in any harbor within

the city limits; to assess and collect harbor dues from all vessels and water craft whatever, arriving at, or departing from the city; to license and tax wharfingers; and to build, construct and regulate wharfs, piers, and landing places at the foot of any street terminating at the shore of Elliott's Bay or Lake Washington, and to regulate and prescribe the limits of the extension of wharfs into the waters of any harbors within the city limits, to prevent the construction of wharves beyond such limits, and to remove any wharf or wharves that have heretofore been or shall hereafter be constructed beyond such limits at the expense of the owner or owners of such wharf or wharves, to be recovered by ordinary civil action, or as the city council may by ordinance provide. Section thirty-one of said act shall be and the same is hereby so amended as to read as follows:

SECTION Thirty-one. There shall be elected as hereinafter specified a justice of the peace, marshal, clerk, attorney, treasurer, health officer, city surveyor, street commissioner, harbor master, and an assessor and collector who shall be officers of the municipal corporation. The assessor and collector to be one officer, who shall be officers of the municipal corporation. The marshal shall be elected by the qualified voters of the corporation, and shall hold his office for one year or until his successor is elected and qualified. The common council shall annually, at the first regular meeting thereof, after the qualification of the new members elected at each annual city election, designate and appoint one of the justices of the peace for the precinct, within which such city is situate, who shall have been duly elected, and appointed, and qualified as required by law, who shall be the justice of the peace of the city, and shall keep his office therein, and shall have jurisdiction over all crimes defined by any ordinance of the city, and of all actions brought to enforce or recover any penalty or forfeit, declared or given by any such ordinances and full power and authority to hear and determine all causes, civil and criminal, arising under such ordinances, and to pronounce judgment in accordance therewith. All civil and criminal proceedings before such justice of the peace, under and by authority of this act, shall be governed and regulated by the general laws of this Territory, relating to justices of the peace and to their practice and jurisdiction, and shall be subject to review in the district court of the proper district, by certiorari or appeal, the same as other cases; the attorney, clerk, treasurer health officer, street commissioner, harbor master, and the assessor and collector shall be elected by the common council at the meeting above specified, and they shall be liable, at any time to be removed by the council, for malfeasance, inattention or incompetency. Section thirty[-]four of said act shall be, and the same is so amended as to read as follows. •

SECTION Thirty-four. No person is qualified to vote at any election, under this act who does not possess the qualifications in section forty-two of this act for officers, and who if under fifty years of age has not paid either a poll or property tax in said city for the fiscal year then last past, such payment to be proved by the proper official receipt therefor, except when such receipt is lost or mislaid, when it may be proved by the oath of the person offering to vote, and all officers required to be elected by this act except those elected by the common council shall be elected by the qualified voters of this city. Section thirty-nine of said act shall be, and the same is hereby so amended as to read as follows:

SECTION Thirty-nine. On the first regular meeting of the council next after such election, the returns thereof shall be canvassed by the city council, and the written statement of such canvass shall be made and signed by the presiding officer of the council and attested by the clerk, and immediately filed with the clerk. Such written statement of the canvass[s] shall contain the whole number of votes given at such election, the number given for any person for any office and the names of persons elected, and to what office: *Provided*, That if the requisite number of city officers shall not be elected, by reason of two or more persons having an equal and the highest number of votes for one and the same office, the city council shall give notice to the several persons so having the highest and an equal number of votes, to attend the council chamber at an appointed time, and the said council shall then and there proceed publicly, to decide, by lot, which of the persons so having the highest and an equal number of votes shall be deemed duly elected, and a certificate of election shall be duly issued to the person thus declared elected as hereinafter provided. Section forty-one, of said act, shall be, and the same is hereby so amended as to read as follows:

SECTION Forty one. A certificate of election, is *prima facia*[e] evidence of the facts therein stated; but the council shall decide all questions as to the qualifications, and election of its own members; and a contested election for any other office must be decided by the council, according to the laws of the Territory, regulating proceedings in cases of contest for county offices. Section forty-two of said act, shall be, and the same is hereby so amended as to read as follows:

SECTION Forty-two. The term of office of every person elected to office under this act, shall commence on the tenth day after the canvass[s] of the election returns by the council, and terminate accordingly, except as otherwise provided by this act, and by such time such person must qualify by taking and filing the oath of office, and give such official undertaking for the

faithful performance of his duties as may be required, or he shall be deemed to have declined, and the office considered vacant, except when there is a contest, in which case such person must qualify within ten days from the determination of such contest. Section fifty-nine of said act shall be, and the same is hereby so amended as to read as follows:

SECTION Fifty-nine. Any ordinance which shall have passed the council shall before it becomes a law, be presented to the mayor for his approval; if he approves he shall sign it; if not, he shall within ten days, return it with his objections in writing to the council who shall cause the same to be entered on the journal, and shall proceed to reconsider the same. If after such reconsideration, five-sevenths of the members of the council shall agree to pass the same, it shall become a law. Section sixty-one of said act, shall be, and the same is hereby so amended as to read as follows:

SECTION Sixty-one. The city attorney shall represent the city in all suits or proceedings in which the city is legally interested, and give his advice and opinion in writing concerning any matter in which the city is interested, when required by the mayor or council; but the city may employ additional counsel when deemed advisable by the council. Section seventy-four of said act, shall, and the same is hereby so amended as to read as follows:

SECTION Seventy-four. The justice of the peace of the city shall, before exercising any of the functions of his office as such, give a bond to the city in such sum and with such conditions as the council may require. He must keep a proper account of all fines, costs, or other moneys received by him when acting under and by the authority of this act, and he must pay to the treasurer monthly all such moneys and take duplicate receipts therefor, one of which he must file with the clerk. Section eighty-four of said act shall be, and the same is hereby so amended as to read as follows:

SECTION Eighty-four. The council must thereafter order the clerk to deliver the tax roll to the treasurer of the county within which the city is located, and issue and annex thereto a warrant directed to said treasurer, commanding him to proceed and forthwith to collect the delinquent taxes upon such roll, in the manner provided by law, and pay the same to the treasurer, less his fees and costs of collection, and return the warrant with his doings thereon, and the receipt of the city treasurer, for all moneys collected thereby and paid to the city treasurer, to the clerk. Section eighty-five of said act shall be, and the same, is hereby so amended as to read as follows:

SECTION Eighty[-]five. Such warrant for the purpose of

collecting such delinquent taxes shall be deemed an execution against property, and shall have the force and effect thereof against any person, firm or corporation, against whom such taxes are levied or charged on the tax roll, and shall be executed and returned in like manner, except as in this chapter otherwise provided. The county treasurer shall proceed to collect the taxes upon such roll, at the same time and in the same manner as he is required to do in collecting delinquent Territorial and county taxes, and for such purposes he shall have the same authority as is given to him by the laws of the Territory, relating to the assessment and collection of Territorial and county taxes, he shall pay to the city treasurer monthly all the moneys collected and due the city, as provided in section nin[e]ty-three of this act.

SECTION 2. Sections eighty-eight and eighty-nine, of said act are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its approval by the Governor.

Approved, November 9th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO AMEND AN ACT ENTITLED, 'AN ACT TO INCORPORATE THE CITY OF WALLA WALLA, APPROVED NOVEMBER 13th 1873.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section three in article four of said act be and the same is hereby amended so as to read as follows, the mayor and common council shall have power within the corporate limits of said 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.

3. To make regulations to prevent the introduction of contagious and other diseases into said 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, ordinances hawkers, peddlers, brokers, pawnbrokers, bankers, money-changers, and any and all business or businesses maintained, conducted or carried on within the corporate limits of said city, *Provided*, That carpenters, house-joiners, wagon-makers, or wheel-[w]rights, black-smiths, boot and shoe makers, cabinet-makers, or milliners shall not be required to take out any license to carry on such trade or trades within the limits of said city and, *Provided further*, that no license shall be required of any person or persons for selling or disposing of any produce raised in this Territory nor shall any restriction be placed on such trade or business.

8. To license, regulate and fix the rates of porters and portorage.

9. To tax, license and regulate hackney carriages, job-wagons, carts, drays, and omnibuses, and fix the rates to be charged for the carriage of persons and property.

10. To license, tax, regulate and restrain drinking-saloons, bar-rooms, tipping-houses, circuses, theatricals and other shows and places of amusement billiard tables, breweries, and and Chinese wash-houses, *Provided*, That no keeper of any drinking saloon or bar-room shall be required to pay any greater sum for the license of such business than one hundred (\$100.00) dollars per annum, *And provided further*, That no such license shall issue for a shorter period than is prescribed for by the laws of Washington Territory 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 compel any person or persons present to aid in extinguishing fire or in the preservation of property exposed to damages in times of fire, and by ordinance to prescribe such other powers as may be necessary on occasions of fire.

15. To establish and regulate a police night watch and patrol.

16. To erect a work-house, or house of correction and provide for the government and regulation thereof.

17. To remove all obstructions from the side and cross walks, and to provide for the construction, cleaning and repairing of the same, as well as all gutters, sewers, water courses and drains.

18. To appropriate money for any item of city expenditure and to provide for the payment of the debts 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 gun powder pitch, tar, rosin and 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 riots, tumultuous and disorderly assemblages, disorderly conduct, drunkenness, public lewdness, indecent exposures of person breaches of the peace and threatened or attempted breaches of the peace assaults, assaults and batteries, affrays and carrying concealed weapons.

23. To impose appropriate fines, forfeitures and penalties for the breach or violation of any ordinance and provide for the punishment of all violations of city ordinances, but no fine shall be imposed for more than one hundred dollars, (\$100,) also to provide for the working of city prisoners on the streets or other public works of the city in payment of any fine or as punishment for the violation of any city ordinance.

24. To provide for the protection of the water and channel of mill creek and other streams within the city limits, and to remove obstructions from the channels, of said streams and to compel persons who have obstructed the same or who may obstruct or cause the same to be obstructed to remove such obstructions, to provide bridges over the same to bulkhead or cause to be bulkheaded the banks of mill-creek so as to protect

the property of the city from damage by flood and make such other improvements in the channel of said stream as may be necessary or expedient.

SECTION 2. The city of Walla Walla has power to provide for clearing opening, graveling, improving and repairing of streets, highways and alleys and for the prevention and removal of all obstructions therefrom or from any cross or sidewalk, also to regulate cellar ways and cellar lights in sidewalks or within the city and to provide for clearing the streets, also for constructing sewers and draining and repairing the same, and has power to assess, levy and collect each year a road poll tax of not less than three nor more than four dollars in every male inhabitant of the city between the ages of twenty-one and fifty years, except persons that are a public charge, and the officers of Walla Walla county shall not levy or collect any road tax upon the inhabitants, or property within the city of Walla Walla.

SECTION 3. That an act entitled "An Act to Amend An Act Entitled, An Act to Incorporate the City of Walla Walla, approved, November 12th 1875," and all acts and parts of acts conflicting with the provisions of this act are hereby repealed.

SECTION 4. This act to take effect and be in force from and after its passage.

Approved, November 6th, 1877.

AN ACT

TO DISINCORPORATE THE CITY OF KALAMA.

SECTION 1. *Be it enacted by the Legislative Assembly of Washington Territory,* That the city of Kalama, in Cowlitz county, Washington Territory, shall be disincorporated, and the same shall cease to exist as a corporation, from and after the time of depositing the books of record and papers of said corporation in the office of the county auditor of Cowlitz county, as hereinafter provided.

SECTION 2. The city council of the said city of Kalama shall, on or before the first day of January one thousand eight hundred and seventy-eight, provide for the payment of all

indebtedness and the discharge of all obligations and liabilities of the corporation, by the sale of the property of said corporation, or by the levy and collection of a sufficient tax for said purpose.

SECTION 3. When all debts, liabilities and obligations of said corporation, shall have been paid and discharged, the books of record, and papers on file in the office of the clerk of city council of said city shall forthwith be deposited in the office of the auditor of Cowlitz county, there to remain and be preserved for future reference, and notice of the disincorporation of said city shall be given by said auditor, by publication thereof in a weekly newspaper of general circulation, in said county.

SECTION 4. All property of said corporation remaining undisposed of, and all moneys of the corporation remaining after the payment of all debts, and the discharge of all liabilities and obligations of the corporation, shall belong to and be transferred to the school district embracing said city of Kalama.

SECTION 5. Nothing in this act shall be construed to interfere with, in anywise, any suit at law, that may have been instituted against the mayor, city council or other officer or officers of the government of said city of Kalama prior to the passage of this act.

SECTION 6. All acts or parts of acts in conflict with the provisions of this act, be and the same are hereby repealed.

Approved, November 9th, 1877.

AN ACT

TO DISINCORPORATE THE TOWN OF TUMWATER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the town of Tum-Water in Thurston county shall be disincorporated and the same shall cease to exist as a corporation from and after the time of depositing and filing the books of record and papers of said corporation in the office of the county auditor of Thurston county as hereinafter provided.

SECTION 2. The board of trustees of said town of Tum-

Water shall on or before the first day of January one thousand eight hundred and seventy-eight, provide for the payment of all the indebtedness and the discharge of all obligations and liabilities of the corporation by sale of the property of said corporation, or by the levy and collection of a sufficient tax for said purposes.

SECTION 3. When all debts, liabilities, and obligations of corporation shall have been paid, and discharged, the books of record and papers on file in the office of the clerk of said town shall be forthwith deposited in the office of the auditor of Thurston county there to remain and be preserved for future reference; and notice of the disincorporation of said town, shall be given by said auditor, by publication thereof in a weekly newspaper of general circulation in said county.

SECTION 4. All property of said corporation remaining undisposed of, and all moneys of the corporation remaining, after the payment of all debts and discharge of all liabilities and obligations of the corporation, shall belong to and be transferred to the school district embracing said town of Tumwater.

Approved, November 6th, 1877.

AN ACT

DEFINING THE BOUNDARIES OF THE CITY OF VANCOUVER.

Be it enacted by the Legislative Assembly of the Territory of Washington

SECTION 1. That the city of Vancouver shall be bounded as follows: Commencing at the Southwest corner of the Military Reservation of Fort Vancouver in the county of Clark[e,] thence westerly along the meanders of the Columbia River down stream to the South-West angle of the donation land claim of Amos M. and Esther Short deceased, thence North three fourths of a mile, thence East to a point due North of the West line of the donation land claim of William Ryan; and thence Southerly along said line sixteen and sixty-three one hundredths chains to a point where the Easterly line of the United States Military Reservation crosses the West line of

the said William Ryan's donation claim; thence Southerly along the East line of said United States Military Reservation to the Columbia River; thence Westerly along said river to the place of beginning.

SECTION 2 This act shall take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

CREATING AND CONFERRING JURISDICTION UPON THE DISTRICT COURT OF THE COUNTY OF COLUMBIA.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a court be and the same is hereby created and established within and for the county of Columbia to be called the District Court of Columbia County.

SECTION 2. That said district court shall have exclusive jurisdiction within said county of all matters and causes except those in which the United States is a party in the same manner and to the same extent as is now had and exercised by the district court of the first judicial district holding terms at Walla Walla city for the counties of Columbia and Walla Walla with the same right of appeal certiorari and writs of error to the supreme court as is now provided and allowed by law.

SECTION 3. Said court shall be held by the judge of the first judicial district at Dayton the county seat of Columbia county.

SECTION 4. The said judge of the first judicial district shall appoint a clerk of said district court of Columbia county who shall give bonds and security in such amount as shall be ordered by the court or judge thereof and shall keep his office and the records of said court at said county seat of Columbia county.

SECTION 5. The district court of columbia county shall be a court of record and the expenses of holding the same shall be paid by the said county of Columbia and the said county of Columbia shall also pay the amount of the necessary expenses

incurred by the judge of the first judicial district in holding said district court of Columbia county said judge shall make a certified statement of the expenses so necessarily incurred, to the county auditor of Columbia county who shall draw a warrant on the treasury of said county for the amount so certified to by said judge.

SECTION 6. The various laws now in force and which may hereafter be enacted regulating the practice and proceedings in civil actions and criminal prosecutions in Territorial causes shall govern the practice and proceedings in said district court of Columbia county except as herein otherwise provided.

SECTION 7. The regular terms of said district court of Columbia county shall be held on the third Monday in June and the second Monday in December in each and every year and each term shall be held for one week unless sooner adjourned: *Provided*, That no term of said court shall be held until the last Monday in June A. D. 1878.

SECTION 8. The board of county commissioners of said county of Columbia shall at their regular terms in February and August in each and every year select from the statement of persons qualified a sufficient number of persons to serve as grand and petit jurors at the term of said court to be held next after said meeting and the auditor of said county shall furnish a list of the grand and petit jurors so selected to the clerk of the court of said Columbia county: *Provided*, That when for any cause there shall not be in attendance a sufficient number of qualified and competent grand and petit jurors or the regular jurors shall not have been summoned or shall have been discharged it shall be competent for the court to order a sufficient number of grand and petit jurors to be summoned from the bystanders or from the body of the county.

SECTION 9. At least thirty days before the commencement of the term of court the clerk thereof shall issue one venire embracing the names of the grand and petit jurors, specifying which are grand and which are petit jurors, commanding the sheriff of said county to summon the person so named to attend at the first day of the term of said court.

SECTION 10. The number summoned as grand jurors shall not exceed twelve and the number of petit jurors shall not exceed twenty-four and the provisions of law providing for the manner of selecting and procuring the attendance of jurors at terms of the several District courts of this Territory consistent with the foregoing and not modified thereby shall fully apply to the District court of the county of Columbia.

SECTION 11. The foregoing sections which relate to the summoning grand and petit jurors for terms of said District

court of Columbia county shall not be construed to alter, amend, or repeal the law now in force in regard to the quota of jurors to be summoned from said Columbia county on behalf of the United States to attend the District court of the first judicial District holding at Walla Walla city, but said county of Columbia shall not be chargeable in any event for the mileage or attendance of any grand or petit jurors, who may be summoned to attend at the District court of the first judicial District at Walla Walla city, except upon the order of the judge thereof.

SECTION 12. The various laws now in force and which may hereafter be enacted regulating the practice and proceedings in civil actions and in criminal prosecutions in Territorial causes shall govern the practice and proceedings in said District court of the county of Columbia.

SECTION 13. All acts and parts of acts conflicting with this act are hereby repealed.

SECTION 14. This act shall take effect and be in force from and after its passage.

Approved, October 27th, 1877.

AN ACT

CREATING AND CONFERRING JURISDICTION UPON THE DISTRICT COURT OF THE COUNTY OF PACIFIC.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a court be, and is, hereby established within and for the county of Pacific to be called the district court of Pacific county.

SECTION 2. That said court shall have exclusive jurisdiction within said county of all matters and causes except those in which the United States is a party, in the same manner and to the same extent as is now had and exercised by the district court of the second judicial district holding terms at Kalama for the county of Pacific with the same rights to appeals certiorari and writs of error from inferior courts and to the supreme court as is now provided and allowed by law.

SECTION 3. Said court shall be held by the judge of the second judicial district at the county seat of Pacific county.

SECTION 4. The said judge of the second judicial district shall appoint a clerk of the court who shall give bonds and security in such amount as shall be ordered by said court or the judge thereof, and shall keep his office and records of said court at the county seat of said county, and said district court shall be a court of record and the expense of holding the same shall be payable by the said county of Pacific and the said county of Pacific shall also pay the actual traveling expenses incurred by the judge of the second judicial district in going to and from his place of residence to the place of holding said court and the county auditor shall draw a warrant upon the county treasury for the amount so certified by said judge.

SECTION 5. The various laws now in force and which may hereafter be enacted regulating the practice and proceedings in civil actions and in criminal prosecutions in Territorial causes shall govern the practice and proceedings in said district court of the county of Pacific.

SECTION 6. The board of county commissioners at their regular May term or session shall select from the statement of persons qualified a sufficient number to serve as grand and petit jurors at each term of said district court for the ensuing year and the county auditor shall therefrom furnish a list of grand and petit jurors so selected to the clerk of the court of said county of Pacific: *Provided*, That when from any cause there shall not be in attendance a sufficient number of qualified and competent grand and petit jurors or the regular jurors shall not have been summoned, or shall have been discharged, it shall be competent for the court to order a sufficient number of qualified grand and petit jurors to be summoned from the by-standers or from the body of the county.

SECTION 7. At least thirty days before the commencement of said term of court the clerk shall issue one venire embracing the names of the grand and petit jurors specifying which are grand and which are petit jurors commanding the sheriff to summon the persons so named to attend on the first day of the term of said court.

SECTION 8. The number summoned as grand jurors shall not exceed sixteen and the number of petit jurors summoned shall not exceed twenty four, and the provisions of law providing for the manner of selecting and procuring the attendance of jurors at terms of the several district courts consistent with the foregoing and not modified thereby shall fully apply to the said district court of the county of Pacific.

SECTION 9. The foregoing sections which relate to sum-

moning grand and petit jurors for the terms of said district court of the county of Pacific shall not be construed to alter amend or repeal the law now in force in regard to the quota of jurors to be summoned from said county of Pacific to attend the district court of the second judicial district holding terms at Kalama to serve on behalf of the United States but said county of Pacific shall not be chargeable in any event for the mileage and attendance of any grand or petit jurors who may be summoned to attend at the district court of the second judicial district holding terms at Kalama except upon the order of the judge thereof.

SECTION 10. All civil actions now pending in the district court of the second judicial district holding terms at Kalama wherein the subject of the action or some part thereof is situated in said county of Pacific according to section 48, of the civil practice act of 1873, or wherein, the cause of action or some part thereof arose in said county according to section 49 of said practice act or wherein service of summons was had upon any defendant in said Pacific county, shall be transferred by order of the judge of said court to the district court of Pacific county for trial and shall then be heard and determined in the same manner as though said cause had been originally commenced in said Pacific county.

SECTION 11. The regular terms of said district court of Pacific county shall be held on the second Monday of August in each and every year and each term held for two weeks unless sooner adjourned.

SECTION 12. All acts and parts of acts in conflict with this act are hereby repealed.

SECTION 13. This act shall take effect and be in force from and after its passage.

Approved, October 17th, 1877.

AN ACT

TO CREATE AND CONFER JURISDICTION UPON THE DISTRICT COURT
OF WHATCOM COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a court be and is hereby

established within and for the county of Whatcom to be called the District Court of Whatcom County.

SECTION 2. Said court shall have exclusive jurisdiction within said county of all matters and causes except those in which the United States is a party in the same manner and to the same extent as is now had and exercised by the district court of the third judicial district holding terms at Steilacoom for the county of Pierce with the same rights to appeals, certiorari and writs of error from inferior courts and to the supreme court as is now provided and allowed by law.

SECTION 3. Said court shall be held by the judge of the third judicial district at the town of La Conner in Whatcom county.

SECTION 4. Said judge shall appoint a clerk of the court who shall hold his office during the pleasure of said court.

SECTION 5. Before entering upon the duties of his office said clerk shall take an oath of office and give bond to the Territory of Washington in such sum with sureties and conditions as said court or judge thereof shall require which bond shall be deposited with the secretary of the Territory and any person aggrieved by the official acts or omissions of said clerk may have his action thereon.

SECTION 6. The clerk shall keep his office and the records of said court at the town of La Conner aforesaid and shall keep said office open at all reasonable hours and said district court shall be a court of record, and the expenses of holding the same shall be paid by said county of Whatcom and said county shall also pay the actual traveling expenses incurred by said judge in going to and from his place of residence to the place of holding said court and the county auditor of said county shall draw warrants upon the county treasurer for the amount so certified by said judge.

SECTION 7. All laws now in force and which may hereafter be enacted regulating the practice and proceedings in civil actions and in criminal prosecutions under the laws of the Territory shall govern the practice and proceedings in said district court of Whatcom county.

SECTION 8. The board of county commissioners for Whatcom county at their regular February term or session shall select from the statement of persons qualified in said county a sufficient number to serve as grand and petit jurors at each term of said district court for the ensuing year, and the county auditor shall therefrom furnish to the clerk of the district court of Whatcom county a list of grand jurors and petit jurors so selected: *Provided*, That when from any cause there shall not be in attendance a sufficient number of qualified and competent

grand and petit jurors or the regular jurors shall not have been summoned or shall have been discharged it shall be lawful for the court to order a sufficient number of qualified grand and petit jurors to be summoned from the bystanders or from the body of said county of Whatcom.

SECTION 9. At least thirty days before the commencement of any term of said court, the clerk shall issue under seal of the court and deliver to the sheriff of said county one venire embracing the names of the grand and petit jurors for the county specifying which are grand and which are petit jurors commanding him to summons the persons therein named to attend on the first day of the term of said court.

SECTION 10. The number of persons summoned as grand jurors shall not exceed sixteen and the number summoned as petit jurors shall not exceed twenty-four, and the laws regulating the manner of selecting and procuring the attendance of jurors at terms of the several district courts consistent with this act and not modified thereby, shall apply to the said district court of Whatcom county.

SECTION 11. This act shall not be construed to alter, amend, or repeal the law now in force relating to the quota of jurors to be summoned from said county of Whatcom to attend the district court of the third judicial district holding terms at Port Townsend to serve on behalf of the United States; and said county of Whatcom shall not be chargeable in any event with the mileage or attendance of any grand or petit jurors summoned to attend at the district court of the third judicial district holding terms at Port Townsend, except upon the order of the judge thereof.

SECTION 12. All civil actions now pending in the district court of the third judicial district holding terms at Port Townsend wherein the subject of the action or some part thereof is situated in said county of Whatcom according to section 48 of the civil practice act of 1873 or wherein the cause of action or some part thereof arose in said county according to section 49, of said civil practice act or wherein service of summons was had upon any defendant in said county of Whatcom shall be transferred by order of the judge of said court to the district court of Whatcom county for trial and shall there be heard and determined in the same manner as though said cause had been originally commenced in said district court of Whatcom county.

SECTION 13. The regular terms of said district court of Whatcom county shall be held on the first Tuesday of June and first Tuesday of December in each and every year and each term shall be held for two weeks unless sooner adjourned.

SECTION 14. All acts and parts of acts in conflict with this act are hereby repealed.

SECTION 15. This act shall take effect and be in force from and after the first day of January 1878.

Approved, November 9th, 1877.

AN ACT

CHANGING THE TIME OF HOLDING TERMS OF THE DISTRICT COURT AT WALLA WALLA.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the district court shall hereafter be held at Walla Walla city on the first Monday in May, and the fourth Monday in November in each year.

SECTION 2. That all process returnable and all parties, witnesses, jurors, and other persons required to be, and appear at the October term one thousand eight hundred and seventy-seven, at Walla Walla; stand over and appear at said November term of said court.

SECTION 3. All parts of acts conflicting with the provisions of this act in relation to district court in Walla Walla, be, and the same are hereby repealed.

SECTION 4. This act to take effect and be in force from and after its approval by the Governor.

Approved, October 5th, 1877.

AN ACT

IN RELATION TO ROADS AND HIGHWAYS IN THE COUNTY OF JEFFERSON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners

of the county of Jefferson shall at their regular meeting in May in each year appoint a road supervisor in each road district in said counties, who shall hold their offices for one year or until their successor[s] are appointed and qualified.

SECTION 2. Each supervisor, before entering upon the duties of his office, shall make oath before some person duly authorized to administer the same, that he will faithfully and honestly discharge the duties of his office, obey and enforce all laws appertaining to his office, and shall give a bond in the sum of one thousand dollars to his county, with one or more sureties to be approved by the auditor, conditioned that he will faithfully and honestly discharge the duties of his office, obey and enforce all laws appertaining to the same, and pay over to the treasurer all moneys that may come into his hands by virtue of his office, which oath of office and bond shall be filed with the auditor.

SECTION 3. The supervisor of each road district shall have power to demand and collect from each person including Chinamen and taxable Indians residing or working in his district, not already taxed on the last assessment roll for his county, or who shall fail to produce a receipt for his tax of that year from the collector or supervisor of some other county in this Territory, or some other Territory or State in the union, the road poll tax required by law, giving his receipt to said person for the same and said supervisor shall expend all money so collected in improving the roads in his district.

SECTION 4. It shall be the duty of the county auditor to furnish the supervisor of each road district with a description of the boundaries of his district, and the changes or alterations which may be made by the board of county commissioners from time to time.

SECTION 5. It shall be the duty of the supervisor of each road district to carefully preserve all books, papers, and descriptions of boundaries and changes, and all tools and property of whatsoever nature or kind belonging to his office, and turn over the same to his successor on or before the third Monday in May of each year.

SECTION 6. The supervisor of roads shall keep open, or cause to be kept open all lawful public roads in his district which are now open and traveled by the public, and shall keep the same in good repair, provided there shall be sufficient money in the road fund of his district to do so.

SECTION 7. In those districts where public roads have been lawfully established and are not yet opened, or in case of new roads being hereafter laid out and established according to law, the supervisor shall open and work the same as fast as the

road money in his district will allow, having due regard for the provisions in section 6 of this act.

SECTION 8. The supervisor of any road district may enter upon any lands adjoining or near a public road in his district, and gather, dig, and carry away any stone, gravel, or sand, and cut down and carry off any trees or wood necessary for making or repairing any public road in his district, provided there are not sufficient stone, gravel, sand, trees, or wood suitable, within the lawful width of said road for said purpose; and may enter upon any lands adjoining or lying near any public road in his district, and cut, open, or construct such drains and ditches as he shall deem necessary for the making or ps[r]eservation of such road, doing as little injury as may be to such lands; and any person stopping or obstructing the drains or ditches so made, shall be liable to the county in which said road is situated in any sum not exceeding fifty dollars for each offense, to be recovered in a civil action, and applied to the general road fund.

SECTION 9. In all cases where any oath or affirmation is required to be taken by any person other than a supervisor under the provisions of this act, the same may be administered by the supervisor.

SECTION 10. If any person shall feel aggrieved by the act of any supervisor under the provisions of section 8 of this act, he may make complaint thereof in writing to the board of county commissioners, at the next regular meeting after the cause of such complaint shall exist, and such commissioners shall proceed to assess and determine the damages, if any, sustained by the complainant, and cause the same to be paid out of the general road fund.

SECTION 11. The board of county commissioners shall, if they deem it advisable, purchase tools for the use of a road district, on application of the supervisor, to be paid out of the general road fund.

SECTION 12. Each supervisor shall erect and keep up at all forks and crossings of public roads within his road district, guide or finger boards, (said boards to be furnished by the board of county commissioners and paid out of the general road fund), containing a description in legible letters, directing the way, and specifying the distance to the next town or public place situated on each road respectively.

SECTION 13. It shall be the duty of each supervisor to furnish the board of county commissioners with the number of guide boards required in his district, and the inscriptions necessary for each board.

SECTION 14. Any supervisor of roads who shall, under

any pretense whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for money paid or labor performed, unless the money shall have been paid or the labor performed prior to giving or signing such receipt or certificate, shall be liable on his bond for the amount of each receipt or certificate so signed, with interest and costs of prosecution, for one year after his term of office has expired: *Provided*, That said amounts, shall not have been sooner paid or settled and discharged.

SECTION 15. The resident real estate tax payers in any road district, may by petition signed by three-fourths of said tax payers, petition the board of county commissioners to vacate any lawfully established public road in their road district, and said board shall vacate said road, provided they are satisfied that the best interests of the general public will be sustained by so doing.

SECTION 16. All petitions and remonstrances for the consideration of the board of county commissioners must be filed with the auditor prior to the first day of a regular meeting of said board, and all petitions and remonstrances presented for their consideration that have not been so filed, shall be laid over for action by said board until their next regular meeting.

SECTION 17. It shall be the duty of the several boards of county commissioners of the counties named in this act at the time of levying taxes for county purposes in each year to levy and assess a road poll tax of four dollars on every male inhabitant of their respective counties, between twenty-one and fifty years of age except persons who are a public charge or too infirm to perform labor, also to levy and assess a tax of not less than two nor more than five mills on every dollar's worth of taxable property in their said counties.

SECTION 18. All road and road poll tax shall be paid in money, in the same manner as other taxes are paid.

SECTION 19. The auditor of each of said counties shall furnish the treasurer with the number of the respective road districts in his county, and the amount that each supervisor shall be allowed to draw orders for on the road fund of his district for the current year, as hereinafter provided.

SECTION 20. All money collected from road and road poll taxes assessed in each road district, shall belong to that respective district, and shall constitute the road fund of that district, except delinquent road taxes, collections from supplemental lists, and the residue after the settlement with the supervisor in May, as hereinafter provided.

SECTION 21. The treasurer shall keep an account with each road district in his county of all moneys paid into his

hands belonging to each respective district, and shall pay out the same as hereinafter provided.

SECTION 22. Within ten days after the assessment roll has been completed and approved by the board of county commissioners the auditor shall furnish the supervisor of each road district with a certified statement of two-thirds of the amount of road tax assessed in his district for the year in which said assessment was taken.

SECTION 23. The supervisor of each road district shall have power to give orders on the treasurer for the amount furnished him by the auditor for each current year, as provided in section 22 of this act, for labor performed on the roads in his district as hereinafter provided.

SECTION 24. The supervisor of each road district shall, whenever in his opinion work should be performed on the roads in his district, or at the written request of two-thirds of the real estate resident tax payers in his district, notify the resident tax payers in said district to perform said labor, by posting written notices in five of the most public places in his district, at least five days prior to the time of meeting, which notices shall state the time and place of meeting, the kind of implements required, and if a team, wagon, cart, plow, or scraper are required, the supervisor shall give notice either verbally or in writing to the person or persons required to furnish the same.

SECTION 25. A day's labor under this act shall consist of nine hours, to wit.: From seven to twelve in the forenoon, and from one to five in the afternoon.

SECTION 26. The compensation for each days labor shall be two dollars per day for each individual, and three dollars per day for each team employed, to be paid out of the road fund of the district in which the labor shall have been performed.

SECTION 27. The supervisor shall give to each individual performing work under section 24 of this act, an order on the treasurer for the amount due to said individual, which order shall state the number of the road district in which said work was performed, and the treasurer shall pay the amount of said order out of any money in his hands belonging to said road district.

SECTION 28. Each order shall be numbered in regular rotation, commencing with No. 1, and ending with the last number issued prior to the close of the fiscal year of said supervisor.

SECTION 29. Any resident taxpayer who shall furnish the supervisor of his road district with the treasurer's receipt showing the amount of road tax paid by him, the same being for the last assessment made in his county, or who shall furnish said supervisor with a certified statement from the auditor of

the amount of his road tax for that year, shall be entitled to perform work, under the supervision of said supervisor, on the public roads in his district to the amount of said receipt or certificate if he so elect: *Provided*, That said receipt or certificate shall be so furnished before said supervisor shall have exhausted the limit of his orders as provided in section 23. of this act; *And: provided further*, That in case the aggregated amount of said receipt and certificates so furnished shall at any time, exceed said limitation, or the balance of said limitation after orders have been issued, then in all such cases the supervisor shall adjust and determine the number of days that each man will be entitled to work, in equal ratio according to the amount of his tax, as shown by his receipt or certificate.

SECTION 30. In case any resident taxpayer shall fail to attend, by himself or suitable substitute, and perform labor when notified by the supervisor as provided in section 24. of this act, or when so called, shall fail to perform a good and reasonable day's work, or refuse to obey the instructions of the supervisor, then said supervisor shall have other persons to perform said labor, who shall be paid in the manner hereinbefore provided.

SECTION 31. Each supervisor shall keep a road book, to be furnished by the auditor at the expense of the county, in which he shall enter all accounts appertaining to his district.

SECTION 32. Each supervisor shall keep an accurate account of all orders issued by him on the road fund of his district, which account shall show the number, date and amount of each order and to whom made payable, the aggregate amount of said orders, the number of day's work performed by each individual, and the aggregate number of said days.

SECTION 33. Each supervisor shall keep an accurate account of the number of days he has been necessarily engaged in the performance of his duties as road supervisor, which account shall show the date of each day that he has been so engaged, and the nature of work performed on that day.

SECTION 34. Each supervisor shall be allowed at the rate of three dollars per day for each day necessarily employed in the discharge of his duties, including the number of days necessarily occupied in going to and from the county-seat and one day while there, as hereinafter provided, for the purpose of settling his accounts with the board of county commissioners: *Provided*, That it shall appear from the accounts of said supervisor that he has not issued orders on the fund of his district in excess of his limit as provided in section 23. of this act, and in all cases where it shall so appear, the amount so

found in excess shall be deducted from the amount of said supervisor's work.

SECTION 35. The supervisors shall attend with their road book at the May meeting of the board of county commissioners, at which meeting the treasurer shall also attend, with all orders from said supervisors which have been paid by him as provided in section 27. of this act, and said commissioners shall examine the accounts of the said supervisors and compare the same with the vouchers of the treasurer, and if found correct, or in as many as are found correct, or corrected by the board, the board shall enter their approval in said road books with their signatures attached, attested by the clerk of the board, and they shall instruct said clerk to notify the treasurer in writing of the amount which they have found due each supervisor under the provisions of this act, and said treasurer shall pay said amount out of the road fund of their respective districts. All orders issued by the supervisors on the road fund of his district must be presented to the treasurer for payment before the meeting of the board of county commissioners in May of each year, or they will be barred from payment.

SECTION 36. In case the board of county commissioners at their May meeting in each year, shall find that there has not been sufficient means collected from the assessment of any road district to pay all lawful orders drawn by the supervisor on the fund of said district, including the amount awarded to the supervisor by said board in their settlement with him, then said board shall authorize the auditor to issue warrants on the treasurer, payable out of the general road fund, to the person or persons so entitled, for the amount of such deficiency.

SECTION 37. In case the board of county commissioners at their meeting in May in each year, shall find that there has been more funds collected in a road district than was necessary to pay all lawful orders which have been drawn by the supervisor on the road fund of said district, including the amount awarded to the supervisor by the board, then said board shall authorize the auditor to notify the treasurer in writing of said amount in excess, and the treasurer shall transfer said amount to the general road fund of the county, and balance the account with said road district.

SECTION 38. All delinquent road tax collected in said counties and all supplemental road tax assessed by the collector of taxes, together with the amounts provided in section 37. of this act, to be transferred from the road funds of the road districts in excess, shall constitute a general road fund for said county.

SECTION 39. In case a county road in any road district, which is opened for travel, and is used by the general public

for such purpose, shall become obstructed by fallen timber or freshets after the limits of the road fund as provided in section 23, of this act has been exhausted, then it shall be the duty of the supervisor of the district in which said road is located, to immediately remove such obstruction; provided that he can do the same in two days time, but if more than two days time will be required to remove such obstructions, then it shall be the duty of said supervisor to notify, in writing or verbally as he may elect, stating the time and place of meeting, as many of the resident tax-payers of said district as can work to advantage in the clearing out of said obstructions, and in case said tax-payers do not appear and perform the work as directed by said supervisor, then said supervisor shall hire other persons to do said work, and he shall give to each person performing labor under this section, his certificate of the amount due said person at the rate of two dollars per day of nine hours each, which certificate shall state the date, the number of days work performed by said person and the place where such work was done, and upon the filing of such certificate with the auditor, the board of county commissioners, at their next regular session after the filing of such certificate, shall pay the amount stated in said certificate, in warrants on the general road fund, to the person so entitled, provided, that no satisfactory evidence be obtained by said board why said amount should not be paid, or any part thereof.

SECTION 40. The supervisor of each district shall keep a separate account in his road book, of all work performed under section 39, of this act, which account shall show the number of days work performed by each person, the day and date of said work and where performed, the number of certificates issued, the date and amount of each, and to whom issued.

SECTION 41. The auditor of each county shall furnish, at the expense of the county, all blanks and forms necessary for the provisions of this act, and he shall be entitled to a fee of fifteen cents for each certificate of the amount of road tax assessed to any one individual, to be collected from the person applying for the same, except in those counties where the auditor is paid a salary, no fee shall be charged.

SECTION 42. All certificates issued by the supervisors as provided in section 39, of this act, must be filed with the auditor before the May meeting of the board in each year, or they will be barred from payment.

SECTION 43. The board of county commissioners at their May meeting in each year, shall examine the certificates of road supervisors filed with the auditor as provided in section 42, of this act, and compare the same with the accounts of said supervisors as provided to be kept by section 40, of this act, and if

found correct, the board shall certify the same in said road book, with their signatures attached, and attested by the clerk of said board; but in case the board shall find a deficiency against the county in the account of any supervisor, then said supervisor shall be held responsible for said deficiency as provided in section 34, of this act.

SECTION 41. The board of county commissioners may, whenever they deem it necessary for the fulfillment of the requirements of this act, but not oftener than once a year, transfer any sum not exceeding one thousand dollars, from the county fund into the general road fund.

SECTION 42. Any resident taxpayer who shall elect to work out his road tax under the provisions of this act, shall, if he own the same, and the supervisor direct, furnish a team, wagon, cart, scraper, plow, ax, pick, or other tools necessary to be used on the roads under the direction of said supervisor, who shall allow said person three dollars per day for the use of said team, and a reasonable compensation for the use of such wagon, cart, or tools, in discharge of any tax due from such person.

SECTION 43. All parts of acts in conflict with the provisions of this act are hereby repealed.

SECTION 44. This act to take effect and be in force from and after its approval by the Governor.

Approved, November 9th, 1877.

AN ACT

CREATING AND CONFERRING JURISDICTION UPON THE DISTRICT COURT OF STEVENS COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a court be and the same is hereby created and established within and for the county of Stevens to be called the district court of Stevens county.

SECTION 2. That said district court shall have exclusive jurisdiction within said county of all matters and causes, except those in which the United States is a party in the same manner and to the same extent as is now had and exercised by the district court of the first judicial district holding terms at Colfax

for the counties of Stevens and Whitman with the same right of appeal certioria [certiorari] and writs of error to the supreme court as is now provided and allowed by law.

SECTION 3. Said court shall be held by the judge of the first judicial district at Fort Colville the county seat of Stevens county.

SECTION 4. The said judge of the first judicial district shall appoint a clerk of said district court of Stevens county who shall give bonds and security in such amount as shall be ordered by the court or the judge thereof and shall keep his office and the records of said court at said county seat of Stevens county.

SECTION 5. The district court of Stevens county shall be a court of record and the expenses of holding the same shall be paid by the said county of Stevens and the said county of Stevens shall also pay the amount of the necessary expenses incurred by the judge of the first judicial district in holding said district court of Stevens county said judge shall make a certified statement of the expenses necessari(a)lly incurred to the county auditor of Stevens county who shall draw a warrant on the treasury of said county for the amount so certified to by said judge.

SECTION 6. The various laws now in force and which may hereafter be enacted regulating the practice and proceedings in civil actions and criminal prosecution in Territorial causes shall govern the practice and proceedings in said district court of Stevens county except as herein otherwise provided.

SECTION 7. The regular terms of said district court of Stevens county shall be held on the second Monday in August in each and every year and each term shall be held for one week unless sooner adjourned: *Provided*, That no term of said court shall be held until the second Monday in August A. D. 1878.

SECTION 8. The board of county commissioners of said county of Stevens shall at their regular term in February in each and every year select from the statement of persons qualified a sufficient number of persons to serve as grand and petit jurors at the term of said court to be held next after said meeting and the auditor of said county shall furnish a list of the grand and petit jurors so selected to the clerk of the court of said Stevens county: *Provided*, That when for any cause there shall not be in attendance a sufficient number of qualified and competent grand and petit jurors or the regular jurors shall not have been summoned, or shall have been discharged, it shall be competent for the court to order a sufficient number of grand and petit jurors to be summoned from the bystanders or from the body of the county.

SECTION 9. At least thirty days before the commencement of a term of said court the clerk thereof shall issue one

venire embracing the names of the grand and petit jurors specifying which are grand and which are petit jurors commanding the sheriff of said county to summon the persons so named to attend at the first day of the term of said court.

SECTION 10. The number summoned as grand jurors shall not exceed twelve and the number of petit jurors shall not exceed twenty-four and the provisions of law providing for the manner of selecting and procuring the attendance of jurors at terms of the several district courts of this Territory consistent with the foregoing and not modified thereby shall fully apply to district court of the county of Stevens.

SECTION 11. The foregoing sections which relate to summoning grand and petit jurors for terms of said district court of Stevens county shall not be construed to alter, amend, or repeal the law now in force in regard to the quota of jurors to be summoned from said Stevens county on behalf of the United States to attend the district court of the first judicial district holding terms at Colfax but said county of Stevens shall not be chargeable in any event for the mileage or attendance of any grand or petit jurors who may be summoned to attend at the district court of the first judicial district at Colfax except upon the order of the judge thereof.

SECTION 12. The various laws now in force and which may hereafter be enacted regulating the practice and proceedings in civil actions and criminal proceedings in Territorial causes shall govern the practice and proceedings in said district court in the county of Stevens.

SECTION 13. All provisions of any act or parts of acts in conflict with this act are hereby repealed.

SECTION 14. This act shall take effect and be in force from and after its passage.

Approved, October 19th, 1877.

AN ACT

“ TO PROVIDE FOR THE LOCATION OF A TERRITORIAL ROAD FROM WILLAPA RIVER TO CHEHALIS STATION AND TO APPROPRIATE MONEY TO AID IN THE CONSTRUCTION OF SAID ROAD.”

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of five hundred

dollars be and the same is hereby appropriated for the purpose of aiding in the location and construction of a Territorial road from Willapa river in Pacific county to Chehalis Station in Lewis county: *Provided, however,* That the county of Pacific shall appropriate the sum of (\$500) in for a like purpose.

SECTION 2. Sebastian Giesy and Hiram Towner of Pacific county and James T. Berry, of Lewis county are hereby appointed and constituted a board of commissioners to view, locate and mark out a Territorial road from Willapa river in Pacific county to Chehalis Station in the county of Lewis by the nearest and most practicable route.

SECTION 3. Said commissioners shall meet on the first Monday in May (A. D. 1878) or as soon thereafter as a majority of said commissioners shall agree upon and, after being duly sworn by an officer duly authorized to administer oaths faithfully to perform the duties assigned to them, shall proceed to view locate and mark out a road between said points on the ground best adapted for that purpose.

SECTION 4. 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 auditor of the respective counties through which the road will pass, within thirty days from the completion of the view and location of said road.

SECTION 5. Before entering upon the construction of said road the commissioners shall enter into a bond to the Territory of Washington in the sum of two thousand dollars with at least two sufficient sureties which bond must be approved by the judge of the second judicial district and shall be conditioned for the faithful performance by said commissioners of their duties as such commissioners and for the economical expenditure of the money appropriated by this act, and file said bond in the office of the secretary of the Territory. And they shall be entitled to receive the sum of three dollars per day for the time actually employed in performing the duties assigned to them which amounts shall be deducted from the amount appropriated in section one of this act. And it shall be the duty of said commissioners to expend the balance of the said sum of five hundred dollars appropriated in section one of this act and also the sum of five hundred dollars appropriated by Pacific county in accordance with section one of this act, in a judicious and economical manner in the construction and opening of said road and to make a report of their proceedings and expenditures to the auditor of their respective counties and the money so disbursed shall be expended in each of the counties named in this act in proportion to the amount of work done in each county respectively.

SECTION 6. After the report of said commissioners has been filed in the office of the secretary of the Territory as provided in section four of this act, it shall be the duty of the Territorial auditor to draw a warrant on the Territorial treasurer which warrant shall be payable to the persons named in section two of this act or to their successors in office and shall be drawn for the sum of five hundred dollars as appropriated in section one of this act.

SECTION 7. This act to take effect and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF LEWIS COUNTY WASHINGTON TERRITORY APPROPRIATING THE AMOUNT OF ITS TERRITORIAL TAXES FOR THE YEARS A. D. 1877 AND 1878 TO SAID COUNTY FOR THE BUILDING OF BRIDGES THEREIN.

WHEREAS, The county of Lewis, was organized under the provisional government of Oregon prior to the organization of the Territory of Oregon; and

WHEREAS, Said county embraced all that area of country between the Columbia river and British Columbia, and between the Pacific ocean and Cowlitz river; and

WHEREAS, Large indebtedness was incurred by said county prior to the organization of other counties within said area, and no part of said indebtedness was assumed by such later organized counties; and

WHEREAS, Much of said indebtedness, was incurred in the opening of a highway from the Columbia river to Puget Sound in the political and governmental organization of said district of country and other objects of a like public nature; and

WHEREAS, Much of said indebtedness, and with the interest thereon is subsisting against said Lewis county; and

WHEREAS, Said county is so embarrassed by accumulated indebtedness, as to be unable from its county revenues to build

the bridges that are necessary and indispensable to the wants of its people:

SECTION 1. *Therefore, Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Territorial tax of Lewis county for the year A. D., 1877, and the year A. D. 1878 be and the same is hereby appropriated to be expended under the direction and control of the county commissioners of Lewis county as heretofore provided by law for building and repairing bridges.

SECTION 2. The treasurer of said county of Lewis shall hold said Territorial tax for the years above specified upon collection thereof, subject only to the order of the county commissioners of said county and shall keep a true and correct account of all money so disbursed and said Territorial tax shall be considered and held, by said treasurer as a special fund for the purpose specified in section first of this act.

SECTION 3. The county commissioners of said county of Lewis, shall have power to make settlement with the treasurer of the said county in the same manner as heretofore provided by law for settlement of county taxes.

SECTION 4. The county auditor of the said county of Lewis shall make out a true statement of the expenditures of the taxes hereby appropriated under the seal of the county commissioners with his signature attached, countersigned by the chairman of the said board of commissioners, and transmit the same to the Territorial auditor who upon receipt of said account, shall credit the said county of Lewis, with the amount so expended in settlement with said county, as provided by law for such settlements.

SECTION 5. This act to take effect and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR THE RECOVERY OF CERTAIN MONEY RAISED TO AID
IN THE CONSTRUCTION OF A WAGON ROAD ACROSS THE CASCADE
MOUNTAINS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person who may

have received any money for the purpose of constructing a wagon road across the Cascade mountains by virtue of an act entitled an "act to aid in the construction of a wagon road across the Cascade mountains," approved, November 12th 1875, shall upon the written demand of the auditor of King county pay into the treasury of King county any and all such money so acquired.

SECTION 2. The board of commissioners of King county are hereby authorized to appropriate all moneys paid into the treasury under the provisions of this act for the purpose of aiding in the construction of a wagon road across the Cascade mountains from Snoqual(a)mia[e] Prairie in King county to a point at or near the south end of Lake Kichelas in Yakima county.

SECTION 3. Upon the refusal of any person so having received any money to pay said money into the treasury of King county it shall be the duty of the prosecuting attorney of the district in which said person resides to bring suit in the name of the Territory for the recovery of said money which shall be paid into the treasury of King county as provided in this act.

SECTION 4. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

IN RELATION TO ROADS AND BRIDGES IN KLUCKITAT COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That should the road supervisor from any cause fail to collect any of the taxes as already provided by law by the first Monday in May in each year it shall be the duty of the said road supervisor to immediately make a return verified by affidavit of all unpaid road taxes to the county auditor whose duty it shall be within ten days thereafter to add ten per cent to such unpaid road tax and to make a transcript of the same and attach his warrant thereto which transcript and warrant shall immediately be placed in the hands of the sheriff of the county.

SECTION 2. The sheriff shall collect the taxes and per cent in the same manner that unpaid Territorial, school and county taxes are collected and he shall be entitled to retain the ten per cent added as his fees for collections and no other or greater fees shall be allowed for collecting said delinquent road tax.

SECTION 3. The provisions of an act amendatory of an act in relation to roads ferries bridges and travel on public highways approved Dec 2 1869 be and the same are hereby repealed so far as they relate to Klickitat county.

SECTION 4. This act shall be in full force and effect from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

- AUTHORIZING THE COUNTIES OF PACIFIC AND CHEHALIS TO APPROPRIATE MONEY FOR THE PURPOSE OF BUILDING BRIDGES AND PUBLIC HIGHWAYS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners of the counties of Pacific and Chehalis shall have power and they are hereby authorized to appropriate annually a sum not exceeding twelve hundred dollars out of the general fund in the county treasury of said counties, for the purposes of building bridges and public highways in said counties.

SECTION 2. All money appropriated by the commissioners of said counties for the purpose aforesaid shall be expended by and under the supervisors of the public roads in whose districts said appropriation shall have been made: *Provided, however,* That the said expenditure be by and under the direction of the board of county commissioners. This act shall take effect and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

IN RELATION TO DELINQUENT ROAD TAX IN YAKIMA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington.* That section one of an act amendatory of an act approved November twelfth, one thousand eight hundred and seventy-five entitled an act in relation to roads ferries bridges and travel on public highways approved December second eighteen hundred and sixty-nine" be amended as follows:

That where the words first Monday of January appear in said section they be stricken out and the words second Monday in July be inserted instead.

SECTION 2. All acts or parts of acts in conflict with this act are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage and shall only apply to the county of Yakima.

Approved, November 9th, 1877.

AN ACT

RELATING TO ROAD DISTRICTS IN SAN JUAN COUNTY.

WHEREAS, The county of San Juan includes several small islands and it is necessary that each of said islands however small in area or few in population shall of itself be a road district and

WHEREAS, The board of county commissioners of said county have heretofore been necessitated to create separate road districts of several of those islands upon petitions without the number of signers thereof required by law, therefore,

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners of said San Juan county are hereby authorized upon the petition of a majority of citizens of either of the said small islands constituting said county of San Juan although such majority should not be equal to the number of petitioners as prescribed by the road laws of the Territory to constitute such small islands into a separate road district.

SECTION 2. The action heretofore of said board of county commissioners in constituting separate road districts in the islands of Blakely Decatur, Waldron, and Shaw although upon petitions signed by less than the legally required number of petitioners, be and the same is hereby declared valid, and all roads in such districts and all acts of road supervisors or such districts or other acts growing out of the section of such districts by the county commissioners are hereby fully legalized, as though done and performed in a road district in all respects lawfully established.

SECTION 3. This act to take effect from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO CREATE A TERRITORIAL ROAD FROM DAYTON IN COLUMBIA TO PALOUSE CITY IN WHITMAN COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of Washington Territory,* That C. A. McCabe of Columbia county, John B. Tabor and William P. Breeding of Whitman county be and are hereby constituted a board of commissioners to view, survey, and locate a Territorial road from Dayton in Columbia county via Marengo and crossing Snake river at Almota in Whitman county to Palouse city in Whitman county Washington Territory.

SECTION 2. Said commissioners shall meet at Palouse City on the 15th day of November A. D. 1877 or within ten days thereafter, and after being duly sworn by an officer author-

ized 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 and on the most practicable route according to the provisions of this act and to make a report thereof to the county commissioners of Whitman and Columbia counties at their next regular terms thereafter and the county commissioners of said counties shall declare the same a Territorial road.

SECTION 3. The county commissioners of said counties shall cause the said report together with their action thereon to be recorded in the road book of their respective counties.

SECTION 4. The said viewers shall receive four dollars (\$4.00) per day for performing the duties assigned them each one to be paid out [of] the treasury of his own county.

SECTION 5. This act to take effect and be in force from and after its passage.

Approved, October 27th, 1877.

AN ACT

TO PROVIDE FOR THE PAYMENT OF THE EXPENSE OF A TELEGRAM
TO THE PRESIDENT.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of thirteen dollars and sixty cents, (13.60), is hereby appropriated to pay the expense of a telegram, sent by the Governor, to the President, in reference to an extra session of the Legislative Assembly.

SECTION 2. The auditor is hereby authorized to draw a warrant upon the treasurer for said amount in favor of the Western Union Telegraph company and the treasurer is authorized to pay the same out of any money, not otherwise appropriated.

SECTION 3. This act to take effect, from and after its approval.

Approved, November 9th, 1877.

AN ACT

DECLARING A CERTAIN ROAD TO BE A TERRITORIAL ROAD.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the road leading from a point at or near Oliver Shead's mill on Skookumchuck in Thurston county to a point at or near the residence of Benj. McElroy in Lewis county intersecting the Territorial road at that point, be and the same is declared to be a Territorial road.

SECTION. 2. This act to take effect and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

TO DEFRAY THE INCIDENTAL EXPENSES OF THE SIXTH BIENNIAL SESSION 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 sum of two hundred dollars be and the same is hereby appropriated out of the Territorial treasury for the purpose of defraying incidental expenses of the Legislative Assembly of the Territory of Washington in the sixth biennial session thereof, for stationery, light, &c used, and to be used at said session.

SECTION 2. That the Territorial auditor be and is hereby authorized to draw a warrant in favor of the chairman of the committee appointed in accordance with the provisions of this act, on the Territorial treasurer for the sum of two hundred dollars for the purpose of defraying the incidental expenses, and the Territorial treasurer is hereby authorized to pay the same.

SECTION 3. The above amount, or as much thereof as shall

be necessary, shall be expended for the purpose above mentioned by a special committee of one member of the council and two from the house of representatives to be appointed by the presiding officers of the respective branches of the Legislative Assembly.

SECTION 4. It shall be the duty of said committee to keep a true and correct account of all moneys expended and purchases made, and make a return thereof as often as required by the council or house of representatives, and if any balance should remain on hand at the time of adjournment of the Legislature, the same shall be paid back into the Territorial treasury.

SECTION 5. This act to take effect and be in force from and after its passage and approval.

Approved, October 20th, 1877.

AN ACT

FOR THE RELIEF OF HENRY L. CHAPMAN AND OTHERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of two hundred and fifty-two dollars be and the same is hereby appropriated out of the Territorial treasury to pay Henry L. Chapin for wharfage and storage of Territorial arms. That the sum of one hundred and seven dollars and fifty cents be and the same is hereby appropriated out of the Territorial treasury to pay E. P. Ferry governor of the Territory of Washington for actual traveling expenses incurred in visiting Eastern Washington during the time of Indian difficulties. That the sum of seventy-two dollars and seventy-five cents be and the same is hereby appropriated out of the Territorial treasury to pay the actual expenses incurred by John R. Wheat Territorial auditor, in visiting Eastern Washington to look after Indian matters. That the sum of ninety-three dollars and ninety-three cents be and the same is hereby appropriated out of the Territorial treasury to pay the Walla Walla and Columbia River Railroad Company for the transportation of arms and accoutrements from the Columbia river to Walla Walla City.

SECTION 2. The Territorial auditor is hereby authorized to draw warrants on the Territorial treasury in favor of the above named persons, and for the above named amounts.

SECTION 3. This act shall take effect and be in force from and after its approval.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR THE PAYMENT OF STORAGE AND TRANSPORTATION OF ARMS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the Territorial auditor be and he is hereby authorized to draw warrants upon the treasury in favor of the Oregon Stean Navigation Company, or any other transportation company for, not to exceed the sum of, eighty-five (85) dollars for storage, wharfage and transportation of Territorial arms from Celilo, in the State of Oregon to Olympia of Washington Territory.

SECTION 2. This act shall take effect and be in force from and after its approval.

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF THE BOARD OF TRUSTEES OF TACOMA LODGE NO. (4) FOUR, I. O. G. T.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the sum of three hundred dollars (\$300.00) be, and the same is hereby appropriated out

of any funds of the Territorial treasury for the relief of the board of trustees of Tacoma Lodge number (4) four, I. O. G. T., whereof C. B. Mann is president, for the rental of a room in Olympia Hall building belonging to Tacoma Lodge number four (4) I. O. G. T; said room having been used to contain and for the sole use of the Territorial library since November first one thousand eight hundred and seventy-five, two years to November 1st, 1877.

SECTION 2. The Territorial auditor is hereby authorized and required to draw his warrant on the Territorial treasurer for the sum of three hundred dollars (\$300.00) in favor of C. B. Mann, president of the board of trustees of Tacoma Lodge number four (4) I. O. G. T. and the Territorial treasurer is hereby authorized and required to pay the same out of any funds in the treasury not otherwise appropriated.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE AND PAY FOR ADDITIONAL ENROLLING CLERKS FOR THE SIXTH BIENNIAL SESSION OF THE LEGISLATIVE ASSEMBLY OF WASHINGTON TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Washington,

SECTION 1. That the committee on enrolled bills of the two houses be and they are hereby authorized, and directed to procure the services of additional enrolling clerks for the present session of said Assembly.

SECTION 2. The said committees shall issue vouchers to said clerks properly certified by the chairman of said committees and upon the presentation of said vouchers to the Territorial auditor such auditor shall audit the accounts and if found correct shall draw his warrant for the amounts due in favor of such clerks, and upon presentation of such warrants to the Territorial treasurer the same shall be paid by him out of any moneys in the treasury not otherwise appropriated: *Provided,*

That the total amount to be paid by the provisions of this act shall not exceed one hundred and fifty dollars.

SECTION 3. This act to take effect and be in force from and after its passage.

Approved November 9, 1877.

AN ACT

FOR THE RELIEF OF JOHN T. HICKLIN.

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 any money in the Territorial treasury to pay John, T. Hicklin for labor and money advanced in opening the Territorial road from Olympia in Thurston county to Elma in Chehalis county.

SECTION 2. The Territorial auditor is hereby instructed to issue to said John T. Hicklin, a Territorial warrant for the above named sum on the Territorial treasurer, payable out of any money not otherwise appropriated.

SECTION 3. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF JOHN SALTER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,*

SECTION 2. That the sum of eighty-five dollars be and the same is hereby appropriated out of any funds in the Territorial treasury not otherwise appropriated for the payment of John Salter for services as secretary of the board of trustees, of the hospital for the insane since February twenty-third A. D. one thousand eight hundred and seventy-seven(77) (1877) up to date.

SECTION 3. That the Territorial auditor be and is hereby authorized and directed to draw a warrant in [on] the Territorial treasurer for said amount.

SECTION 4. This act to take effect from and after its passage and approval

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF EZRA P. BOYLS EX-TREASURER OF YAKIMA COUNTY WASHINGTON TERRITORY AND LEWIS H. GOODWIN, ORIN D. BARKER, JAMES S. FOSTER AND H. D. MERWIN HIS SURETIES FROM A JUDGMENT OBTAINED AGAINST THEM AT THE OCTOBER TERM A. D. 1877 OF THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF WASHINGTON TERRITORY HOLDING TERMS AT YAKIMA CITY.

SECTION 1. *Be it enacted by the Legislative Assembly of Washington Territory,* That said Ezra P. Boyls late treasurer of Yakima county in Washington Territory and Lewis H. Goodwin, Orin D. Barker, James S. Foster, and H. D. Merwin sureties on the official bond of said Boyls as such treasurer be and they and each of them are hereby released and discharged from all and every obligation, indebtedness and demand created against them or any of them by virtue of a certain judgment rendered against them and in favor of said Yakima county at the October term A. D. 1877 of the District court of the first judicial district of Washington Territory holding terms at Yakima City and that execution be and is hereby perpetually stayed upon said judgment.

SECTION 2. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF E. L. WILLEY.

Be it enacted by the Legislative Assembly of the Territory of Washington.

SECTION 1. That the sum of eighty-seven dollars be and the same is hereby appropriated out of the Treasury of the Territory of Washington for the payment of E. L. Willey for per diem as trustee of the board of the Hospital for the Insane, the same being for services rendered for which there is no provision made for the payment of the same by the Territory of Washington.

SECTION 2. When demanded it shall be the duty of the Territorial Auditor to draw a warrant on the Territorial Treasury for the said amount and it is hereby made the duty of the Treasurer to pay the same out of any moneys in the Treasury not otherwise appropriated.

SECTION 3. This act to take effect and be in force from and after its passage.

Approved November 9th 1877.

AN ACT

FOR THE RELIEF OF WILLIAM BILLINGS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there be and hereby is ap-

propriated out of any money in the Territorial treasury not otherwise appropriated the sum of four hundred and forty-one dollars to reimburse William Billings for money by him expended in bringing from the province of British Columbia and delivering to the proper authorities of Washington Territory Andrew StMartin and Dabney G. Jones fugitives from the justice of said Territory.

SECTION 2. The Territorial auditor is hereby directed to draw his warrant on the Territorial treasurer in favor of said William Billings for the sum of four hundred and forty one (441) dollars and the Territorial treasurer is hereby directed to pay said warrant in its regular order.

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

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF J. C. KELLY, THOMAS DEALEY AND JOHN FITZPATRICK.

Be it enacted by the Legislative Assembly of Washington Territory, That J. C. Kelly, Thomas Dealey and John Fitzpatrick and each of them as well as the heirs, executors and administrators of each of them be and they hereby are fully released and discharged from all obligations and liability incurred by reason of a certain recognizance or bail-bond for five hundred dollars signed and executed by the said Dealey and Fitzpatrick—dated the — day of October A. D. 1875, and returned into the district court of the second judicial district of Washington Territory holding terms at Kalama, and further that each and all of said parties, their heirs, executors and administrators, be and they hereby are resolved, discharged and fully absolved from all obligation claim and liability on account of the judgment if [of] forfeiture entry upon said recognizance or bail-bond in the said district court at its June term A. D. 1876, upon payment of all costs incurred in said court by reason of said judgment of forfeiture.

SECTION 2. That this act take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF JOHN P. JUDSON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the sum of one hundred and twenty dollars, be and the same is hereby appropriated, to John P. Judson, out of any moneys not otherwise appropriated, for services rendered in securing three hundred and twenty acres of land for the University of Washington Territory, and for money expended for printing the proposed school law, at the request of the Territorial teachers institute.

SECTION 2. The Territorial auditor is hereby instructed to issue, to said John P. Judson, a Territorial warrant for the aforesaid sum, and the treasurer is instructed to pay the same.

SECTION 3. This act shall be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF THE CLERKS AND EMPLOYEES OF THE PRESENT LEGISLATIVE ASSEMBLY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the Territorial auditor be

and he is hereby authorized to draw warrants on the Territorial treasury for the following sums of money, to the following named clerks and employees of this Legislature for two days extra services each: to wit T. B. Merry, sixteen dollars; R. G. O'Brien, sixteen dollars; William Huges, twelve dollars; James T. Berry, twelve dollars; Fannie Baldwin, ten dollars; Clara E. Myers, ten dollars; Annie Knighton ten dollars; Stella Galligher, ten dollars; I. V. Mossman, ten dollars; L. B. Berry, ten dollars; Frank Hastings, ten dollars; L. G. Abbott, ten dollars; Minnie Hathaway, ten dollars; Robert Wilson, ten dollars; E. Harmon, ten dollars; Hector McKay, ten dollars: *Provided*, The forty-sixth Congress of the United States now in session do not make an appropriation to pay the same.

SECTION 2. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR THE PROTECTION OF DEER IN THE COUNTIES OF JEFFERSON AND CLALLAM, IN THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall be unlawful for any person or persons to kill deer for the purpose of selling the same, or offering the same to any market, resto[au]rant hotel or family.

SECTION 2. That it is hereby declared unlawful for any person or persons to kill or hunt deer in the above named counties from the first day of January to the first day of July in each year.

SECTION 3. That it shall be unlawful for any person or persons to hunt deer moose or elk, with dogs in the above named counties at any season of the year, any person or persons violating any of the provisions of this act shall be fined in the sum of seventy[-]five (\$75.00) dollars or six months imprisonment in the county jail or both at [t]he discretion of the court for every offence so committed.

SECTION 4. That one half of all fines under the provisions of this act shall be paid by the court to the informer, and the other half shall be paid into the general school fund to the county in which the offence is committed.

SECTION 5. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

AUTHORIZING THE COUNTY COMMISSIONERS OF STEVENS COUNTY TO
LEVY A SPECIAL TAX FOR BRIDGE PURPOSES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the County Commissioners of Stevens County are hereby authorized to levy a special tax upon the assessable property of said County for the purpose of building a bridge across the Spokane river at or near Spokane Falls.

SECTION 2. Said amount shall be expended under the direction of the board of County Commissioners of the County of Stevens.

SECTION 3. This act to take effect and be in force from and after its approval by the Governor.

Approved October 30th 1877.

AN ACT

DONATING THE ROAD PROPERTY TAX OF SAN JUAN COUNTY TO
SCHOOL FUND OF SAID COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the road tax levied and

collected in the county of San Juan shall be payable in money and be collected at the time and in the manner that Territorial, county and school taxes are now by law collected.

SECTION 2. So much of said road fund or road tax as shall be levied from assessments upon property is hereby set apart and donated to the school fund of said county, and the same shall be apportioned and expended as the common school fund in said county of San Juan is now by law apportioned and expended.

SECTION 3. Laws or parts of laws inconsistent with the provisions of this act shall be inoperative in the county of San Juan.

SECTION 4. This act to take effect and be in force from and after its passage and to apply to any road property tax of the year 1877, which may remain unexpended.

Approved, November 9th, 1877.

AN ACT

TO AUTHORIZE THE TERRITORIAL TREASURER TO REFUND CERTAIN MONEYS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Territorial auditor shall audit the following bill and if found correct shall draw a warrant on the Territorial treasurer for such amount as is found to be due in favor of Mr. H. Hartley and the Territorial treasurer is hereby authorized to pay the sum out of any money in the treasury not otherwise appropriated.

(BILL.)

The Territory of Washington to H. Hartley,	Dr.
To cash deposited in the treasury by the Governor July 22d 1873, on account of fund for keeping patients at the Hospital for Insane sixty dollars	\$60.00
Credit by four weeks board of inmate,	\$28.00
Balance due	\$32.00

SECTION 2. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT CONCERNING MARKS AND BRANDS IN CERTAIN COUNTIES IN WASHINGTON TERRITORY, APPROVED NOVEMBER 12TH 1875.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section four of an act entitled an act concerning marks and brands in certain counties in Washington Territory approved November 12th 1875, be and the same is hereby made to apply to the whole of Washington Territory.

SECTION 2. All acts or parts of in conflict with this act are hereby repealed.

SECTION 3. This act to (to) take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO REPEAL AN ACT ENTITLED AN ACT TO REGULATE THE RUNNING OF SHEEP AT LARGE IN SAN JUAN COUNTY APPROVED, NOVEMBER 12th, 1875.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That an act entitled "An act to regulate the running of sheep at large in San Juan county approved November twelfth (12) one thousand eight hundred and seventy-five, be and the same is now hereby repealed.

SECTION 2. This act to take effect, and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF J. R. THOMPSON, D. N. UTTER, J. P. LUDLOW,
AND A. ATWOOD.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of twenty-five dollars each, be, and the same, is hereby appropriated out of any money in the Territorial treasury, not otherwise appropriated, for the relief of Rev. J. R. Thompson, D. N. Utter, J. P. Ludlow and A. Atwood.

SECTION 2. Upon demand, it shall be the duty of the Territorial auditor, to draw his warrant on the Territorial treasury, in favor of each, said, J. R. Thompson, D. N. Utter, J. P. Ludlow and A. Atwood for twenty-five dollars (\$25.00) each, which shall be paid out of any money in the Territorial treasury, not otherwise appropriated.

SECTION 3. This act shall take effect and be in force from and after its approval.

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF HALL'S SAFE AND LOCK COMPANY.

WHEREAS A joint committee of the Legislative Assembly of the Territory of Washington did receive a proposition from Hall's Safe and Lock Company to deliver two safes on the wharf at Olympia Washington Territory, for the sum of one thousand dollars in Territorial warrants, the said safes to be of the dimensions hereinafter mentioned in this bill. Therefore:

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That upon the delivery of two safes by the Hall's Safe and Lock Company at Olypnia Wash-

ington Territory to George A. Barnes and upon his becoming satisfied that the same are in good condition and of the following dimensions, to wit.:

One fire proof safe, inside measurements twenty-five by twenty-four and one half by sixteen inches deep. Weight two thousand seven hundred pounds.

One fire and burglar proof safe, inside measurements thirty-one by twenty-four and one half by seventeen inches deep. Weight, four thousand two hundred lbs. (pounds), and upon the certificates of the said George A. Barnes that said safes are of the dimensions aforesaid and in accordance with contract for the same, it is hereby made the duty of the Territorial auditor to draw a warrant on the Territorial treasurer for the sum of one thousand dollars in favor of said Hall's Safe and Lock Com[p]any, and for the further sum of one hundred dollars or as much as may be necessary to place said safes in the offices of the Territorial auditor and treasurer in favor of said George A. Barnes, out of which amount he is authorized to retain five dollars per diem for superintending the removal of said safes, and it is hereby made the duty of the Territorial treasurer to pay said amount out of any monies[ey]s in the treasury not otherwise appropriated.

This act to take effect and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR THE APPOINTMENT OF A COUNTY ASSESSOR IN THE COUNTY OF PIERCE AND DEFINING HIS DUTIES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the regular meeting in November, A. D. one thousand eight hundred and seventy eight of the Board of County Commissioners of the county of Pierce, and at each November term thereof, there shall be appointed in said county, a county assessor who shall have the qualifica-

tions of a voter, and shall continue in office for one year and until his successor is appointed and qualified.

SECTION 2. The said assessor shall, before entering on the discharge of the duties of his office, give a bond to the county of Pierce with two or more sureties to be approved by the board of county commissioners, in such penal sum as such board shall direct conditional for the faithful performance of his duties according to law, and shall take and subscribe an oath faithfully and impartially to discharge the duties of his office according to law and to the best of his ability.

SECTION 3. In addition to the other duties of assessor prescribed by the general revenue law, it shall also be his duty at the time of making his annual assessment to take a census of all the inhabitants in his respective county, comprising a complete list of all the white male inhabitants, their occupations, ages, nationality, whether married or single, citizens or aliens, also a list of all female inhabitants their ages, whether married or single and also a list of all taxable half-breeds, Indians, Negroes, Mulattoes, Kanakas, and Chinamen; the said list shall be returned to the county auditor, at the time now, or hereafter provided by law, to be filed in his office and a copy of the same shall be forwarded by the auditor to the Territorial auditor, the substance of the same to be embodied by him in his report to the Legislative Assembly.

SECTION 4. That it may be competent for any assessor, in case of his being prevented by sickness or any other unavoidable cause as above described, to appoint some suitable person having the qualifications of a voter, his deputy, who shall perform all the duties of the assessor he represents, and for whose acts the assessor shall be responsible, and said deputy shall, before he enters upon the discharge of the duties of his office take and subscribe before the county auditor an oath faithfully and impartially to perform the duties devolving upon him which oath shall be filed in the office of the county auditor.

SECTION 5. Each assessor shall receive a compensation of five dollars per day for each day actually and necessarily employed in the discharge of the duties of his office and such reasonable compensation for the copy of the assessment roll, as the board of county commissioners may allow, which compensation shall be paid out of any moneys in the county treasury not otherwise appropriated.

SECTION 6. Any vacancy occurring in the office of county assessor before the expiration of his term of office shall be filled by the county commissioners at any session of their board.

SECTION 7. All parts of acts in conflict with this act be and the same are hereby repealed.

Approved, November 6th, 1877.

AN ACT

TO DECLARE SAMAMISH SLOUGH IN THE COUNTY OF KING A PUBLIC HIGHWAY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Samamish slough in King county be, and the same is hereby declared a public highway from Samamish Lake to Lake Washington.

SECTION 2. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

IN RELATION TO THE RELOCATION OF THE COUNTY SEAT OF KLICKITAT COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the county commissioners of Klickitat county to submit the question of the relocation of the county seat of said county to the voters at the general election to be held A. D. 1878.

SECTION 2. Any legal voter may at such general election designate on his ballot by either printing or writing the name of the place he prefers as the county seat of said county and it shall be the duty of the county commissioners at its first regular meeting held after such general election to declare the place which has received a majority of legal votes to be the county seat of said county: *Providing,* That the county seat shall not be changed unless three fifths (3-5) of all legal votes cast shall be in favor of any one place.

SECTION 3. The votes cast in pursuance of this act shall be canvassed and returned at the same time and in the same

manner as is required by law for canvassing and returning votes for the county officers.

SECTION 4. It shall be the duty of the county commissioners at their regular meeting next after such general election to cause to be removed to the place declared to be the county seat, all books, papers, and all other county property which by law is required to be kept at the county seat: *Provided*, Such removal may be made at any time within sixty days after the adjournment of such meeting and it is *Provided, further* That before any county buildings are erected at the expense of the county the title to any lands upon which such buildings are to be erected shall first be approved by the judge of the second judicial district and such approval placed in the hands of the county auditor, to be by him filed in his office.

SECTION 5. The provisions of any act conflicting with the provisions of this act be and the same are hereby repealed.

SECTION 6. This act shall take effect and be in full force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

DEFINING THE BOUNDARY LINES OF MASON COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Mason county shall be bounded as follows:

Commencing in middle of the main channel of Puget Sound where it is intersected by the mid-channel of Cases inlet, thence westerly along the mid-channel of Puget Sound via Dana's passage into Totten's inlet and up said inlet to its intersection by section line between sections twenty-eight (28) and twenty-nine (29) in township nineteen (19) north, range three (3) west of the Willamette Meridian; thence south to the south-west corner of section thirty-three (33) in said township nineteen north, three west; thence west along the township line dividing townships eighteen (18) and nineteen (19) twenty miles to the township line dividing ranges six (6) and seven (7) west of the Willamette

Meridian which constitutes a part of the east boundary line of Chehalis county thence north along said township line to the sixth standard parallel, thence east along said parallel line to the middle of the channel of Hood's canal, thence southerly along said mid-channel to a point due west of the intersection of the shore-line of said Hood's canal by the township line between township twenty-three (23) and twenty-four (24) thence east along said township line to the line dividing sections three and four in said township twenty-three north, one west of the Willanette Meridian, thence south along said section line to the head of Cases inlet, thence south by the mid-channel of said inlet to the place of beginning.

SECTION 2. All acts and parts of acts affixing county lines affecting said Mason county, inconsistent, or conflicting with this act are hereby repealed.

SECTION 3. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

IN RELATION TO HOGS, IN SNOHOMISH COUNTY AND CERTAIN TOWNSHIPS IN KLICKITAT COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That owner or occupant of any enclosed premises may take up any hogs found trespassing upon his or their said premises, and may safely keep the same at the expense of the owner of said hogs.

SECTION 2. All persons taking up hogs found trespassing upon their enclosed lands shall immediately thereafter post notices in three public places, containing a description of the ear, or other marks of such hogs whereby the owners may identify them.

SECTION 3. If the owners of such hogs come forward within ten days after the time such notices are posted the person taking them up shall deliver them to such owners upon their paying all costs and damages sustained by their trespassing.

SECTION 4. If however the owners do not come forward within the ten days, then the person taking up such hogs shall immediately notify a constable of the precinct wherein the trespass has been committed, or if there be no constable in said precinct, then the sheriff of said county or constable of a neighboring county and said constable or sheriff shall proceed to sell at public auction (after giving five days notice of sale, by posting notices in three public places in said precinct) all said hogs so taken: *Provided however*, That the owners may prove their ownership of the hogs and receive them by paying all costs, charges and damages at any time before said sale takes place.

SECTION 5. If the parties cannot agree as to the amount of the charges and damages, then each party may choose one disinterested person, and they may choose a third person who shall determine the amount of the damages and costs of keeping of said hogs. Should the owner not come forward then the constable or sheriff shall appoint one or more disinterested persons to determine the amount.

SECTION 6. The fees of the officer for making the sales under the provisions of this act shall be the same as are allowed for sales under execution.

SECTION 7. If there should be any surplus money arising from such sales, after paying all costs charges and damages the constable or sheriff shall pay the same to the owner of said hogs sold provided they prove they are entitled to it within ten days after the sale; if not then he shall pay it to the county treasurer taking his receipt for the same: *Provided*, The hogs sold do not pay all costs charges and damages, this shall not bar the right of the damaged party to bring his action against the party owning the hogs trespassing for the balance due or unpaid.

SECTION 8. All monies paid to the county treasurer under the provisions of this act shall constitute a part of the school fund of the county.

SECTION 9. Any constable or sheriff refusing to pay to the county treasurer or the owners of the hogs found trespassing the surplus(s) money derived from such sale, shall be liable for the same on his official bond, and shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars.

SECTION 10. The provisions of this act shall apply to townships sixteen, seventeen, eighteen, nineteen, twenty and twenty-one in township four north range sixteen east in Klickitat county according to the surveys made by the United States.

SECTION 11. This act shall take effect and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

FOR THE RELIEF OF PUGET SOUND STEAM NAVIGATION COMPANY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of two hundred and twenty-three and one-half dollars (\$223.50) be and the same is hereby appropriated out of moneys not otherwise appropriated for transportation furnished to this Legislative Assembly in visiting the public Territorial institutions on a tour of inspection.

SECTION 2. The Territorial auditor is hereby instructed to issue to said Puget Sound Steam Navigation Company or its legal agent, a Territorial warrant for the aforesaid sum, and the Territorial treasurer is required to pay the same upon presentation out of any moneys not otherwise appropriated.

SECTION 3. This act to take effect and be in force from and after its passage.

Approved, November 6th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO PROTECT DEER IN ISLAND COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That an act entitled "An act to protect deer in Island county approved November 9th 1875 be amended to read as follows:

SECTION 2. It shall be unlawful for any person or persons to hunt or kill deer in Island county, for the purpose of selling or offering the same for sale in the market.

SECTION 3. It shall be unlawful for any person to drive or run deer with dogs or bitches at any season of the year in Island county without first obtaining from the county auditor a license for each dog or bitch so used, which license must be

kept by the person owning or hunting with such dog or bitch, in such a way, that it may be examined by any citizen of Island county demanding the same.

SECTION 4. The auditor of Island county is hereby authorized and directed to issue to any person desiring and paying for the same a license for and in accordance with the provisions of section three (3) of this act; no license to be granted for a period of more than one year nor without the payment of the sum of five dollars; for each license; which shall state the name size, color, and probable age and breed of said animal, together with permission to use the same in obtaining deer under the provision of this act.

SECTION 5. The county auditor shall record all dog licenses issued by him in a book kept for that purpose he to receive for each one, so issued, and recorded, the sum of fifty cents, and the balance to be paid in to the county treasury for the use of the general road fund.

SECTION 6. Any person or persons violating any of the provisions of this act shall be fined in any court of competent jurisdiction not less than twenty dollars nor more than fifty dollars for each offense; one-half to be paid to the informer and the other half to be paid into the general road fund of Island county, and in case of non-payment of fine to be imprisoned in the county jail for not more than thirty days.

SECTION 7. All acts or parts of acts in any way conflicting with this act are hereby repealed.

SECTION 8. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT DEFINING LAWFUL FENCES IN YAKIMA AND WHITMAN COUNTIES.

SECTION 1. *Be it enacted by the Legislative Assembly of Washington Territory,* That section one be amended by striking out the words "four feet eight inches" and inserting in

their stead the words "four feet six inches," also strike out the words "five feet" in first line of section two and insert "four feet six inches" also strike out all after the word plank in ninth line of section four.

SECTION 2. All parts of acts in conflict with this act are hereby repealed.

SECTION 3. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

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 required at their May meeting A. D. 1878 and at each regular spring term 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 (\$300.00): *Provided,* That said board may fix the minimum number of trees which shall be grown on each acre.

SECTION 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 exemption, which shall be received by the county treasurer in satisfaction of the taxes exempted.

SECTION 3. All acts in conflict with this act are hereby repealed.

SECTION 4. This act to take effect and be in force from and after its passage.

Approved, October 27th, 1877.

AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT TO REGULATE THE COLLECTION AND DISBURSEMENT OF ROAD AND ROAD-POLL TAX IN KING COUNTY WASHINGTON TERRITORY," APPROVED NOVEMBER 12TH 1875.

SECTION 1. *Be it enacted by the Legislative Assembly of Washington Territory*, That the act of the Legislative Assembly of Washington Territory approved November, 12th 1875, entitled "an act to regulate the collection and disbursement of road and road poll tax in King county Washington Territory," be and the same is hereby repealed.

SECTION 2. This act shall take effect and be in force from and after its approval by the governor.

Approved, October 30th, 1877.

AN ACT

FOR THE RELIEF OF J. C. HERR AND OTHERS.

WHEREAS The parties hereinafter named have furnished goods, wares, and merchandise to and have performed labor for the Hospital for the Insane in Washington Territory and

WHEREAS The fund provided for the payment of bills of a similar nature was inadequate to meet the actual and necessary expenses of the said Hospital for the Insane, and

WHEREAS There is now justly due the following named persons the amounts respectively set opposite their names for goods, wares, and merchandise furnished, and labor performed at said asylum, to wit:

W. H. Mastin.....	\$ 9.77
Jamison McClang.....	44.71
John Latham.....	19.68
E. A. Light.....	14.25
Samuel Parker.....	44.10
Edward Harmon.....	13.00
Samuel Roberts.....	4.00
P. Renquist.....	23.65
J. R. Reynolds.....	16.00
Rufus Willard.....	21.50
Wm. Neison.....	58.05
Ed. Higgins.....	5.00
Pincus & Packscher.....	32.07
McCaw & Rogers.....	83.62
R. M. Rylath.....	57.53
Lionel Stuart.....	44.10
M. A. McConnell.....	44.10
Ellen Madden.....	6.57
Wm. P. Sooth.....	44.10
W. H. Orr.....	14.00
J. G. Weller.....	14.00
John Saulter.....	20.00
E. L. Willey.....	42.50

\$712.05

J. C. Horr.....	82.00
Daniel Tuite.....	226.29
Schwabacher Bros. & Co.....	28.80
Samuel Williams.....	19.00
Ward & Mitchell.....	71.61
Waddell & Miles.....	7.25

\$434.95

AND WHEREAS The said accounts have been duly audited and approved by the trustees after accounts rendered by the said parties, therefore,

Be it enacted by the Legislative Assembly of the Territory of Washington.

SECTION 1. That the sum of eleven hundred and fo(u)rty-seven dollars or as much thereof as may be necessary, be and the same is hereby appropriated out of any funds in the Territorial treasury not otherwise appropriated, for the relief of the said parties, to wit: fee

Jamison McClang & Co.....	\$33.50
W. H. Mastin.....	9.77
Howard Scott.....	44.71
John Latham.....	19.68
E. A. Light.....	14.25
Rufus Willard.....	21.50
Wm. Neison.....	58.05
Ed. Higgins.....	5.00
Pincus & Packscher.....	32.07
McCaw & Rogers.....	83.62
R. M. Rylatt.....	57.53
Samuel Parker.....	44.10
Edward Harmon.....	13.00
Samuel Roberts.....	4.00
P. Renquist.....	23.65
J. R. Reynolds.....	16.00
Lionel Stuart.....	44.10
M. A. McConnell.....	44.10
Ellen Madden.....	6.57
Wm. P. Sooth.....	44.10
N. H. Orr.....	14.00
J. S. Weller.....	14.00
John Latham.....	20.00
E. L. Willey.....	42.50
	<hr/>
	\$712.05
	<hr/>
J. C. Horr.....	\$82.00
Daniel Tuite.....	226.29
Schwabacher Brothers.....	28.80
Samuel Williams.....	19.00
Ward & Mitchell.....	71.61
Waddell & Miles.....	7.25
	<hr/>
	\$434.95

SECTION 2. Upon presentation to the Territorial auditor of the accounts of the parties above mentioned in this act duly audited by the trustees of the Hospital for the Insane for Washington Territory, and the same being by them duly approved and duly certified by them to the Territorial auditor, it shall be the duty of the Territorial auditor to draw his warrant on the Territorial treasurer in favor of each of said parties for the amount so found due on their appro(pro)ved vouchers, which said amount shall be paid out of any money in the Territorial treasury not otherwise appropriated.

This act to take effect and be in force from and after its passage and approval.

Approved, November 9th, 1877.

AN ACT

TO REGULATE THE RAISING OF REVENUE FOR ROAD PURPOSES IN
COLUMBIA AND WALLA WALLA COUNTIES

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the county commissioners of Columbia and Walla Walla counties it [at] the session now required by law to levy Territorial county and school taxes in each year, to levy on all the taxable property of said counties, one mill on the assessed value, for road purposes.

SECTION 2. That the tax provided for in the foregoing section is in lieu of road tax now required by law for road purposes as aforesaid, and shall be collected each year by the tax collectors of said counties at the same time, and in the same manner, that other taxes are collected by law.

SECTION 3. That the tax for road purposes when collected shall be paid immediately u[nto] the county treasury of said counties and shall remain there subject to the order of said board of commissioners, for the purchase of material in building and repairing of bridges on county and Territorial roads in said counties, and for the purchase of material for any other purpose connected with highways in said counties, but said funds shall not be used for any other purposes whatsoever.

SECTION 4. It shall be the duty of the supervisor in each road district in Columbia and Walla Walla counties, to require of every male person, over twenty-one and under fifty years old, residing in his road district to perform two full days work on some highway in his road district in each year: *Providing,* That such person may pay to such supervisor in lieu thereof, the sum of one dollar and fifty cents for each days work, which money when paid shall be applied to the improvement of the highways in said district.

SECTION 5. If any person, as provided shall fail or refuse to perform the two days service, required by this act, after five days notice shall be given by the supervisor of said district, of time and place when such work will be required, or to pay therefor(e) one dollar and fifty cents, for each days work unperformed, then such person shall be liable to such supervisor for said sum and for all costs and necessary expenses in collecting the same by action at law, and such supervisor shall bring an action for the collection of the same.

SECTION 6. This act to take effect and be in force from and after January, First, one thousand eight hundred and sev-

enty-eight: *Provided*, That this act shall not be construed to effect [affect] in any way the collection of taxes already levied in said counties by existing laws.

Approved, November 9th, 1877.

AN ACT

FOR THE PROTECTION OF QUAILS, COMMONLY CALLED BOB WHITES.

Be it enacted, by the Legislative Assembly of the Territory of Washington.

That any person, or persons, who shall buy, sell, shoot, kill, snare, or trap any quails in the counties of Walla Walla, Columbia, and Whitman, before the first day of September, A. D. one thousand eight hundred and eighty-one, shall be deemed guilty of a misdemeanor, and on conviction thereof, before any court, of competent jurisdiction, shall be fined in any sum not more than fifty dollars and not less than ten dollars; one-half to be paid to the informer and the other to go into the county school fund.

This act to take effect and be in force from and after its approval.

Approved, November 9th, 1877.

AN ACT

TO AUTHORIZE THE BOARD OF COMMISSIONERS OF JEFFERSON COUNTY TO BORROW MONEY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the board of county com-

missioners of Jefferson county are authorized to borrow a sum or sums of moneys in gold coin, not aggregating more than five thousand dollars which may bear interest not exceeding one per cent per month in gold coin.

SECTION 2. Said board shall apply said money to the building of a court house and county offices at the county seat of said county.

SECTION 3. That thirty per cent of all moneys arising from licenses in said county shall be applied to pay the interest on said loan and extinguish the same.

SECTION 4. This act to take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

DEFINING DISTRICTS IN SAN JUAN COUNTY FOR THE ELECTION OF COUNTY COMMISSIONERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the next general election in the Territory and thereafter the county commissioners of San Juan county shall be elected by districts for which purpose the said county is hereby divided into three several election districts—That is to say:

The Island[s] of San Juan, Henry and Spiden, shall be and compose the first county commissioners district, and be entitled to elect one county commissioner who shall reside therein;

Lopez, Shaw, Blakely and the small adjacent islands contiguous thereto shall constitute the second county commissioners district and be entitled to elect one county commissioner who shall reside therein.

Orcas, Waldron, and the islands north of Orcas island known as the "Three Sisters" shall constitute the third county commissioners district and be entitled to elect one county commissioner who shall reside therein.

SECTION 2. Any island in said San Juan county not herein above named shall be deemed as annexed to the nearest

district adjacent herein named and in the election district including such adjacent district.

SECTION 3. Parts of acts providing for the election of county commissioners inconsistent with the above, shall have no force or effect within said county of San Juan.

SECTION 4. This act to take effect and be in force from and after its passage, though nothing herein contained shall interfere with the board of county commissioners of said county of San Juan as at present constituted.

Approved, November 8th, 1877.

AN ACT

TO AID IN THE CONSTRUCTION OF A RAILROAD FROM THE CITY OF SEATTLE IN KING COUNTY THROUGH THE CITY OF WALLA WALLA IN WALLA WALLA COUNTY AND THE TOWN OF DAYTON IN COLUMBIA COUNTY TO THE TOWN OF COLFAX IN WHITMAN COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be lawful for the several counties in this Territory to subscribe as herein set out to the capital stock of the Seattle and Walla Walla Railroad and Transportation Company to aid in the construction of a railroad from the city of Seattle in King county through the city of Walla Walla in Walla Walla county and the town of Dayton in Columbia county to the town of Colfax in Whitman county.

SECTION 2. The county of King is authorized to subscribe to said capital stock the sum of one hundred thousand dollars.

The county of Walla Walla the sum of one hundred thousand dollars.

The County of Ya(c)kima the sum of fifty thousand dollars.

The county of Columbia the sum of seventy-five thousand dollars.

The county of Whitman the sum of sixty thousand dollars.

The county of Kitsap the sum of ten thousand dollars.

The county of Stevens the sum of twenty thousand dollars.

The county of Klickitat the sum of ten thousand dollars and the remaining counties of this Territory, save San Juan Clallam and Wahkiakum the sum of five thousand each and the said counties of San Juan Clallam and Wahkiakum the sum of two thousand five hundred dollars each.

SECTION 3. Before any such subscription shall be made a special election of the legal voters of each of said counties shall be held on the ninth day of April one thousand eight hundred seventy-eight and at said election it shall be submitted to the thd said voters whether the county in which they vote will subscribe the sum set out in section two of this act to the stock of the Seattle and Walla Walla Railroad and Transportation Company and if at said election a majority of the legal votes in such county are in favor of subscription then the board of county commissioners of said county shall appoint an agent to subscribe to the capital stock of said company to the amount set forth in section two of this act and also an agent to negotiate a loan or loans in the name of the county so voting at a rate of interest not exceeding eight per cent per annum for the purpose of paying such subscription of stock and said board of commissioners shall be and are authorized to issue the bonds of the county for said loan coupon or registered for the amount authorized in section two of this act running from two to twenty years; and the said board of commissioners shall at the time when county taxes are assessed and fixed assess and collect additional taxes upon the taxable property in said county sufficient to pay interest on such loans and final extinction of the principal thereof.

SECTION 4. The stock so subscribed and purchased shall be preferred stock and non-assessable and for every one hundred dollars in value thereof the said county shall be entitled to one vote in the board of directors of said company and the board of county commissioners of each county owning stock in said railroad company shall at their meeting in May of each year appoint a person to represent and vote for said county in the meetings of said board of directors.

SECTION 5. Before said stock is subscribed the said railroad and transportation company shall file with the secretary of the Territory an amendment of their charter extending said road through Dayton in Columbia county to Colfax in Whitman county and shall further amend their charter or act of incorporation so as to accept and agree to the terms of this act and terms upon which such subscription is made: *And provided further*, That a sufficient sum of the amount paid for said capital stock in said company, by the counties of Walla Walla,

Columbia Whitman and Stevens shall be first expended in constructing the eastern portion of said road from or near Wallula on the Columbia river to the said town of Colfax along the proposed route of said road.

SECTION 6. If Walla Walla or King county should refuse to vote said subscription no other county notwithstanding their vote to subscribe, shall subscribe to said stock. And if the county of Columbia refuse to vote their subscription the said road need not be extended to Dayton, and if the county of Whitman refuse to subscribe said stock said road need not be extended to Colfax and if the county of Columbia refuse to vote said subscription the county of Whitman notwithstanding its vote may be in favor of subscription in that event shall not be required to subscribe to said stock unless the board of county commissioners elect so to do.

SECTION 7. The vote on the proposed subscription shall be by ballot either written or printed and said ballots if cast in favor of subscription shall contain the words "for railroad subscription" or words to that effect. And if against said subscription the words "against railroad subscription" or words to that effect.

SECTION 8. The judges appointed to hold the election for members of the constitutional convention shall be the judges of said election and the returns of said election shall be made to the county auditor of the county in which the election was held in the same manner as in the election of county officers and he shall canvass and make known the result to the board of county commissioners of his county.

SECTION 9. This act to take effect from and after its passage.

Approved, November 9th, 1877.

AN ACT

EXTENDING THE TIME FOR THE COLLECTION OF TAXES IN KING COUNTY

W. T.

WHEREAS By an act of the Legislative Assembly of the Territory of Washington approved October 8th 1877, it was

provided that the board of commissioners of King county, Washington Territory hold a special meeting commencing on the 9th day of October 1877, for the equalization of the taxes of said county, and

WHEREAS, Under the operation of the said act it will be impossible to place the assessment rolls for the said county for the year 1877, in the hands of the treasurer for collection before the 1st day of December 1877; thus delaying the commencement of the collection of taxes two months, and giving to the treasurer but one month to make the collection; and

WHEREAS, It will be impracticable to receive and receipt for the taxes in that time thus working a great hardship upon the taxpayers by reason of the limited time allowed for collection, now therefore,

Be it enacted by the Legislative Assembly of the Territory of Washington.

SECTION 1. That the time allowed for the collection of taxes in King county for the year 1877, be, and the same is hereby extended to the first day of February 1878.

SECTION 2. No tax which shall have been assessed, in King county for the year 1877, shall be deemed delinquent nor shall any penalty attach thereto for delinquency or nonpayment before the first day of February 1878.

SECTION 3. At the expiration of the time herein allowed for the collection of taxes, the treasurer shall proceed in relation to delinquent taxes in the manner provided by law.

SECTION 4. This act shall take effect from and after its passage and approval by the Governor.

Approved, November 6th, 1877.

AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE ELECTION OF COUNTY COMMISSIONERS AND COUNTY ASSESSORS OF KING COUNTY, WASHINGTON TERRITORY."

SECTION 1. *Be it enacted by the Legislative Assembly of Washington Territory,* That the act of the Legislative

Assembly of Washington Territory approved November twelfth one thousand eight hundred and seventy-five, entitled "an act to provide for the election of county commissioners and county assessors of King county Washington Territory" be and the same is hereby repealed: *Provided*, That the respective officers elected pursuant to the provisions of the act hereby repealed shall not by this act be divested of their respective offices but the commissioners so elected, shall be the commissioners of said county and the assessors so elected shall be the assessors of their respective districts to the end of the term for which they were elected: *And provided further*, That in lieu of the compensation provided by the act hereby repealed for said assessors they shall receive for their services already performed as well as for services hereafter to be performed such reasonable compensation as the board of county commissioners of said county may determine, which shall be appropriated and paid out of the general fund of said county.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved, October 8th, 1877.

AN ACT

TO AMEND AN ACT, TO BETTER PROVIDE FOR THE MAINTENANCE OF COMMON SCHOOLS IN THE COUNTY OF JEFFERSON, APPROVED OCT. 20TH 1875.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section 1, of an act, to better provide for the maintenance of common schools in the county of Jefferson approved October 20th 1875: be amended to read as follows—

SECTION 2. That fifty per cent of all moneys arising from the insurances [issuance] of licences for the sale of spirituous liquors in the county of Jefferson, Washington Territory, shall be set apart for the use of common schools in said county and be distributed as other school moneys are distributed, therein.

SECTION 3. All acts or parts of acts in conflict with this act are hereby repealed.

SECTION 4. This act to take effect and be in force from and after its passage.

Approved, November 6th, 1877.

AN ACT

TO REPEAL CERTAIN SECTIONS OF ACTS AND CERTAIN ACTS RELATING TO THE INCORPORATION OF THE CITY OR TOWN OF PORT TOWNSEND, JEFFERSON COUNTY, WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section two (2) of an act passed January 17th 1861. To amend an act passed January 16th 1860 to incorporate city of Port Townsend, be and the same is hereby repealed.

SECTION 2. That section one (1) relating to boundaries and section five (5) of article ninth of miscellaneous provisions relating to the appropriation of twenty-five (25) per cent of liquor licenses to city purposes of an act approved January 18, 1867 entitled an act to amend an act to incorporate the city of Port Townsend passed January 16th 1860 be, and the same is hereby repealed.

SECTION 3. That all of the act approved November 29th 1871. To amend an act to incorporate city or town of Port Townsend passed January 16th 1860, be and the same is hereby repealed.

SECTION 4. That all of the act approved November 5th 1873 to incorporate the town of Port Townsend be and the same is hereby repealed.

SECTION 5. That all of an act approved November 9th 1875 To amend an act to incorporate city or town of Port Townsend approved November 5th 1873, be and the same is hereby repealed.

SECTION 6. This act shall take effect and be in force from and after its approval by the Governor; and until the general

election of city or town officers is held on the first Monday in April 1878. The following persons shall be trustees:

George Barthrop, J. G. Clinger, and A. H. Tucker, and A. R. Huffman, clerk; and Sumer Carr, city marshal, and said board shall have power to fill vacancies.

Approved, November 9th, 1877.

AN ACT

TO REPEAL AN ACT ENTITLED AN ACT TO PROVIDE FOR THE ELECTION OF THE COUNTY COMMISSIONERS OF JEFFERSON COUNTY BY DISTRICTS APPROVED NOVEMBER 12TH 1875.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington.* That an act entitled an act to provide for the election of the county commissioners of Jefferson county by districts approved November 12th 1875, be and the same is hereby repealed.

SECTION 2. This act to take effect and be in force from and after its passage: *Providing,* That the commissioners now in office shall hold their respective offices until their successors are elected and qualified at the general election of 1878.

Approved, October 26th, 1877.

AN ACT

IN RELATION TO THE COLLECTION OF LICENC[S]ES IN THE CITIES OF TACOMA AND STEILACOOM.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That one-third of all county

licenc[s]e money paid within the cities of Steilacoom and Tacoma shall be paid directly into the city treasuries. The amount paid into the treasury of the city of Tacoma to be applied for the support of the common schools in said city, and the amount paid into the treasury of the city of Steilacoom shall be for the use of said city.

SECTION 2. This act to take effect and be in force from and after its passage.

Approved, November 6th, 1877.

AN ACT

AN ACT TO REPEAL AN ACT ENTITLED AN ACT AUTHORIZING THE COMMISSIONERS OF CLARKE COUNTY TO LEVY A TAX FOR SCHOOL PURPOSES APPROVED NOVEMBER 12TH 1875.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act entitled an act authorizing the commissioners of Clarke county to levy a tax for school purposes approved November 12th 1875, be and the same is hereby repealed.

SECTION 3. This act to take effect and be in force from and after its approval by the Governor.

Approved, October 27th, 1877.

AN ACT

DEFINING THE BOUND[E[A]RY BETWEEN THE COUNTY OF ISLAND AND THE COUNTIES OF SAN JUAN WHATCOM AND SNOHOMISH.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bounde[a]ry line between

the county of Island and the county of San Juan, shall be the center of the main channel between Blunts island and San Juan and Lopez island commencing at the center of Admiralty inlet and extending in an easterly direction of the west entrance of Deception pass.

SECTION 2. The boundary line between the county of Island and the county of Whatcom shall be the center of the main or deepest channel beginning at the west entrance of Deception pass and extending along said channel until it intersects the north west or west bounde[a]ry of Snohomish county.

SECTION 3. Snohomish county shall be bounded as follows: Commencing at the south west corner of Whatcom county, thence east to the summit of the Cascade mountains thence southerly along the summit of said Cascade mountain to the north east corner of King county it being a point due east of the north east corner of township number twenty-six north of range four east, thence due west along the north boundary of King county to Admiralty inlet, thence northerly along the channel of said inlet to the entrance of Port Susan including Gedney island, thence up the main channel of Port Susan to the mouth of the Steilaguamish river, thence north westerly through the channel of the slough at the head of Camano island, known as Davis slough thence northerly to the place of beginning.

SECTION 4. All acts and parts of acts in any way in conflict with the provisions of this act are hereby repealed.

SECTION 5. That this to act take effect and be in force from and after its passage.

Approved, November 9th, 1877.

AN ACT

RELATING TO THE RECEIVING OF COUNTY WARRANTS IN PAYMENT
OF COUNTY TAXES IN CLARK[E] COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That no order or warrant drawn on the county treasurer and payable out of the revenue of

Clark[e] county, in said Territory shall be received in payment of county taxes or dues, except from the person or persons in whose favor the warrant was drawn.

SECTION 2. All warrants or orders drawn upon the county treasurer except those named in section one of this act shall be paid in the order in which they were issued and numbered.

SECTION 3. No warrant or order on the county treasurer shall be drawn in favor of any party, except to whom the amount is due.

SECTION 4. All acts or parts of acts in conflict with this act are hereby repealed, so far as relates to Clarke county.

SECTION 5. This act to take effect from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE FOR EQUALIZATION OF TAXES IN KING COUNTY FOR THE YEAR ONE THOUSAND EIGHT HUNDRED AND SEVENTY-SEVEN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of commissioners of King county shall hold a special session commencing on the twenty-ninth day of October one thousand eight hundred and seventy-seven for the equalization of taxes in said county for the year one thousand eight hundred and seventy-seven.

SECTION 2. The assessment roll for one thousand eight hundred and seventy-seven, shall be returned to said board by the assessors of said county on or before the first day of said session. All complaints in regard to assessments made by said assessors must be made to, and determined by said board of commissioners at said session; and said board shall at said session make all necessary corrections and alterations in said assessment roll; and all appraisements of property made by said assessors that may be found to be either above or below the average valuation of property of the same kind according to the appraisements of said

assessors shall be raised or reduced as the case may require in order to make taxation in said county equal and uniform.

SECTION 3. Public notice of said special session of said board and the purpose thereof shall be given by publication in the weekly editions of each of the three newspapers now published in said county, at least ten days prior to said twenty-ninth day of October, one thousand eight hundred and seventy-seven.

SECTION 4. When the board shall have finally passed upon and approved the assessment roll it shall be certified and signed by the President of the board; and within twenty days thereafter the county auditor of said county shall transmit to the Territorial auditor a certified statement of the total value of all property real and personal as shall appear by said assessment roll; and shall estimate the amount of taxes due on the valuation of property in said county and shall make a duplicate assessment roll and deliver a copy thereof to the treasurer of said county and charge said treasurer with the amount of taxes to be collected on said roll as required by the general law of the Territory relating to the assessment and collection of taxes.

SECTION 5. This act shall take effect and be in force from and after its passage.

Approved, October 8th, 1877.

AN ACT

IN RELATION TO THE ELECTION OF COUNTY COMMISSIONERS AND
DEFINING THEIR DUTIES IN THE COUNTIES OF CLARK[E], THURSTON,
Klickitat YAKIMA AND KITSAP.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be established in each organized county of the Territory, three commissioner districts.

SECTION 2. That it shall be the duty of the county auditor of each county, to furnish the board of county commissioners

with a correct record of the legal vote of each county precinct, as taken at the last general election.

SECTION 3. That it shall be the duty of county auditors to furnish said record to the board of county commissioners, whenever the board demands the same.

SECTION 4. That it shall be the duty of the board of county commissioners, on receipt of said auditor's record, at any regular meeting, for the transaction of general business, to apportion the county into three districts, giving to each district, as nearly as possible, an equal number of legal voters, in accordance with said county auditor's record of the legal vote of the county: *Provided* That no municipal corporation shall constitute more than one commissioner district.

SECTION 5. That the districts so apportioned shall be styled, County Commissioner Districts.

SECTION 6. That the county commissioners of each county, shall apportion their several counties as provided(:) before the next general election, provided that the vote for each commissioner shall be general in the whole county.

SECTION 7. That no more than one county commissioner be elected at any general election in any one commissioner district, *Provided*, That this act shall apply to the counties of Clark[e] Thurston Yakima, Kitsap and Klickitat only.

SECTION 8. That at the next general election, for the choice of county officers there shall be two county commissioners elected, to serve for the term of two years, each, and one for the term of four years *Provided* that this act shall apply to the counties of Clark[e] Thurston, Yakima Kitsap and Klickitat.

SECTION 9. That at each succeeding election for choice of county officers, there shall be two county commissioners elected, one for the term of two years and one for the term of four years, *Provided* That the commissioner districts in each county shall be numbered as follows, Number one, two, and three.

SECTION 10. That the commissioner, for the long term shall be elected first from district number one, at the next election from district number two, at the next from district number three, and ever afterwards in regular rotation.

SECTION 11. All acts or parts of acts in any wise conflicting with this act, be and are hereby repealed.

SECTION 12. This act to take effect and be in force from and after its passage and approval by the Governor.

Approved, November 9th, 1877.

MEMORIALS.

MEMORIALS.

MEMORIAL

PRAYING FOR THE RESTORATION TO SETTLEMENT OF CERTAIN
PUBLIC LANDS WITHDRAWN IN FAVOR OF THE NORTHERN
PACIFIC RAILROAD COMPANY.

*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 western terminus of the Northern Pacific railroad was located at Tacoma on Puget Sound, in township twenty north, range three east, in one thousand eight hundred and seventy-three. That prior to that time, viz: In one thousand eight hundred and seventy and one thousand eight hundred and seventy-two, the withdrawals on the main line of said road were made beyond Tacoma as far north as Bellingham Bay, embracing over two million acres of the public lands north of Tacoma, which lands are still withheld from settlement, notwithstanding the location of said terminus at Tacoma as aforesaid. That in one thousand eight hundred and seventy-three the odd sections of the public lands were withdrawn in favor of said company on their branch line from lake Pen d'Oreille to Tacoma via the Skagit pass amounting to over eight million acres. That said company have abandoned said Skagit pass route, and in November, one thousand eight hundred and seventy-six filed a map of their branch line, in the office of the Commissioner of the General Land Office, which last named branch line leaves the main line

near the mouth of Snake river and runs over the Cascade mountains to Tacoma via the Natche[z]es pass.

Wherefore your memorialists pray, that Congress will restore to the public domain, to be dealt with as other public lands under the direction of the Secretary of the Interior, all lands heretofore withdrawn in favor of said company on their main line north of the adjusted limits of their earned lands near Tacoma, and all lands heretofore withdrawn on their said branch line via the Skagit pass.

And your memorialists as in duty bound will ever pray.

Passed the House of Representatives Oct. 11, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 6, 1877.

T. M. REED,

President of the Council.

MEMORIAL

IN RELATION TO THE EXTENSION OF TIME FOR BUILDING THE
NORTHERN PACIFIC RAILROAD.

*To the Senate and House of Representatives
of the United States in Congress Assembled:*

Your memorialists the Legislative Assembly of Washington Territory would respectfully represent, that under and by virtue of the act of Congress, entitled "an act" granting lands to aid in the construction of a railroad "and telegraph line from Lake Superior to Puget Sound on the Pacific coast by the northern route" approved July 2nd 1864 and the acts amendatory thereof, the Northern Pacific Railroad Company definitely fixed the line of said railroad where the same runs through the Territory of Washington and filed a plat thereof in the office of the Commissioner of the General Land Office in August A. D. 1870. That the western terminus of the said Northern Pacific railroad was located at Tacoma on Puget Sound in township

20 north range 3 east in 1873. That by virtue of the aforesaid acts of Congress and the filing of the plat definitely locating the route of said railroad, twenty alternate sections of land per mile in the Territory of Washington on each side of said route have been withdrawn from settlement under the land laws of the United States. That by reason of the facts, that the Northern Pacific Railroad Company has no authority to sell lands within the grant not earned, and having fixed no price upon said lands, at which settlers could purchase the same after the company acquired title thereto, the settlement and prosperity of the Territory has been greatly retarded. That while the Northern Pacific Railroad Company is daily selling and disposing of its earned lands, it refuses to pay any taxes upon its lands and has instituted suits which are now pending to restrain our tax collectors from collecting the taxes. That this company demands and receives protection of our civil officers, and that its refusal to bear its proportion of the taxes to pay those officers is oppressive and unjust to the taxpaying settlers of the Territory. That we realize the fact that the speedy completion of this road would be a great benefit to the Territory. We nevertheless regard an extension of time for that purpose without terms and conditions, wrong and injurious to the people of our Territory.

Your memorialists would therefore respectfully pray, that the time for the completion of said railroad eastward from the western terminus be extended, but on the following terms and conditions only viz:

First. That the price of the lands within the limits of the grant be fixed at two dollars and a half (\$2.50) per acre.

Second. That the registers and receivers of the United States land offices be the only persons authorized to dispose of any of these lands and that they be disposed of by entry and payment under such rules as the department may establish.

Third. That these lands be sold to actual settlers only and in such quantities as your honorable bodies may deem best.

Fourth. That the money arising from the sales of the lands aforesaid be paid to the Northern Pacific Railroad Company from time to time as the different sections of the road are completed.

Fifth. That the time within which said road shall be completed be limited by law, and that a failure to complete the road within the specified time, shall cause all the lands to revert to the government which have not been sold.

Sixth. That the company be required to pay taxes on all of its property whether acquired by purchase or otherwise upon the

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same terms and conditions now imposed by law upon the settlers of the Territory.

And your memorialists will as in duty bound ever pray.

Passed the House of Representatives Oct. 6, 1877.

RUFUS G. NEWLAND,

Speaker of House of Representatives.

Passed the Council Oct. 18, 1877.

T. M. REED,

President of the Council.

MEMORIAL

IN RELATION TO CERTAIN LAND IN 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 most respectfully represent to your honorable body that under the land grant to the Northern Pacific Railroad Company a large portion of the public lands of Washington Territory has been held in reserve for said company and have not been subject to entry at the government land offices a great many of our citizens have settled upon such lands and others have notified and in both cases have valuable improvements thereon and the railroad company has issued certificates to such persons guaranteeing to them first right to purchase as soon as the company acquired title. Many of these persons have exhausted all their government rights to take land and in case the land grant of said company should revert to the government they would be left entirely at the mercy of unscrupulous parties who could take the land under some of the government land laws. We would also represent that within the limits of said grant homestead settlers have been restricted to eighty acres of land and if the company fails to construct the road a manifest injustice would be done these persons they having been subject to all the inconvenience and disadvantage in-

cident to the withdrawal of the land and having received none of the benefits on account of the failure of the company to construct a road, we therefore most respectfully memorialize your honorable body, that in case the land grant of the said company should revert to the government that you pass a law allowing all persons who have valuable and substantial improvements upon railroad land and have been acting in good faith with said company to enter at the minimum price of one dollar and twenty-five cents per acre, and further that some provision be made whereby homestead settlers that have been restricted to eighty acres of land in each part of the grant where the company has failed to build their road may be allowed to enter an additional eighty acres whether it be found to adjoin their original claims or not without settlement or cultivation provided they have complied [complied] with the law under the entry of their original claims.

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives Nov. 1, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 9, 1877.

T. M. REED,

President of the Council.

MEMORIAL

IN RELATION TO INDIANS EAST OF THE CASCADE MOUNTAINS.

*To the Senate and House of Representatives
of the United States in Congress Assembled:*

Your memorialist, the Legislative Assembly of Washington Territory, would respectfully represent: That the unsettled condition of the Indians east of the Cascade Mountains, in Washington Territory, is injurious alike to the Indians and the white people. The permanent location of the Indians east of the Cascade Mountains, in Washington Territory, upon one reservation, would result (result) in the prosperity and peace of both the white people and the Indians.

We would further represent that the Colville valley is admirably adapted for an Indian territory for all the Indians east of the Cascade Mountains, not only [on] account of its arable land, the roots, camas, and salmon fisheries, but also on account of its situation, which owing to the surrounding country, can never be intrenched upon by any white settlements. The remnants of different tribes to whom reservations have been assigned under different treaties, at [to] the exclusion of the white settlers. The Indians derive no benefit from these reservations which they could not fully enjoy in Colville valley. Yet there [their] occupancy of the different reservations keep a body of fine, arable land from cultivation and settlement by white people. These different reservations together contain more arable land than the Colville valley, and their situation in close proximity to the settlements of white people, make a change not only desirable, but also of ultimate benefit to all concerned and thereby the peace of the country will be more fully secured.

Wherefore your memorialists would earnestly pray that your honorable body would as soon as practicable enact a law, setting apart the Colville valley as an Indian territory and removing the Indians thereto, whenever their treaties with the government expire by limitation of law.

Passed the House of Representatives Nov. 5, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 5, 1877.

T. M. REED,

President of the Council.

MEMORIAL.

PRAYING FOR THE ESTABLISHMENT OF A MILITARY POST AT SPOKANE FALLS IN STEVENS COUNTY WASHINGTON TERRITORY.

To the Honorable Secretary of War of the United States:

Your memorialists the Legislative Assembly of the Territory of Washington would respectfully represent that there is

a large number of Indians in Stevens, Columbia, and Whitman counties in said Territory, that many of them are untreated with and that large numbers roam over the country at will. That since the late war with Joseph and his tribe these Indians have manifested more or less hostile feeling toward the white people. That the white settlers in these counties and in the county of Yakima are widely scattered over this vast area of country and in case of Indian outbreak are totally unprotected. That experience has demonstrated the impossibility of the attempt to confine the majority of these Indians to reservations. That in view of the above mentioned facts there is an urgent necessity for a military post somewhere in the section of country above referred to.

Therefore your memorialists would respectfully and earnestly ask that a strong military post be established at Spokane Falls in Stevens county Washington Territory, and as in duty bound your memorialists will ever pray.

Passed the House of Representatives Oct. 19, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 24, 1877.

T. M. REED,

President of the Council.

MEMORIAL

RELATIVE TO AUTHORITY BEING GIVEN THE RESIDENT DEPUTY
INSPECTOR OF CUSTOMS RESIDING ON SAN JUAN ISLAND TO
ENTER AND CLEAR VESSELS.

*To the Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists the Legislative Assembly of Washington Territory would respectfully represent that between the counties of Whatcom and San Juan (counties), Washington Territory and British Columbia a large and increasing agricultural and other trade is springing up, that this trade at present

all has to be carried on by way of the custom house at Port Townsend; that to clear through said custom house vessels must sail from thirty-five to seventy-five miles and return out of their regular course and through waters that are dangerous for small crafts, that by reason of such extra distance and danger, trade between the place named is very much hindered and oftentimes rendered entirely impracticable; that there has been for twenty years last past a deputy inspector of customs stationed on San Juan island; that by giving said authority to the deputy inspector on San Juan island there would no longer exist the necessity of a revenue vessel cruising in the waters of the archipelago thereby saving expense to the government and preventing smuggling.

Therefore your memorialists would respectfully pray that in order to foster trade, prevent smuggling, accommodate a large class of settlers and lessen the expense of the customs department of Puget Sound, power to enter and clear vessels be conferred upon the officer of customs stationed at some point on San Juan island.

And your memorialists in duty bound will ever pray.

Passed the House of Representatives Oct. 27, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 27, 1877.

T. M. REED,

President of the Council.

MEMORIAL

PRAYING FOR THE ESTABLISHMENT OF A LAND OFFICE AT PORT
TOWNSEND W. T.

*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, San Juan and Whatcom about seven hundred homesteads 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 the 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 Port Townsend,

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives Oct. 27, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 1, 1877.

T. M. REED,

President of the Council.

MEMORIAL

PRAYING FOR VESSELS OF WAR TO BE STATIONED ON PUGET SOUND.

To the Honorable Secretary of the Navy of the United States:

Your memorialists the Legislative Assembly of the Territory of Washington respectfully represent that there are

many flourishing settlements on the shores of the great inland sea known as Puget Sound which do a large business with various ports in England, Scotland, Ireland, France and Spain in Europe, as well as with South America Republics, China, Japan, the East Indies and Australia: That vessels from all these countries frequent our bays and harbors, that the English government for the protection of a very inferior commerce, comparatively, has established a naval station at Esquimalt, Vancouver Island, and has a fleet of war vessels constantly stationed there; that our commerce is entirely unprotected and that the seamen and subjects of foreign powers draw comparison between us and the neighboring colonies of Great Britain which, however, are very humiliating and by no means comport either with the dignity of the United States or its true naval strength. In view of these facts your memorialists would earnestly urge the Navy Department to station such a number of vessels of war upon the waters of Puget Sound as are essential to our security as well as to convince foreign powers that the general government has the interest and honor of her most remote settlements at heart and as in duty bound your memorialists will ever pray.

Passed the House of Representatives Oct. 29, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 1, 1877.

T. M. REED,

President of the Council.

MEMORIAL

FOR AN EXTENSION OF TIME IN HOLDING SESSIONS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF WASHINGTON.

*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

Territory is of vast extent that it has within its borders great variety of climate; mines of iron, coal, and the precious metals; and vast interests, lumbering, ship-building, fishing, grazing, agricultural and commercial; that these climatic differences require great attention to legislation, both in general and local matters, and that the varied industries of the Territory call for more care and attention than can be fitly given to them in a session of forty days, necessitating either neglect or hasty legislation.

Therefore, your memorialists would most respectfully ask that sessions of this body may be permitted, in the future, to extend to sixty days and as in duty bound, your memorialists will ever pray.

Passed the House of Representatives Nov. 3, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 31, 1877.

T. M. REED,

President of the Council.

MEMORIAL

PRAYING THE ESTABLISHMENT OF A HARBOR OF REFUGE ON THE
NORTHWEST COAST.

*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 there is an extensive shore line from San Francisco northward to the straits of Juan de Fuca, with no harbor of refuge of ready access and safe approach in heavy weather, between those points, much of which coast is rock-bound, contiguous to which are bars, shoals and other hidden dangers to navigation. That for several months of the year, during the winter season, storms are at times extremely severe and long continued. That the

increasing product of wheat, lumber, coal and other staple exports, and the growth of the north Pacific States and Territories in wealth and population are establishing a vast and growing commerce, requiring a rapidly increasing number of vessels of all kinds, compelled at all seasons to make voyages between the ports and places on the coast of Oregon and Washington, between San Francisco, the Columbia river, and Puget Sound. That the interests of humanity and commerce demand protection to the human life and wealth invested in this growing coast trade. That several points in that shore line with a comparatively small expenditure of money can be made into a harbor of refuge, whereby protection from danger and shipwreck could be insured, human life rendered more secure and the large amount of capital and property invested, less liable to destruction or loss.

Therefore your memorialists earnestly pray that steps be taken at once to locate and establish at some proper point or points on the coast line of Oregon, or this Territory or both, a harbor or harbors of refuge for shipping, to the end that many human lives and a large amount of property shall not needlessly be sacrificed or lost, and your memorialists as in duty bound will ever pray.

Passed the House of Representatives Nov. 5, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 9, 1877.

T. M. REED,

President of the Council.

MEMORIAL

ASKING AN APPROPRIATION FOR THE REMOVAL OF OBSTRUCTIONS
IN THE SKAGIT AND STILLAGUAMISH RIVERS.

*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 Skagit

and Stillaguamish rivers (navigable streams flowing into Puget Sound) are certain obstructions to navigation that the removal of these obstructions will open to settlement a large area of the best agricultural lands in the Territory which by reason of such obstructions cannot now be settled.

Therefore, your memorialists pray that an appropriation of ten thousand dollars (\$10,000.00) be made and placed in the hands of commissioners for the removal of these obstructions and for such commissioners we recommend William B. Moore, Frank Ledger and John Mathews, and your memorialists as in duty bound ever pray.

Passed the House of Representatives Oct. 9, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 12, 1877.

T. M. REED,

President of the Council.

MEMORIAL

RELATIVE TO THE ESTABLISHMENT OF A LAND OFFICE AT YAKIMA
CITY 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 most respectfully represent, that many of the settlers of Yakima and Klickitat counties in Washington Territory are required in making proof upon land in contested cases to travel with their witnesses distances varying from one to four hundred miles, and while your memorialists are aware that under the present ruling of the General Land Office final proof can be made before a probate judge, these officers are constantly changing and as a consequence settlers are put to great inconvenience and vexatious delays, by new rules and regulations made by the Department.

We would also represent to your honorable body that Yakima and Klickitat counties have an area [of] twelve thousand square miles in which may be found large bodies of the finest agricultural and grazing lands in the world; that said counties are rapidly filling up with settlers at the present time, with every prospect that the rate of settlement will very materially increase during the next few years.

We therefore most respectfully but earnestly ask for the better accommodation of that class of citizens who have the courage and bravery to face the dangers and trials of frontier life, men who need every encouragement that the government can offer; that you do pass an act making Yakima and Klickitat counties a land district and that a land office be established at Yakima city, Washington Territory, and as in duty bound your memorialists will ever pray.

Passed the House of Representatives Oct. 19, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 25, 1877.

T. M. REED,

President of the Council.

MEMORIAL

ASKING AN APPROPRIATION TO ERECT FOG-BELL AND STEAM WHISTLE ON FOULWEATHER BLUFF AT THE ENTRANCE OF HOOD CANAL PUGET SOUND.

*To the Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington beg leave to represent to your honorable bodies that a fog-whistle or fog-bell should be placed on Foulweather bluff; the above named point is dangerous to shipping in foggy and thick weather and dangerous to navigation; commerce demands that fog signals be placed upon the above named point.

We therefore respectfully petition your honorable bodies to make an appropriation for the purpose herein stated.

Passed the House of Representatives Oct. 8, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 8, 1877.

T. M. REED,

President of the Council.

MEMORIAL

IN REGARD TO SCHOOL LANDS IN THE TERRITORY OF WASHINGTON.

*To the Senate and House of Representatives
of the United States in Congress assembled.*

WHEREAS, Certain of the school lands of this Territory are valuable for use and cultivation, and

WHEREAS, The Legislative Assembly has by law provided for leasing said lands, (see Statutes of W. T. 1869, pages 401, and 402), and

WHEREAS, Several of the counties in the Territory, receive several hundred dollars each, toward defraying school expenses and

WHEREAS, Questions are, raised touching the validity of the aforesaid Legislative enactment,

Therefore we, the Legislative Assembly of the Territory of Washington do ask that your honorable body approve and make valid said act of the Legislative Assembly of Washington Territory.

Passed the House of Representatives Nov. 7, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 6, 1877.

T. M. REED,

President of the Council.

MEMORIAL

ASKING AN APPROPRIATION TO ERECT A STEAM WHISTLE AND
FOG-BELL ON POINT WILSON.

*To the Senate and House of Representatives
of the United States in Congress Assembled:*

Your memorialists the Legislative Assembly of the Territory of Washington beg leave to represent to your honorable bodies, that a fog-bell and steam whistle should be placed on Point Wilson at the entrance of Admiralty inlet. The above named point is a dangerous one to shipping, it has a sand bar nearly one mile in length which was caused by vessels getting ashore, and having to throw their ballast overboard to enable them to get afloat.

We therefore respectfully petition your honorable bodies to make an appropriation for the purpose herein stated, and in duty bound we will ever pray.

Passed the House of Representatives Oct. 30, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 9, 1877.

T. M. REED,

President of the Council.

MEMORIAL

RELATING TO MAIL SERVICE BETWEEN PORT TOWNSEND AND PORT
ANGELES.

To the Honorable Postmaster General of the United States:

Your memorialists the Legislative Assembly of the Territory of Washington, respectfully represent that the United

States mails between Port Townsend and Port Angeles are now carried over route No.—— once a week by sailing vessel, that said route is on the straits of San Juan deFuca and owing to the roughness of the route during eight months of each year, said service is very uncertain and unsatisfactory, that at Sequim prairie, there is a large settlement without a postoffice or any mail facilities, that there is a good overland route from Port Townsend to Port Angeles.

Wherefore your memorialists pray; first that a postoffice may be established on Sequim prairie and second, that the road for [from] Port Townsend via; Port Discovery; Sequim prairie, New Dungeness to Port Angeles be made a post route, and that the United States mails be carried over said route once a week. And as in duty bound your memorialists will ever pray.

Passed the House of Representatives Nov. 5, 1877.

RUFUS G. NEWLAND,

Speaker of House of Representatives.

Passed the Council Nov. 6, 1877.

T. M. REED,

President of the Council.

MEMORIAL

ASKING FOR AN APPROPRIATION TO ERECT A CUSTOM HOUSE AT
PORT TOWNSEND THE PORT OF ENTRY FOR THE PUGET SOUND
DISTRICT.

*To the Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists the Legislative Assembly of the Territory of Washington hereby represent that at the port of entry for the Puget Sound district, Port Townsend is no safe or suitable government building for custom house, and that there is no bonded warehouse in said district. That the increase of

MEMORIALS.

commerce demands better facilities; that there is no protection against destruction by fire of the valuable records of the custom house.

We therefore pray that an appropriation of twenty-seven thousand dollars (\$27,000.00) be made for the purpose of purchasing a suitable site and for the erection of a safe and suitable building for custom house "etc.," and your memorialists as in duty bound will ever pray.

Passed the House of Representatives Oct. 19, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 24, 1877.

T. M. REED,

President of the Council.

MEMORIAL.

PRAYING FOR THE OPENING OF THE U. S. LAND OFFICE AT COLFAX
WHITMAN COUNTY, W. T.

*To the Senate and House of Representatives
of the United States in Congress Assembled:*

WHEREAS, By an act passed by your honorable body and approved August 15, A D 1876, as appears on page 207, chapter 307, of the statutes of the United States, passed at the first session of the forty-fourth Congress creating an additional land office at Colfax Whitman county Washington Territory and

WHEREAS, Said act has not been put into effect and said office not been opened for business by reason of no appropriation having been made for that purpose and

WHEREAS, The lands within the district embraced in said act are being rapidly occupied by settlers who are now required to travel from one hundred and fifty to five hundred miles going and returning in transacting their business at the Walla

Walla land office, thereby entailing great expense inconvenience and loss of time.

We therefore your memorialists the Legislative Assembly of the Territory of Washington would most respectfully request your honorable body to make an appropriation and take such other action as may be needful and necessary to render the law aforesaid effective and enable the Secretary of the Interior to open said land office and place the same upon a practicable business footing at the earliest possible day; and as in duty bound your memorialists will ever pray.

Passed the House of Representatives Oct. 9, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 9, 1877.

T. M. REED,

President of the Council.

RESOLUTIONS.

RESOLUTIONS.

RESOLUTION

RELATIVE TO AN APPROPRIATION TO PAY THE MEMBERS AND OFFICERS OF THE SIXTH BIENNIAL SESSION.

WHEREAS, The second session of the forty-fourth Congress, did not make an appropriation, sufficient to cover the legislative expenses, of the Territory of Washington, and the incidental expenses thereof, for the fiscal year ending June thirtieth, one thousand eight hundred and seventy-eight, said appropriation, only being sufficient, to pay the per diem of members and officers, for thirty-eight days, and

WHEREAS, Important legislation, now pending, cannot be consummated short of the time fixed by law, for holding said session, therefore

Be it resolved by the Council, the House concurring, That the Legislative Assembly, continue the present session for forty days from date of convening, and that the secretary of the Territory, be instructed to furnish without delay, a certified copy of this resolution, to the Secretary of the Treasury, recommending an appropriation sufficient to cover the per diem of members and officers, for the two days, for which they can receive no compensation, until such appropriation be made.

Passed the House of Representatives Nov. 6, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 5, 1877.

T. M. REED,

President of the Council.

RESOLUTIONS.

RESOLUTION

RELATIVE TO THE JOINT CONVENTION OF BOTH HOUSES TO GIVE
AUDIENCE TO THE SUB-COMMITTEE OF THE BOARD OF TRADE.

Resolved by the House, the Council concurring, That the two houses meet in joint convention in the Hall of Representatives on Monday 29th at 2:30 P. M. to give audience to the honorable gentlemen constituting the sub-committee of the board of trade of Portland Oregon on the subject of the protection of the salmon fisheries of the Columbia river and tributaries.

Passed the House of Representatives Oct. 27, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 27, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO AN EXTRA SESSION OF THE LEGISLATIVE ASSEMBLY
OF WASHINGTON TERRITORY.

WHEREAS, The sixth biennial session of the Legislative Assembly of the Territory of Washington now being held at Olympia will expire by limitation on Friday, November 9th 1877, and

WHEREAS, the period of forty days is not at this session a sufficient time within which to accomplish the legislation demanded by the wants and interests of the Territory; their being a large number of important bills, relative to schools, roads,

public revenues and other matters of the highest importance that must fail of proper consideration and passage unless the said session be extended and,

WHEREAS, The Governor of the Territory has the authority by and with the advice and consent of the President of the United States to call an extra session of said assembly, therefore

Be it resolved by the House of Representatives the Council concurring, That the Governor of this Territory be and he is hereby requested to take the necessary steps toward calling an extra session of said assembly, said extra session to commence on Saturday November 10th 1877 and to continue fifteen days unless sooner adjourned; and be it further,

Resolved That the chief clerk of the Council be and he is hereby instructed to furnish the Governor a certified copy of these resolutions.

Passed the House of Representatives Oct. 30, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 1, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO A JOINT COMMITTEE TO INQUIRE INTO THE EXPENDITURE OF FIFTEEN HUNDRED DOLLARS (\$1500.00) APPROPRIATED FOR THE TERRITORIAL UNIVERSITY.

Be it resolved by the House of Representatives the Council concurring, That a special committee of five be appointed consisting of three on the part of the House and two on the part of the Council whose business it shall be to inquire into the expenditure of the fifteen hundred dollars (\$1500.00) appropriated by an act of the Legislative Assembly of Washington Territory of 1875, for the purpose of making repairs on the University building and ascertain if the law has been complied

RESOLUTIONS.

with in regard to said appropriation and report as soon as practicable: *Provided*, That the investigations be made on or before Oct. 25th, 1877.

Passed the House of Representatives Oct. 20, 1877.

RUFUS G. NEWLAND,

Speaker of House of Representatives.

Passed the Council Oct. 20, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO NEW BUSINESS.

Resolved by the House, the Council concurring, That no new business shall be introduced after Saturday November 3d A. D. 1877, except by unanimous consent of the body in which said new business shall originate.

Passed the House of Representatives Oct. 30, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 3, 1877.

T. M. REED,

President of the Council.

RESOLUTION

TO RECEIVE BIDS FOR SAFES.

Resolved by the Council, the House concurring, That a committee of two on the part of the Council and three on the

part of the House be appointed to receive bids and to arrange for the purchase of two safes, one for the Territorial auditor and one for the treasurer; said bids to be reported to the respective branches of the Legislature from which said committee are appointed, by the eight[th] of November. That said amounts to be paid for the two safes shall not exceed one thousand dollars (\$1,000.00).

Passed the House of Representatives Nov. 7, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 7, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO THE DEATH OF SENATOR OLIVER P. MORTON.

Resolved by the Legislative Assembly of the Territory of Washington, That when the illustrious through life, the statesmen who have made their names immortal by long and patriotic service to the country, the idols of a grateful and admiring people pass away—it is eminently proper that a halt shall be called, to remind us of the lesson which death teaches.

The death of Oliver P. Morton, is such an event, and the people of Washington Territory appreciate the public loss in common with the whole nation.

The illustrious statesman and patriot whose death the people mourn, had introduced himself to our people a few short months ago; his words of encouragement, exhibiting deep interest in our growth and progress inspired the hope for valuable results to the Pacific States and Territories. But disease which so long had prostrated his physical powers—which his iron will enabled him measurably to triumph over—at length wore him out and he left our midst to get home to die in his own Indiana, a State glorified by having given birth to such a son, which he had honored by having been its best Governor.

He needs no biographical notice—the name of Morton is historic—it speaks its own eulogy. Honest, truthful, earnest and sincere, his decided course on all national questions in the heat of political strife, made for him embittered enemies, but his sincerity and patriotism always demanded the respect of his fellow citizens of every party.

His death has silenced all partisan rancor, all without distinction of political opinion gather at the tomb to do honor to the memory of the illustrious patriot the profound statesman, the honest man.

Resolved, That this tribute of the Representatives of the people of this Territory, whom he visited among his latest acts and for whom he so freely attested his warmest sympathy, be spread upon the Journals of each House, and that copies thereof, under the seal of the Territory, be forwarded by the Governor to the widow and family of the deceased Senator, and to the Vice President of the United States.

Passed the House of Representatives Nov. 5, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 9, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO HEARING THE ADDRESS OF HON. ELWOOD EVANS

Resolved by the Council, the House concurring. That the Legislative Assembly meet in joint convention October thirteenth at half past seven p. m. in the Town Hall, to hear the address of Hon. Elwood Evans.

Passed the House of Representatives Oct. 12., 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 13, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO APPOINTMENT OF A COMMITTEE TO COMPUTE MILEAGE.

Resolved by the Council, the House concurring, That the President of the Council and two members of the House of Representatives be appointed a special committee to compute the mileage of the members of the Council and House, and to report the amount each member is entitled to receive for mileage.

Passed the House of Representatives Oct. 5, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 5, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RECOMMENDING THE PURCHASE BY COUNTIES OF MUSSER'S TAX BOOK ATTACHMENT.

Be it resolved by the House, the Council concurring, That all the boards of county commissioners in this Territory are hereby recommended to purchase R. W. Musser's tax book attachment, we being satisfied of its merit and of the pressing necessity for the use of such a system.

Passed the House of Representatives Nov. 8, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Nov. 9, 1877.

T. M. REED,

President of the Council.

RESOLUTION

TO INFORM THE GOVERNOR OF THE ORGANIZATION OF BOTH
HOUSES.

Resolved by the Council, the House concurring, That a committee of two be appointed by the President to confer with a like committee chosen by the House to wait upon the Governor and inform him that both houses are now organized and ready to receive any communication he may be pleased to make

Passed the House of Representatives Oct. 2, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 2, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO PRINTING 1,000 COPIES OF THE GOVERNOR'S MESSAGE
FOR THE USE OF THE BOARD OF IMMIGRATION OF W. T.

Resolved, by the House, the Council concurring, That 1,000 copies of the Governor's message be ordered printed, for the use of the Board of Immigration of Washington Territory, 500 copies for the members of the Council.

Passed the House of Representatives Oct. 6, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 4, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO THE ENROLLMENT AND PRINTING OF ACTS, MEMORIALS AND RESOLUTIONS.

Resolved by the Council, the House of Representatives concurring, That all acts of the Legislative Assembly, and all memorials and joint resolutions shall be enrolled upon parchments or paper in a neat legible handwriting and without erasures or interlineations, and with the title, enacting clause, and sections following without break-lines paragraphs or vacant space sufficient for additions or incorporation of any word or figure and all dates and numbers shall be expressed in words and not in figures, and no ab[b]reviations shall be used.

Resolved further, That all enrolled acts, resolutions, and memorials shall be printed in separate paragraphs, each section and numbered subdivision of a section being a separate paragraph.

Passed the House of Representatives Oct. ,11 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 8, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO THE LEGALITY OF CERTAIN ACTS OF INCORPORATION OF TOWNS AND CITIES.

Resolved by the Council, the House concurring, That a special committee consisting of two on the part of the Council, and three on the part of the House, be appointed for the purpose of examining into the legality of the acts relating to the

RESOLUTIONS.

incorporation of towns and cities and to report by bill or otherwise.

Passed the House of Representatives Oct. 6, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 4, 1877.

T. M. REED,

President of the Council.

RESOLUTION

REQUESTING HON. ELWOOD EVANS TO DELIVER HIS CENTENNIAL ADDRESS BEFORE A JOINT CONVENTION OF BOTH HOUSES.

Resolved by the Council, the House concurring, That a committee of two be appointed to act with a like committee on the part of the House, to wait upon Hon. Elwood Evans and request him to deliver to a joint convention of both Houses, his address delivered at the Centennial Exhibition.

Passed the House of Representatives Oct. 6, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 5, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO THE OBTAINING AND PRINTING OF THE ADDRESS OF HON. ELWOOD EVANS.

Resolved by the Council, the House concurring, That a committee consisting of two on the part of the Council and a

like number on the part of the House, be appointed to wait upon Hon. Elwood Evans and request a copy of his address delivered before the joint convention on the thirteenth inst. for publication, and that said committee ascertain what will be the cost of printing five thousand copies of said address.

Passed the House of Representatives Oct. 17, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 17, 1877.

T. M. REED,

President of the Council.

RESOLUTION

IN REGARD TO EXTENDING INVITATIONS ON EXCURSIONS TO VISIT
PUBLIC INSTITUTIONS.

Be it resolved by the House the Council concurring, That the Speaker of the House of Representatives and the President of the Council be appointed a joint committee for the purpose of extending an invitation to the Territorial and Federal officials and reporter of press within the bar to (to) join the Legislative Assembly on its contemplated excursion to visit and inspect the several Territorial institutions on Monday October 22d, 1877.

Passed the House of Representatives Oct. 19, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 19, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO THE APPOINTMENT OF A JOINT COMMITTEE TO EXAMINE THE TERRITORIAL AUDITOR'S ACCOUNTS.

Resolved by the House, the Council concurring, That a committee of three on the part of the House and two on the part of the Council be appointed to examine the books, papers and accounts of the Territorial auditor with authority to destroy any and all paid and cancelled warrants and to report to the House and Council the result of their examination and action.

Passed the House of Representatives Oct. 8, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 6, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO THE PRINTING 1,000 ADDITIONAL COPIES OF THAT PART OF THE GOVERNOR'S MESSAGE RELATING TO THE NORTHERN PACIFIC R. R. CO.

Resolved by the House, the Council concurring, That one thousand additional copies of the Governor's message, so far as relates to the Northern Pacific railroad, be printed and that the secretary of the Territory be requested to furnish each member of Congress, a copy for reference at the coming session.

Passed the House of Representatives Oct. 4, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 4, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO APPOINTMENT OF A COMMITTEE TO MAKE A CONTRACT
FOR THE PRINTING REQUIRED AT THE SIXTH BIENNIAL
SESSION.

Resolved by the Council, the House of Representatives concurring, That a special committee, of two on the part of the Council, and three on the part of the House, be appointed to make arrangements and contract for the printing required to be done by the Territory of Washington at the sixth biennial session.

Passed the House of Representatives Oct. 4, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 2, 1877.

T. M. REED,

President of the Council.

RESOLUTION

RELATIVE TO APPOINTMENT OF A COMMITTEE TO VISIT INSANE
ASYLUM, ETC.

Resolved by the Council, the House concurring, That a committee of two on the part of the Council, and three on the part of the House, be appointed to make necessary arrangements for the members, officers, and clerks, of both Houses to visit the Insane Asylum and Territorial University on Monday October 22d, one thousand eight hundred and seventy-seven, to enquire into the condition of those institutions.

Passed the House of Representatives Oct. 12, 1877.

RUFUS G. NEWLAND,

Speaker of the House of Representatives.

Passed the Council Oct. 12, 1877.

T. M. REED,

President of the Council.

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