

S T A T U T E S

OF

WASHINGTON TERRITORY,

TENTH ANNUAL SESSION ;

HELD AT OLYMPIA, DECEMBER FIRST, 1862.

ALSO, CONTAINING THE

TERRITORIAL ORGANIC ACT,

THE DECLARATION OF INDEPENDENCE, THE FEDERAL CON-
STITUTION, THE DONATION AND PRE-EMPTION
LAWS, &C., &C., &C.

OLYMPIA :

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1863.

DECLARATION OF INDEPENDENCE.

JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA, IN CONGRESS ASSEMBLED.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed

to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evince a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states—for that purpose obstructing the laws of naturalization of foreigners, refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws—giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us :

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states :

For cutting off our trade with all parts of the world :

For imposing taxes on us without our consent :

For depriving us, in many cases, of the benefits of trial by jury :

For transporting us beyond seas to be tried for pretended offences :

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies.

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments :

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by

every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our immigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces the separation, and hold them, as we hold the rest of mankind—enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, Free and Independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members :

JOHN ADAMS,	THOMAS LYNCH, JR.,
SAMUEL ADAMS,	THOMAS M'KEAN,
JOSIAH BARTLETT,	ARTHUR MIDDLETON,
CARTER BRAXTON,	LEWIS MORRIS,
CHARLES CARROLL, of Carrolton,	ROBERT MORRIS,
SAMUEL CHASE,	JOHN MORTON,
ABRAHAM CLARK,	THOMAS NELSON, JR.,
GEORGE CLYMER,	WILLIAM PACA,
WILLIAM ELLERY,	ROBERT TREAT PAINE,
WILLIAM FLOYD,	JOHN PENN,

DECLARATION OF INDEPENDENCE.

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BENJAMIN FRANKLIN,
ELBRIDGE GERRY,
BUTTON GWINNETT,
LYMAN HALL,
JOHN HANCOCK,
BENJAMIN HARRISON,
JOHN HART,
THOMAS HEYWARD, Jr.,
JOSEPH HEWES,
WILLIAM HOOPER,
STEPHEN HOPKINS,
FRANCIS HOPKINSON,
SAMUEL HUNTINGTON,
THOMAS JEFFERSON,
FRANCIS LIGHTFOOT LEE,
RICHARD HENRY LEE,
FRANCIS LEWIS,
PHILIP LIVINGSTON,

GEORGE READ,
CÆSAR RODNEY,
GEORGE ROSS,
BENJAMIN RUSH,
EDWARD RUTLEDGE,
ROGER SHERMAN,
JAMES SMITH,
RICHARD STOCKTON,
THOMAS STONE,
GEORGE TAYLOR,
MATTHEW THORNTON,
GEORGE WALTON,
WILLIAM WHIPPLE,
WILLIAM WILLIAMS,
JAMES WILSON,
JOHN WITHERSPOON,
OLIVER WOLCOTT,
GEORGE WYTHE.

CONSTITUTION OF THE UNITED STATES.

PREAMBLE.

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

CHAPTER I.

- SEC. 1. Legislative powers.
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5. Each house shall be the judge of its own members.
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The forms of proceeding on bills.
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8. Powers of congress.
9. Importation of certain persons not to be prohibited until after 1808.
Writ of *habeas corpus*; direct taxes.
No export duty; nor preference of one state to another.
Money to be expended by legal appropriation only.
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10. Powers forbidden to the states individually.
Powers which the states can only exercise, under sanction of congress.

OF THE LEGISLATIVE POWER.

SECTION 1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

OF THE HOUSE OF REPRESENTATIVES.

SECTION 2. The house of representatives shall be composed of members chosen every second year by the people of the severcal states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when clected, be an inhabitant in that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servicc for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumcration shall be made within three years

after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

OF THE SENATE.

SECTION 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of any legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of United States.

The senate shall have sole power to try all impeachments. When

sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

MANNER OF ELECTING MEMBERS.

SECTION 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the place of choosing senators.

CONGRESS TO ASSEMBLE ANNUALEY.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

POWERS.

SECTION 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceeding, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members, of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the

consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

COMPENSATION, ETC., OF MEMBERS.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United

States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

POWERS OF CONGRESS.

SECTION 8. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment

of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

LIMITATION OF THE POWERS OF CONGRESS.

SECTION 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

LIMITATION OF THE POWERS OF THE INDIVIDUAL STATES.

SECTION 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports, or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of treasury of the United States; and all such laws shall be subject to the revision and control of congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

- SEC. 1. Executive power vested in a president.
 Electors of president and vice president.
 Meeting of electors of president, &c.
 Time of choosing electors.
 Qualifications of the president.
 In case of vacancy in the office of president, the vice president to act.
- SEC. 2. Powers of the president.
- SEC. 3. Other duties and powers.
- SEC. 4. Officers liable to impeachment.

EXECUTIVE POWER.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

MANNER OF ELECTING.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress:

but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member, or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.

[NOTE. The above paragraph annulled by amendments which prescribe mode of election.]

TIME OF CHOOSING ELECTORS.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

WHO ELIGIBLE.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

WHEN THE PRESIDENT'S POWER DEVOLVES ON THE VICE PRESIDENT.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

PRESIDENT'S COMPENSATION.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emoluments from the United States, or any of them.

OATH.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect, and defend the constitution of the United States.

POWERS AND DUTIES.

SECTION 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate to make treaties, provide two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the ap-

pointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

OFFICERS REMOVED.

SECTION 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SEC. 1. Judicial power.

Judges to hold their offices during good behavior, &c.

SEC. 2. Extent of the judicial power.

Original and appellate jurisdiction of the supreme court.

Trial of crimes to be by jury, &c.

SEC. 3. Definition of treason.

Congress to declare its punishment.

OF THE JUDICIARY.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all

cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

JURISDICTION OF SUPREME COURT.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to the law and fact, with such exceptions, and under such regulations as the congress shall make.

OF TRIALS FOR CRIMES.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

OF TREASON.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or in confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SEC. 1. Credit in one state to the public acts, &c., of another.

SEC. 2. Reciprocity of citizens.

Criminals flying from one state to another, to be delivered up on demand.

CONSTITUTION OF THE UNITED STATES.

Fugitives to be delivered up.

SEC. 3. New states may be admitted into the Union, &c.
Congress to have power over territory, &c.

SEC. 4. Republican form of government guaranteed to each state, &c.

STATE ACTS.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effects thereof.

PRIVILEGES OF CITIZENS.

SECTION 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

FUGITIVES TO BE DELIVERED UP.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

NEW STATES.

SECTION 3. New states may be admitted by the congress into the union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

TERRITORIAL AND OTHER PROPERTY.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so con-

strued as to prejudice any claims of the United States, or of any particular state.

SECTION 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

Mode of amending this constitution.

AMENDMENTS.

The congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

DEBTS.

Assumption of former debts.

This constitution, &c., the supreme law: the state judges bound thereby.

Certain officers to take oath to support constitution.

No religious test.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

SUPREME LAW OF THE LAND.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby,

anything in the constitution or laws of any state to the contrary notwithstanding.

OATH.—NO RELIGIOUS TEST.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

RATIFICATION.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

NEW HAMPSHIRE.

JOHN LANGDON,
NICHOLAS GILMAN,

MASSACHUSETTS.

NATHANIEL GORHAM,
RUFUS KING.

CONNECTICUT.

WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN.

NEW YORK.

ALEXANDER HAMILTON.

NEW JERSEY.

WILLIAM LIVINGSTON,
DAVID BREARLEY,
WILLIAM PATTERSON,
JONATHAN DAYTON.

DELAWARE.

GEORGE READ,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

MARYLAND.

JAMES M'HENRY,
DANIEL OF ST. THOMAS JENIFER,
DANIEL CARROLL.

VIRGINIA.

JOHN BLAIR,
JAMES MADISON, JR.

NORTH CAROLINA.

WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON,

CONSTITUTION OF THE UNITED STATES.

PENNSYLVANIA.

BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.

Attest,

SOUTH CAROLINA.

JOHN RUTLEDGE.
CHARLES COTTESWORTH PINCK-
NEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

GEORGIA.

WILLIAW FEW,
ABRAHAM BALDWIN.
WILLIAM JACKSON, Secretary.

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES.

- ART. 1. Restrictions on the power of congress.
2. Rights of the people to bear arms, &c.
 3. Quartering of soldiers, &c.
 4. Search warrants.
 5. Proceedings against persons charged with crimes. Their rights.
 6. Further rights.
 7. Rights of trial by jury.
 8. Excessive bail, &c.
 9. Construction of constitution.
 10. Powers reserved to the states.
 11. Restriction of judicial powers.
 12. Mode of electing the president and vice president of the United States.

FREE EXERCISE OF RELIGION.

ARTICLE THE FIRST. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

RIGHT TO BEAR ARMS.

ARTICLE THE SECOND. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

NO SOLDIER TO BE QUARTERED, ETC.

ARTICLE THE THTRD. No soldier shall, in time of peace, be quar-

tered in any house, without the consent of the owner ; nor in time of war, but in a manner to be prescribed by law.

UNREASONABLE SEARCHES PROHIBITED.

ARTICLE THE FOURTH. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized,

CRIMINAL PROCEEDINGS.

ARTICLE THE FIFTH. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb ; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law ; nor shall private property be taken for public use, without just compensation.

MODE OF TRIAL.

ARTICLE THE SIXTH. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of council for his defence.

RIGHT OF TRIAL BY JURY.

ARTICLE THE SEVENTH. In suits at common law, where the value in controversy shall exceed twelve dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

AMENDMENTS TO CONSTITUTION.

BAIL FINES. ETC.

ARTICLE THE EIGHTH. Excessive bail shall not be required, no excessive fines imposed, nor cruel and unusual punishments inflicted.

RIGHTS NOT ENUMERATED.

ARTICLE THE NINTH. The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

POWERS RESERVED

ARTICLE THE TENTH. The powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

LIMITATION OF JUDICIAL POWERS.

ARTICLE THE ELEVENTH. The judicial power of the United States shall not be construed to extend to any in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[This amendment was proposed at the second session of the third congress. It is printed in the Laws of the United States, 1st vol., p. 73, as Article 11.]

ELECTION OF PRESIDENT.

ARTICLE THE TWELFTH. The electors shall meet in their respective states and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of senate shall, in the presence of the senate and house of representatives, open all certificates, and the votes shall

then be counted:—the person having the greatest number of votes for president, shall be the president, if such a number be a majority of the whole number of electors appointed; and if no such person have a majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall be president, as in case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no such person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

[The foregoing article proposed at the first session of the eight congress, is printed in the Laws of the United States as Article 12.]

NOTE.—Another amendment was proposed as Article xiii., at the second session of the eleventh congress, but, not having been ratified by a sufficient number of states, has not yet become valid as a part of the constitution of the United States. It is erroneously given as a part of the constitution, in page 74, vol. 1. Laws of the United States.

ORGANIC ACT.

AN ACT

TO ESTABLISH THE TERRITORIAL GOVERNMENT OF WASHINGTON.

March 2d, 1853.

- SEC. 1.** Boundary of Washington territory defined.
Authority to govern Indians retained.
Missionary lands confirmed.
- SEC. 2.** Executive authority.
Powers and duties of the governor.
- SEC. 3.** Secretary to be appointed.
His tenure of office and duties.
To perform the duties of governor in his absence, &c.
- SEC. 4.** The legislature.
Council.
Representatives.
The whole not to exceed thirty.
Apportionment to be made.
Election, how held, &c.
When a new election to be ordered.
Session not to exceed sixty days.
- SEC. 5.** Qualification of voters.
Proviso as to right of suffrage.
Proviso as to soldiers, seamen, &c.
Proviso prohibiting persons in the army and navy holding office.
- SEC. 6.** Extent of legislative authority.
No banks to be incorporated or debts contracted.
Taxes to be uniform.
Laws to embrace but one object; that to be expressed in the title.
- SECS. 7 & 8.** The Legislature to provide the manner of electing all inferior officers.
- SEC. 9.** Of the judiciary.
Judicial districts.
Courts.
Clerks; clerk's fees, &c.
- SEC. 10.** An attorney and marshal to be appointed.
Their duties and fees to be the same as those of the marshal and attorney of Oregon.
- SEC. 11.** Appointment of officers.
Their salaries.

Officers of the legislative assembly; their pay.

The legislature to hold but one session annually.

Legislature no power to control disbursements for the territory.

SEC. 12. Existing laws continued in force as far as applicable.

SEC. 13. When, where, and how the first session of the legislative assembly to be held.

Seat of government to be located.

Appropriation for public buildings.

SEC. 14. Delegate, the election and pay of.

SEC. 15. Removal of cases from the courts of Oregon territory.

Proviso.

SEC. 16. Certain officers to retain their offices until others are appointed.

SEC. 17. Of the library.

SEC. 18. Courts and judicial districts.

SEC. 19. Certain officers to give bond.

SEC. 20. Reservation of sections 16 and 36 for schools.

SEC. 21. Concurrent jurisdiction of the courts in Oregon and Washington territories.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the passage of this act, all that portion of Oregon territory lying and being south of the forty-ninth degree of north latitude, and north of the middle of the main channel of the Columbia river, from its mouth to where the forty-sixth degree of north latitude crosses said river, near fort Walla-walla, thence with said forty-sixth degree of latitude to the summit of the Rocky mountains, be organized into and constitute a temporary government, by the name of the territory of Washington: *Provided,* That nothing in this act contained shall be construed to affect the authority of the government of the United States to make any regulation respecting the Indians of said territory, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never been passed: *Provided further,* That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said territory, or that may have been so occupied as missionary stations prior to the passage of the act establishing the territorial government of Oregon, together with the improvement thereon, be, and is hereby, confirmed and established to the several religious societies to which said missionary stations respectively belong.

SEC. 2. *And be it further enacted,* That the executive power and authority in and over said territory of Washington shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside in said territory,

shall be the commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs: he may grant pardons and remit fines and forfeitures for offences against the laws of said territory, and respites for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, where, by law, such commissions shall be required, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States: he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said territory shall be vested in a legislative assembly, which shall consist of a council and house of representatives. The council shall consist of nine members, having the qualification of voters, as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled in consequence of their first election, they shall be divided as equally as may be into three classes. The seats of the members of the council of the first class shall be vacated at the expiration of the first year, of the second class at the expiration of the second year, and of the third class at the expiration of the third year, so that one-third may be chosen every year; and if vacancies happen, by resignation or otherwise, the same shall be filled at the next ensuing election. The house of representatives shall, at its first session, consist of eighteen members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall con-

tinue one year. The number of representatives may be increased by the legislative assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken, by such persons, and in such mode, as the governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act; and the governor shall, by his proclamation, give at least sixty days' previous notice of such apportionment, and of the time, places, and manner of holding such election. The persons having the highest number of legal votes in each of the said council districts for members of the council, shall be declared by the governor to be duly elected to the council, and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place, and on such day, within ninety days after such elections, as the governor shall appoint. But thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular session of the legislative assembly: *Provided*, That no session in any one year shall exceed the term of sixty days, except the first session, which shall not exceed one hundred days.

SEC. 5. *And be it further enacted*, That every white male inhabitant above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the legislative assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and those above that age who shall have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States, and the provisions of this act: *And provided further*, That no officer, soldier, seaman, mariner, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote in said territory, by reason of being on service therein, unless said territory is, and has been for the period of six months, his permanent domicil: *Provided further*, That no person belonging to the army or navy of the United States shall ever be elected to, or hold any civil office or appointment in said territory.

SEC. 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation, not inconsistent with the constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly shall be submitted to the congress of the United States, and, if disapproved, shall be null and of no effect: *Provided*, That nothing in this act shall be construed to give power to incorporate a bank or any institution with banking powers, or to borrow money in the name of the territory, or to pledge the faith of the people of the same for any loan whatever, directly or indirectly. No charter granting any privileges of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds, scrip, drafts, bills of exchange, or granting any other banking powers or privileges, shall be passed by the legislative assembly: nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said territory; nor shall said legislative assembly authorize the issue of any obligation, scrip, or evidence of debt, by said terri-

tory, in any mode or manner whatever, except certificates for service to said territory. And all such laws, or any law or laws inconsistent with the provisions of this act, shall be utterly null and void. And all taxes shall be equal and uniform; and no distinctions shall be made in the assessments between the different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

SEC. 7. *And be it further enacted*, That all township, district, and county officers not herein otherwise provided for, shall be appointed or elected in such manner as shall be provided by the legislative assembly of the territory of Washington.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

SEC. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts, by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any case in which the title to land shall in anywise come in question, or where the debt or damages claimed shall exceed one hundred dollars; and the said supreme and district courts respectively shall

possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district court to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit court of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars, and in all cases where the constitution of the United States, or acts of congress, or a treaty of the United States, is brought in question; and each of said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States and the laws of said territory, as is vested in the circuit and district courts of the United States; writs of error and appeal in all such cases shall be made to the supreme court of said territory the same as in other cases. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed and may be taken to the supreme court of the United States in the same manner as from the circuit courts of the United States, where the value of the property, or the amount in controversy shall exceed two thousand dollars, and each of said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and also of all cases arising under the laws of said territory, and otherwise. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of the territory of Oregon receive for similar services.

SEC. 10. *And be it further enacted,* That there shall be appointed an attorney for said territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall receive the same fees and salary as is provided by law for the attorney of the United States for the territory of Oregon. There shall also be a marshal for the territory ap-

pointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees, as are provided by law for the marshal of the territory of Oregon, and shall, in addition, be paid the sum of two hundred dollars annually as a compensation for extra services.

SEC. 11. *And be it further enacted,* That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States.—The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and fifteen hundred dollars as superintendent of Indian affairs. The chief justice and associate justices, shall each receive an annual salary of two thousand dollars. The secretary shall receive an annual salary of fifteen hundred dollars. The said salaries shall be paid quarter yearly, from the dates of the respective appointments, at the treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive three

dollars each per day during their attendance at the session thereof, and three dollars each for every twenty miles' travel in going to and returning from said sessions, estimated according to the nearest usually travelled route. And a chief clerk, one assistant clerk, a sergeant-at-arms, and door keeper, may be chosen for each house; and the chief clerk shall receive five dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the governor shall deem it expedient and proper to call the legislature together. There shall be appropriated, annually, the sum of fifteen hundred dollars, to be expended by the governor, to defray the contingent expenses of the territory, including the salary of a clerk of the executive department; and there shall also be appropriated annually, a sufficient sum to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the governor and secretary of the territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid sums of money shall have been expended; and no expenditure to be paid out of money appropriated by congress, shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 12. *And be it further enacted*, That the laws now in force in said territory of Washington, by virtue of the legislation of congress in reference to the territory of Oregon, which have been enacted and passed subsequent to the first day of September, eighteen hundred and forty-eight, applicable to the said territory of Washington, together with the legislative enactments of the territory of Oregon, enacted and passed prior to the passage of, and not inconsistent with, the provisions of this act, and applicable to the said territory of Washington, be, and they are hereby, continued in force in said territory of Washington until they shall be repealed or amended by future legislation.

SEC. 13, *And be it further enacted*, That the legislative assembly of the territory of Washington shall hold its first session at such time and place in said territory as the governor thereof shall appoint and di-

rect; and at said first session, or as soon thereafter as they shall deem expedient, the legislative assembly shall proceed to locate the seat of government for said territory, at such place as they may deem eligible: which place, however, shall thereafter be subject to be changed by said legislative assembly. And the sum of five thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said territory of Washington, to be there applied by the governor to the erection of suitable buildings at the seat of government.

SEC. 14. *And be it further enacted,* That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as have been heretofore exercised and enjoyed by the delegates from the several other territories of the United States to the house of representatives, but the delegate first elected, shall hold his seat only during the term of congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; of which, and the time, place, and manner of holding such elections, he shall give at least sixty days' notice by proclamation; and at all subsequent elections, the time, places, and manner of holding the elections shall be prescribed by law.—The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. The delegate from said territory shall be entitled to receive the same compensation and mileage at present allowed to the delegate from the territory of Oregon.

SEC. 15. *And be it further enacted,* That all suits, complaints, process and proceedings, civil and criminal, at law and in chancery, and all indictments and informations, which shall be pending and undetermined in the courts established within and for said territory of Oregon, by act of congress, entitled "an act to establish the territorial government of Oregon," approved August fourteen, one thousand eight hundred and forty-eight, wherein the venue in said causes, suits at law, or in chancery, or criminal proceedings, shall be included within the limits hereinbefore declared and established for the said territory of Washington; then, and in that case, said actions so pending in the supreme or circuit courts of the territory of Oregon shall be, by the clerks of said courts, duly certified to the proper courts of said territory of Washington; and thereupon said causes shall, in all things concerning the same, be proceeded on, and judgments, verdicts, decrees, and sentences rendered

thereon, in the same manner as if the said territory had not been divided. All bonds, recognizances, and obligations of every kind whatsoever, valid, under existing laws, within the limits of said territory of Oregon, shall be held valid under this act, and all crimes and misdemeanors against the laws now in force within the said limits of the territory of Washington may be prosecuted, tried, and punished in the courts established by this act, and all penalties, forfeitures, actions, and causes of action, may be recovered and enforced, under this act, before the supreme and circuit courts established by this act as aforesaid; *Provided*, That no right of action whatever shall accrue against any person for any act done in pursuance of any law heretofore passed by the legislative assembly of the territory of Oregon, and which may be declared contrary to the constitution or laws of the United States.

SEC. 16, *And be it further enacted*, That all justices of the peace, constables, sheriffs, and other judicial and ministerial officers, who shall be in office within the limits of said territory of Washington when this act shall take effect, shall be and they are hereby authorized and required to continue to exercise and perform the duties of their respective offices as officers of said territory, until they or others shall be duly elected or appointed, and qualified, to fill their places in the manner herein directed, or until their offices shall be abolished.

SEC. 17. *And be it further enacted*, That the sum of five thousand dollars be, and the same is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to be expended by and under the direction of the governor of Washington, in the purchase of a library, to be kept at the seat of government for the use of the governor, legislative assembly, judges of the supreme court, secretary, marshal, attorney of the territory, and such other persons and under such regulations as shall be prescribed by law.

SEC. 18. *And be it further enacted*. That until otherwise provided for by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts by proclamation, to be issued by him; but the legislative assembly, at their first, or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the time and places of holding the courts, as to them shall seem expedient and proper.

SEC. 19. *And be it further enacted*, That all officers to be appoint-

ed by the president, by and with the advice and consent of the senate, for the territory of Washington, who, by virtue of the provisions of any law of congress now existing, or which may be enacted during the present session of congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security at such time and place and in such manner, as the secretary of the treasury may prescribe.

SEC. 20. *And be it further enacted,* That when the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market or otherwise disposing thereof, sections number sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to common schools in said territory. And in all cases where said sections sixteen and thirty-six, or either or any of them, shall be occupied by actual settlers, prior to survey thereof, the county commissioners of the counties in which said sections so occupied as aforesaid are situated, be, and they are hereby authorized to locate other lands to an equal amount in sections, or fractional sections, as the case may be, within their respective counties, in lieu of said section so occupied as aforesaid.

SEC. 21. *And be it further enacted,* That the territory of Oregon and the territory of Washington shall have concurrent jurisdiction over all offenses committed on the Columbia river, where said river forms a common boundary between said territories.

APPROVED, March 2, 1853.

ACT OF CONGRESS

CREATING THE OFFICE OF SURVEYOR GENERAL OF THE PUBLIC LANDS IN OREGON, AND TO PROVIDE FOR THE SURVEY, AND TO MAKE DONATIONS TO SETTLERS OF THE SAID PUBLIC LANDS.

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- SEC. 1. A surveyor general to be appointed, his duties and authority.
- SEC. 2. Surveyor general's office to be established where the president shall designate; salary of surveyor general—appropriation for clerk hire and office rent.
- SEC. 3. The secretary of the interior to designate the method of the survey; proviso as to land unfit for cultivation—the cost of the survey not to exceed eight dollars per mile.
- SEC. 4. Donations of 640 and 320 acres to citizens of the United States—no alien to be entitled to the benefit of this act unless his declaration of intention is made—the donation to embrace the land occupied—certain contracts to be void—persons claiming under this act not to hold under the treaty of '48.
- SEC. 5. Donation of 320 and 160 acres to citizens of the United States up to 1st Dec. 1853—no person to receive but one patent, and no mineral lands to be located.
- SEC. 6. Notifications to be filed—when, where and how record to be kept. Surveyor general to decide all conflicts of boundaries; proviso as to lines running with section lines.
- SEC. 7. Of final proof and the issuing of patents.
- SEC. 8. Upon the death of a claimant his rights to extend to his heirs at law.
- SEC. 9. Certain claims invalid.
- SEC. 10. Two townships of land granted to the territory of Oregon to establish a university.
- SEC. 11. "The Oregon City Claim" granted to the territory except certain portions thereof.
- SEC. 12. Affidavits of cultivation, &c., to be made before the surveyor general, and to be recorded by him.
- SEC. 13. Questions arising under this act to be decided by the surveyor general—duty of the surveyor general.
- SEC. 14. Land not to be claimed under this act; proviso as to military reservations.

SECTION 1. *Be it enacted by the Senate and House of Representa-*

tives of the United States of America, in Congress assembled, That a surveyor general shall be appointed for the territory of Oregon, who shall have the same authority, perform the same duties respecting the public lands and private land claims in the territory of Oregon, as are vested in and required of the surveyor of lands in the United States northwest of the Ohio, except hereinafter provided.

SEC. 2. *And be it further enacted,* That the said surveyor general shall establish his office at such place, within the said territory, as the president of the United States, may from time to time direct; he shall be allowed an annual salary of two thousand five hundred dollars, to be paid quarter yearly, and to commence at such time as he shall enter into bond, with competent security, for the faithful discharge of the duties of his office. There shall be, and hereby is appropriated the sum of four thousand dollars, or as much thereof as is necessary for clerk hire in his office: and the further sum of one thousand dollars per annum for office rent, fuel, books, stationery, and other incidental expenses of his office, to be paid out of the appropriation for surveying the public lands.

SEC. 3. *And be it further enacted,* That if, in the opinion of the secretary of the interior it be preferable, the surveys in said territory shall be made after what is known as the geodetic method, under such regulations, and upon such terms, as may be provided by the secretary of the interior, or other department having charge of the surveys of the public lands, and that said geodetic surveys shall be followed by topographical surveys, as congress may, from time to time authorize and direct; but if the present mode of survey be adhered to, then it shall be the duty of said surveyor to cause a base line, and meridian to be surveyed, marked and established, in the usual manner, at or near the mouth of the Wallamet river; and he shall also cause to be surveyed, in townships and sections, in the usual manner, and in accordance with the laws of the United States, which may be in force, the district of country lying between the summit of the Cascade mountains and the Pacific ocean, and south and north of the Columbia river: *Provided however,* that none other than township lines shall be run, where the land is deemed unfit for cultivation. That no deputy surveyor shall charge for any line except such as may be actually run and marked, nor for any line not necessary to be run; and that the whole cost of surveying shall not exceed the rate of eight dollars per mile, for every mile and part of mile actually surveyed and marked.

SEC. 4. *And be it further enacted,* That there shall be and hereby is granted to every white settler or occupant of the public lands, Ameri-

can half-breed Indians included, above the age of eighteen years, being a citizen of the United States, or having made a declaration according to law, of his intention to become a citizen, or who shall make such declaration on or before the first day of December, eighteen hundred and fifty-one, now residing in said territory, or who shall become a resident thereof, on or before the first day of December, eighteen hundred and fifty, and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act, the quantity of one-half section, or three hundred and twenty acres of land, if a single man, and if a married man, or if he shall become married within one year from the first day of December, eighteen hundred and fifty, the quantity of one section, or six hundred and forty acres, one-half to himself and the other half to his wife, to be held by her in her own right; and the surveyor general shall designate the part enuring to the husband and that to the wife, and enter the same on the records of his office; and in all cases where such married persons have complied with the provisions of this act, so as to entitle them to the grant as above provided, whether under the late provisional government of Oregon, or since, and either shall have died before patent issues, the survivor and children, or heirs of the deceased shall be entitled to the share or interest of the deceased, in equal proportions, except where the deceased shall otherwise dispose of it by testament duly and properly executed according to the laws of Oregon: *Provided*, That no alien shall be entitled to a patent to land, granted by this act, until he shall produce to the surveyor general of Oregon, record evidence that his naturalization as a citizen has been completed; but if any alien, having made his declaration of an intention to become a citizen of the United States, after the passage of this act, shall die before his naturalization shall be completed, the possessory right acquired by him under the provisions of this act, shall descend to his heirs at law, or pass to his devisees, to whom, as the case may be, the patent shall issue: *Provided further*, that in all cases provided for in this section, the donation shall embrace the land actually occupied and cultivated by the settler thereon: *Provided further*, that all future contracts, by any person or persons entitled to the benefit of this act, for the sale of the land to which he or they may be entitled under this act, before he or they have received a patent therefor, shall be void: *Provided further*, however, that this section shall not be so construed as to allow those claiming rights under the treaty with Great Britain, relative to the Oregon territory, to claim both under this grant

and the treaty, but merely to secure them the election, and confine them to a single grant of land.

SEC. 5. *And be it further enacted*, That to all white male citizens of the United States, or persons who shall have made a declaration of intention to become such, above the age of twenty-one years, emigrating to, and settling in said territory, between the first day of December, eighteen hundred and fifty, and the first day of December, eighteen hundred and fifty-three; and to all white male American citizens, not heretofore provided for, becoming one and twenty-years of age in said territory, and settling there between the times last aforesaid, who shall in other respects comply with the foregoing section and the provisions of this law, there shall be, and hereby is granted the quantity of one quarter section, or one hundred and sixty acres of land, if a single man; or if married, or if he shall become married within one year from the time of arriving in said territory, or within one year after becoming twenty-one years of age as aforesaid, then the quantity of one half section, or three hundred and twenty acres, one-half to the husband, and the other half to the wife in her own right, to be designated by the surveyor general as aforesaid: *Provided always*, that no person shall ever receive a patent for more than one donation of land in said territory in his or her own right: *Provided*, that no mineral lands shall be located or granted under the provisions of this act.

SEC. 6. *And be it further enacted*, That within three months after the survey has been made, or where the survey has been made before the settlement commenced, then within three months from the commencement of such settlement, each of said settlers shall notify the surveyor general, to be appointed under this act, of the precise tract or tracts claimed by them respectfully, under this law, and in all cases it shall be in a compact form; and where it is practicable so to do, the land so claimed shall be taken as nearly as practicable, by legal sub-divisions; but where that cannot be done, it shall be the duty of the said surveyor general to survey and mark each claim, with the boundaries as claimed, at the request and expense of the claimant; the charge for the same in such case, not to exceed the price paid for surveying the public lands. The surveyor general shall enter a description of such claims in a book to be kept by him for that purpose, and note, temporarily on the township plats, the tract or tracts of land so designated, with the boundaries; and whenever a conflict of boundaries shall arise prior to issuing the patent, the same shall be determined by the surveyor general: *Provided*, that after the first of December next, all claims shall be bounded

by lines running east and west, and north and south:—*And provided further*, that after the survey is made, all claims shall be made in conformity to the same, and in compact form.

SEC. 7. *And be it further enacted*, That within twelve months after the surveys have been made, or where the survey has been made before the settlement, then within twelve months from the time the settlement was commenced, each person claiming a donation right under this act, shall prove to the satisfaction of the surveyor general, or of such other officer as may be appointed by law for that purpose, that the settlement and cultivation required by this act had been commenced, specifying the time of the commencement; and at any time after the expiration of four years from the date of such settlement, whether made under the laws of the late provisional government or not, shall prove in like manner, by two disinterested witnesses, the fact of continued residence and cultivation required by the fourth section of this act; and upon such proof being made, the surveyor general, or other such officer appointed by law for that purpose, shall issue certificates, under such rules and regulations as may be prescribed by the commissioner of the general land office, setting forth the facts in the case, and specifying the land to which the parties are entitled. And the said surveyor general shall return the proof so taken, to the office of the commissioner of the general land office, and if the said commissioner shall find no valid objection thereto, patents shall issue for the land, according to the certificates aforesaid, upon the surrender thereof.

SEC. 8. *And be it further enacted*, That upon the death of any settler before the expiration of the four years, continued possession required by this act, all the rights of the deceased under this act, shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler, shall be sufficient to entitle them to the patent.

SEC. 9. *And be it further enacted*, That no claim to a donation right under the provisions of this act, upon sections sixteen and thirty-six, shall be valid or allowed, if the residence and cultivation upon which the same is founded, shall have commenced after the survey of the same; nor shall such claim attach to any tract or parcel of land selected for a military post, or within one mile thereof, or to any other land reserved for government purposes, unless the residence or cultivation thereof shall have commenced previous to the selection or reservation of the same for such purposes.

SEC. 10. *And be it further enacted,* That there be, and hereby is granted to the territory of Oregon, the quantity of two townships of land in said territory, west of the Cascade mountains, and to be selected in legal subdivisions after the same has been surveyed, by the legislative assembly of said territory, in such manner as it may deem proper, one to be located north, and the other south of the Columbia river, to aid in the establishment of a university in the territory of Oregon, in such manner as the said legislative assembly may direct, the selection to be approved by the surveyor general.

SEC. 11. *And be it further enacted,* That what is known as the "Oregon city claim," excepting the Abernethy Island, which is hereby confirmed to the legal assignees of the Wallamett Milling and Trading Companies, shall be set apart and be at the disposal of the legislative assembly, the proceeds thereof to be applied by said legislative assembly to the establishment and endowment of a university, to be located at such place in the territory as the legislative assembly may designate: *Provided however,* that all lots and parts of lots in said claim, sold or granted by Doctor John McLaughlin, previous to the fourth of March, eighteen hundred and forty-nine, shall be confirmed to the purchaser or donee, or their assigns, to be certified to the commissioner of the general land office, by the surveyor general, and patents to issue on said certificates, as in other cases: *Provided further,* that nothing in this act contained, shall be so construed and executed, as in any way to destroy or affect any rights to land in said territory, holden or claimed under the provisions of the treaty or treaties, existing between this country and Great Britain.

SEC. 12. *And be it further enacted,* That all persons claiming land under any of the provisions of this act, by virtue of settlement and cultivation commenced subsequent to the first of December, in the year eighteen hundred and fifty, shall first make affidavit before the surveyor general, who is hereby authorized to administer all such oaths or affirmations, or before some competent officer, that the land claimed by them is for their own use and cultivation; that they are not acting directly or indirectly, as agent for, or in employment of others, in making such claims: and that they have made no sale, or transfer, or any arrangement or agreement, for any sale, transfer or alienation of the same, or by which the said land shall enure to the benefit of any other person. And all affidavits required by this act, shall be entered of record, by the surveyor general, in a book to be kept by him for that purpose; and on proof, before a court of competent jurisdiction, that any of such oaths

or affirmations are false or fraudulent, the persons making such false or fraudulent oaths or affirmations, shall be subject to all the pains and penalties of perjury.

SEC. 13. *And be it further enacted,* That all questions arising under this act, shall be adjudged by the surveyor general as preliminary to a final decision according to law; and it shall be the duty of the surveyor general, under the direction of the commissioner of the general land office, to cause proper tract books to be opened for the lands in Oregon, and to do and perform all other acts and things necessary and proper to carry out the provisions of this act.

SEC. 14. *And be it further enacted,* That no mineral lands, nor lands reserved for salines, shall be liable to any claim under and by virtue of the provisions of this act; and that such portions of the public lands as may be designated under the authority of the president of the United States, for forts, magazines, arsenals, dock-yards, and other needful public uses, shall be reserved and excepted from the operation of this act: *Provided,* that if it shall be deemed necessary, in the judgment of the president, to include in any such reservation, the improvements of any settler made previous to the passage of this act, it shall in such case be the duty of the secretary of war, to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money not otherwise appropriated.

APPROVED, September 27, 1850.

AN ACT

TO AMEND AN ACT, ENTITLED "AN ACT TO CREATE THE OFFICE OF SURVEYOR GENERAL OF THE PUBLIC LANDS IN OREGON, AND TO PROVIDE FOR THE SURVEY, AND TO MAKE DONATIONS TO THE SETTLERS OF THE SAID PUBLIC LANDS APPROVED SEPTEMBER 27, 1850."

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- SEC. 1. Settlers allowed to purchase their lands, after two years' residence, at one dollar and twenty-five cents per acre.
- SEC. 2. How a patent may issue to such settlers.
- SEC. 3. Surveyor general to keep a record and make report to the general land office.
- SEC. 4. Surveyor general to give additional bond.
Compensation for such duties.
- SEC. 5. Provisions of the original act extended.
- SEC. 6. Certain persons debarred the benefit of the act to which this is an amendment.
- SEC. 7. Certain lands subject to private entry after the first of April, 1855.
Register and receiver to be appointed.
Their pay and duties.
- SEC. 8. Certain widows entitled to the benefit of the land law.
- SEC. 9. Limitation of reservations.
- SEC. 10. The surveyor general subject to the provisions of congress for the safe keeping and disbursements of public revenue.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That all persons who have located, or may hereafter locate lands in the territory of Oregon, in accordance with the provisions of an act, entitled "an act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands," approved September twenty seventh, eighteen hundred and fifty, and of which survey shall have been made or may hereafter be had, in lieu of the term of continued occupation after settle-

ment, as provided by said act, shall be permitted, after occupation for two years of the land so claimed, to pay into the hands of the surveyor general of said territory, at the rate of one dollar and twenty-five cents per acre for the land so claimed, located, and surveyed as aforesaid; and upon the death of any settler before the expiration of the two years' continued possession required by this act, all the rights of the deceased under this act shall descend to the heirs-at-law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act, up to the time of the death of such settler, shall be sufficient to entitle them to the patent.

SEC. 2. *And be it further enacted*, That upon the payment of money for lands as aforesaid to the said surveyor general, he shall issue his certificate of such payment, together with an accurate copy of the survey of the land so located and purchased, to the purchaser thereof, and upon the filing of which said certificate and copy of survey in the office of the commissioner of the general land office, a patent shall issue therefor as in other cases.

SEC. 3. *And be it further enacted*, That it shall be the duty of the said surveyor general to keep and preserve a record of all moneys so received, and to make out and transmit quarterly, to the commissioner of the general land office, an accurate report of the moneys so received by him as aforesaid.

SEC. 4. *And be it further enacted*, That it shall be the duty of the said surveyor general immediately upon the taking effect of this act, to enter into security in the sum of fifty thousand dollars, conditioned for the safe keeping of all moneys received by him as surveyor general according to law *Provided, however*, That, in order to compensate the surveyor general of said territory for the additional labors and responsibilities imposed upon him by this act, in receiving, safe-keeping, paying over, and accounting for the moneys aforesaid, he shall receive a per centum on all such sums, which shall include the pay for clerk hire, together with all costs and expenses incidental to such special services in any one year: *Provided*, The salary and per centage of said surveyor general, and for clerk hire, shall not exceed four thousand dollars for any one year.

SEC. 5. *And be it further enacted*, That the provisions of the act to which this is an amendment, be, and the same are hereby extended and continued in force until the first day of December, eighteen hundred and fifty-five.

SEC. 6. *And be it further enacted*, That every person entitled to the benefit of the fourth section of the act of which this is amendatory, who was resident in said territory on or prior to the first of December, eighteen hundred and fifty, shall be, and hereby is required to file with the surveyor general of said territory, in advance of the time when the public surveys shall be extended over the particular land claimed by him, where those surveys shall not have been made previous to the date of this act, a notice in writing, setting forth his claim to the benefits of said section, and citing all required particulars in reference to such settlement claim; and all persons failing to give such notice on or prior to the first of December, eighteen hundred and fifty-three, shall be thereafter debarred from ever receiving any benefit under said fourth section. And all persons who, on the first of December, eighteen hundred and fifty-three, shall have settled on surveyed lands in said territory, in virtue of the provisions of the fifth section of the act of which this is amendatory, who shall fail to give notice in writing of such settlement, specifying the particulars thereof to the surveyor general of said territory, on or prior to the first of April, eighteen hundred and fifty-five, shall be thereafter debarred from ever receiving the benefits of said fifth section.

SEC. 7. *And be it further enacted*, That from and after the first of April, eighteen hundred and fifty-five, all public lands within the limits of the townships surveyed or to be surveyed in said territory, west of the Cascade mountains, which shall not have been claimed under the provisions of the fourth and fifth sections of the act of which this is amendatory, or reserved for public uses by law or order of the president, and excepting also mineral lands, shall be subject to public sale and private entry as other public lands in the United States; and so soon as he shall deem expedient, the president of the United States shall, by and with the advice and consent of the senate, appoint a receiver of public moneys for the territory of Oregon, west of the Cascade mountains, who shall give bond and security, in the penalty of fifty thousand dollars, for the faithful discharge of his official trust, and whose duties, under the laws in relation to the public lands of the United States in said territory, shall be the same as those of other like officers of the United States, and who shall be allowed not exceeding five hundred dollars per annum for the safe keeping and accounting for the public moneys by him received, including all charges for office rent and clerk hire; and at such time as the president of the United States shall deem expedient, he shall appoint, by and with the advice and consent of the

senate, a register of the land office for the territory of Oregon, west of the Cascade mountains, who shall enter into bond, with sufficient security, for the faithful discharge of his official duties, as other like officers, and whose duties and authority, under the direction of the secretary of the interior, shall be the same as those imposed by law on other like officers, consistently with the provisions of this act and of the act of which this is amendatory, and whose compensation shall be equal to that allowed to the receiver of public moneys to be appointed under this act; and until such register shall have been appointed, and entered upon the discharge of his official duties, the surveyor general of Oregon shall perform all the duties which shall appertain to such office.

SEC. 8. *And be it further enacted*, That each widow now residing in Oregon territory, and such others as shall locate in said territory, whose husband, had he lived, would have been entitled to a claim under the provisions of the act to which this is an amendment, shall be entitled under the provisions and requirements of said act, to the same quantity of land that she would have been but for the death of her husband; and that in case the death of the widow prior to the expiration of the four years' continued possession required by said act, to which this is an amendment, all the rights of the deceased shall inure unto, and be vested in, the heirs-at-law of such widow.

SEC. 9. *And be it further enacted*, That all reservations heretofore, as well as hereafter, made in pursuance of the fourteenth section of the act to which this is an amendment, shall for magazines, arsenals, dock yards, and other needful public uses, except for forts, be limited to an amount not exceeding twenty acres for each and every of said objects at any one point or place, and for forts to an amount not exceeding six hundred and forty acres at any one point or place: *Provided*, That if it shall be deemed, in the judgment of the president, to include in any such reservation the improvement of any settler made previous to such reservation, it shall, in such case, be the duty of the secretary of war to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money in the treasury not otherwise appropriated.

SEC. 10. *And be it further enacted*, That the said surveyor general, in the discharge of his duties under this act, shall be subject to all the provisions of the act entitled "an act to provide for the better organization of the treasury, and for the collection, safe-keeping, transfer, and disbursement of the public revenue," approved August sixth, eighteen hundred and forty-six; and all acts and parts of acts in conflict with the provisions of this act be, and the same are hereby repealed.

Approved February 14, 1853.

AN ACT

TO AMEND THE ACT, APPROVED SEPTEMBER TWENTY-SEVENTH, EIGHTEEN HUNDRED AND FIFTY, TO CREATE THE OFFICE OF SURVEYOR GENERAL OF THE PUBLIC LANDS IN OREGON, &c., AND ALSO THE ACT AMENDATORY THEREOF, APPROVED FEBRUARY NINETEEN, EIGHTEEN HUNDRED AND FIFTY-THREE.

- SEC. 1. Town sites not to be included in donations heretofore made.
Proviso changing the time for the purchase of lands to one instead of two years.
2. That portion of the law making contracts for the sale of lands by settlers repealed.
3. Pre-emption privilege extended to lands in Oregon and Washington territories.
Notifications to be filed within thirty days after requested to do so.
Time further extended.
4. Two townships of land granted to this territory for university purposes.
5. Orphans entitled to 160 acres of land.
Surveyor general to set apart the land for orphans.
6. All the provisions of this act extended to Washington territory, and a register and receiver to be appointed.
Their compensation.
7. A surveyor general to be appointed.
His duties, powers and obligations the same as in Oregon.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the donations hereafter to be surveyed in Oregon and Washington territories, claimed under any of the provisions of the act to create the office of surveyor general of the public lands in Oregon, &c., approved September twenty-seven, eighteen hundred and fifty, shall in no case include a townsite, or lands settled upon for purposes of business or trade, and not for agriculture;—and all legal sub-divisions included in whole or in

part in such town sites, or settled upon for purposes of business or trade and not for agriculture, shall be subject to the operations of the act of May twenty-three, eighteen hundred and forty-four, "for the relief of citizens of towns upon lands of the United States, under certain circumstances," whether such settlements were made before or after the surveys: *Provided however*, that the period of two years' occupancy required of settlers before they can purchase the lands claimed by them under the provisions of the first section of the act of February fourteen, eighteen hundred and fifty-three, above mentioned, shall be, and the same is hereby reduced to one year.

SEC. 2. *And be it further enacted*, That the proviso to the fourth section of the act of twenty-seventh September, eighteen hundred and fifty, above mentioned, by which all contracts for the sale of lands claimed under that law, before the issue of patents therefor, are declared void, shall be, and the same is hereby repealed: *Provided*, that no sale shall be deemed valid, unless the vendor shall have resided four years upon the land.

SEC. 3. *And be it further enacted*, That the pre-emption privilege granted by the act of fourth September, eighteen hundred and forty-one, shall be, and the same is hereby extended to the lands in Oregon and Washington territories, whether surveyed or unsurveyed, not rightfully claimed, entered, or reserved, under the provisions of this act, or the acts of which it is amendatory, nor excluded by the terms of the said act of eighteen hundred and forty-one, with the exception of unsurveyed lands as above mentioned; and all settlers on unsurveyed lands in said territories shall give notice to the surveyor general, or other duly authorized officer, of the particular tract claimed under this section, within six months after the survey of such lands is made and returned. And all persons claiming donations under this act, or the acts of which it is amendatory, shall, in like manner give notice to the surveyor general, or other duly authorized officer, of the particular lands claimed as such donations, within thirty days after being requested to do so by such officer; and failing such notice in either case, the claimant or claimants shall forfeit all right and claim thereto; *Provided however*, that the time limited by the sixth section of the act of eighteen hundred and fifty-three, in which claimants under the act of eighteen hundred and fifty are required to give notice of their claims, shall be, and the same is hereby extended to the first of December, eighteen hundred and fifty-five, except in cases where the surveyor general shall request them to do so, as above provided.

SEC. 4. *And be it further enacted*, That in lieu of the two townships of land granted to the territory of Oregon by the tenth section of the act of eighteen hundred and fifty, for universities, there shall be reserved to each of the territories of Washington and Oregon, two townships of land of thirty-six sections each, to be selected in legal subdivisions for university purposes, under the direction of the legislatures of said territories respectively.

SEC. 4. *And be it further enacted*, That in any case where orphans have been, or may be left in either of the said territories, whose parents, or either of them while living, would have been entitled to a donation under this act, or either of those of which it is amendatory, said orphans shall be entitled to a quarter section of land on due proof being made to the satisfaction of the surveyor general, subject to the decision of the secretary of the Interior. Said land to be set off to them by the surveyor general in good agricultural land, not reserved, or otherwise appropriated, under any law of congress; and, in case of the death of either or any of said orphans, after their lands shall have been designated by the surveyor general, the right or rights of the deceased shall vest in the survivor or survivors.

SEC. 6. *And be it further enacted*, That all the provisions of this act, and the acts of which it is amendatory, shall be extended to all the lands in Oregon and Washington territories; and, for the purpose of carrying said acts into effect in said territories, the president shall be, and he is hereby authorized to appoint a register and receiver for each of said territories, whose powers, duties, obligations and responsibilities, shall be the same as are now prescribed by law for other land officers, and for the surveyor general of Oregon, so far as they apply to such officers. They shall keep their offices at such place as the president shall, from time to time direct; and their compensation shall be twenty-five hundred dollars each per annum, and office rent; but they shall be entitled to no fees or other emolument of any kind whatsoever, except the receiver's actual and necessary expenses in depositing; and, on satisfactory proof that either of said officers, or any other officer, has charged or received fees or other rewards not authorized by law, he shall be forthwith removed from office.

SEC. 7. *And be it further enacted*, That the territory of Washington shall be erected into a separate surveying district, and the president of the United States is hereby authorized to appoint a surveyor general for the same, who shall hold his office at such place as the president may direct, and the location thereof may be changed from time to

time, if, in the judgment of the president, the public interest should require it, and the powers, duties, obligations, responsibilities and emoluments of the said surveyor general shall be the same as are now prescribed by law for the surveyor general of Oregon.

APPROVED, 17th July, 1854.

AN ACT

TO APPROPRIATE THE PROCEEDS OF THE SALES OF THE PUBLIC LANDS, AND TO GRANT PRE-EMPTION RIGHTS.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That from and after the thirty-first day of December, in the year of our Lord, one thousand, eight hundred and forty-one, there be allowed and paid to each of the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas and Michigan, over and above what each of the said states is entitled to by the terms of the compacts entered into between them and the United States, upon their admission into the Union, the sum of ten per centum upon the nett proceeds of the sales of the public lands which, subsequent to the day aforesaid, shall be made within the limits of each of said states respectively: *Provided,* That the sum so allowed to the said states respectively, shall be in nowise affected or diminished on account of any sums which have been heretofore, or shall be hereafter applied to the construction or continuance of the Cumberland road, but that the disbursements for the road shall remain, as heretofore, chargeable on the two per centum fund provided for by compacts with several of the said states.

SEC. 2. *And be it further enacted,* That after deducting the said ten per centum, and what, by the compacts aforesaid, has heretofore been allowed to the states aforesaid, the residue of the nett proceeds, shall be ascertained by deducting from the gross proceeds all the expenditures of the year for the following objects: Salaries and expenses on account of the general land office, expenses for surveying public lands, salaries and expenses in the surveyor general's offices: salaries, commissions and allowances to the registers and receivers: the five per centum to new states of all the public lands of the United States, wherever situated, which shall be sold subsequent to the said thirty-first day of December, shall be divided among the twenty-six states of the Union and

the District of Columbia, and the territories of Wisconsin, Iowa and Florida, according to their respective federal representative population as ascertained by the last census, to be applied by the legislatures of the said states, to such purposes as the said legislatures may direct: *Provided*, that the distributive share to which the District of Columbia shall be entitled, shall be applied to free schools, or education in some other form, as congress may direct: *And provided also*, That nothing herein contained shall be construed to the prejudice of further applications for a reduction of the price of the public lands, or to the prejudice of applications for a transfer of the public lands on reasonable terms, to the states within which they lie, or to make such future disposition of the public lands, or any part thereof as congress may deem expedient.

SEC. 3. *And be it further enacted*, That the several sums of money received in the treasury as the nett proceeds of the sales of the public lands shall be paid at the treasury half yearly on the first day of January and July in each year, during the operation of this act, to such person or persons as the respective legislatures of the said States and territories, or the governors thereof in case the legislatures shall have made no such appointment, shall authorize and direct to receive the same.

SEC. 4. *And be it further enacted*, That any sum of money which, at any time may become due and payable to any state of the Union, or to the District of Columbia, by virtue of this act, as the portion of the said state or district, of the proceeds of the sales of the public lands, shall be first applied to the payment of any debt due and payable from the said state or district to the United States: *Provided*, That this shall not be construed to extend to the sums deposited with the states under the act of congress of twenty-third June, eighteen hundred and thirty-six, entitled "an act to regulate the deposits of the public money," nor to any sums apparently due to the United States as balances of debts growing out of the transactions of the revolutionary war.

SEC. 5. *And be it further enacted*, That this act shall continue and be in force until otherwise provided by law, unless the United States shall become involved in war with any foreign power, in which event, from the commencement of hostilities, this act shall be suspended during the continuance of such war: *Provided nevertheless*, That if, prior to the expiration of this act, any new state or states shall be admitted into the Union, there be assigned to such new state or states, the proportion of the proceeds accruing after their admission into the Union, to which such new state or states may be entitled, upon the principles of this

act, together with what such state or states may be entitled to by virtue of compacts to be made on their admission into the Union.

SEC. 6. *And be it further enacted*, That there shall be annually appropriated for completing the surveys of said lands, a sum not less than one hundred and fifty thousand dollars; and the minimum price at which the public lands are now sold at private sale shall not be increased, unless congress shall think proper to grant alternate sections along the line of any canal or other internal improvement, and at the same time to increase the minimum price of the sections reserved; and in case the same shall be increased by law, except as aforesaid, at any time during the operation of this act, then so much of this act as provides that the nett proceeds of the sales of the public lands shall be distributed among the several states, shall from and after the increase of the minimum price thereof, cease and become utterly null and of no effect, anything in this act to the contrary notwithstanding: *Provided*, That if, at any time during the existence of this act, there shall be an imposition of duties on imports inconsistent with the provision of the act of March second, one thousand eight hundred and thirty-three, entitled, "An act to modify the act of the fourteenth of July, one thousand eight hundred and thirty-two, and all other acts imposing duties on imports," and beyond the rate of duty fixed by that act, to-wit: twenty per-cent. on the value of such imports, or any of them, then the distribution provided in this act shall be suspended and shall so continue until the cause of its suspension shall be removed, and when removed, if not prevented by other provisions of this act, such distribution shall be resumed.

SEC. 7. *And be it further enacted*, That the secretary of the treasury may continue any land district, in which is situated the seat of government of any one of the states, and may continue the land office in such district, notwithstanding the quantity of land unsold in such district may not amount to one hundred thousand acres, when in his opinion, such continuance may be required by public convenience, or in order to close the land system in such state at a convenient point, under the provisions of the act on that subject, approved twelfth of June, one thousand eight hundred and forty.

SEC. 8. *And be it further enacted*, That there shall be granted to each state specified in the first section of this act, five hundred thousand acres of land, for purposes of internal improvement: *Provided*, that to each of the said states which has already received grants for said

purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such state has received as aforesaid, make five hundred thousand acres, the selections in all of the states, to be made within their limits, respectively, in such manner as the legislatures thereof shall direct; and located in parcels conformably to sectional divisions, and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of congress or proclamation of the president of the United States, which said locations may be made at any time after the lands of the United States in said states respectively, shall have been surveyed according to existing laws. And there shall be, and hereby is, granted to each new state that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such state before its admission, and while under a territorial government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid.

SEC. 9. *And be it further enacted,* That the lands herein granted to the states above named, shall not be disposed of at a price not less than one dollar and twenty-five cents per acre, until otherwise authorized by a law of the United States; and the net proceeds of the sales of said lands shall be faithfully applied to objects of internal improvement, within the states aforesaid, respectively, namely: roads, railways, bridges, canals and improvement of water-courses, and draining of swamps; and such roads, railways, canals, bridges and water-courses, when made or improved, shall be free for the transportation of the United States mail, and munitions of war, and for the passage of their troops, without the payment of any toll whatever.

SEC. 10. *And be it further enacted,* That from and after the passage of this act, every person being the head of a family, or widow, or single man, over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen as required by the naturalization laws, who since the first day of June, A. D., eighteen hundred and forty, has made or hereafter shall make a settlement in person on the public lands to which the Indian title had been at the time of such settlement extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be, and is hereby authorized to enter with the register of the land office for the district in which such land may lie, by legal subdi-

visions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land, subject, however, to the following limitations and exceptions. No person shall be entitled to more than one pre-emptive right by virtue of this act; no person who is the proprietor of three hundred and twenty acres of land in any state or territory of the United States, and no person who shall quit or abandon his residence on his own land to reside on the public land in the same state or territory, shall require any right of pre-emption under this act; no lands included in any reservation, by any treaty, law, or proclamation of the president of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the state of Indiana, or which may be acquired of the Wyandot tribe of Indians in the state of Ohio, or other Indian reservations to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States, alternate to other sections granted to any of the states for the construction of any canal, railroad, or other public improvement, no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and agriculture; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, or any order of the president of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing Rabbit Creek, be, and the same is hereby repealed; *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty.

SEC. 11. *And be it further enacted*, That when two or more persons shall have settled on the same quarter section of land, the right of pre-emption shall be in him or her who made the first settlement, provided that such persons shall conform to the other provisions of this act; and all questions as to the right of pre-emption arising between different settlers shall be settled by the register and receiver of the district within which the land is situated, subject to an appeal to and a revision by the secretary of the treasury of the United States.

SEC. 12. *And be it further enacted*, That prior to any entries be-

ing made under and by virtue of the provisions of this act, proof of the settlement and improvement thereby required, shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the secretary of the treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

SEC. 13. *And be it further enacted*, That before any person claiming the benefit of this act shall be allowed to enter such lands, he or she shall make oath before the receiver or register of the land district in which the land is situated, (who are hereby authorized to administer the same,) that he or she has never had the benefit of any right of pre-emption under this act; that he or she is not the owner of three hundred and twenty acres of land in any state or territory of the United States; nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the government of the United States, should enure in whole or in part, to the benefit of any person except himself or herself; and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of *bona fide* purchasers, for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the general land office, either of which shall be good and sufficient evidence that such oath was administered according to law.

SEC. 14. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been, or may be appointed by the proclamation of the president, nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required before the day appointed for the commencement of the sales aforesaid.

SEC. 15. *And be it further enacted*, That whenever any person

has settled or shall settle and improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall, in the first case, within three months after the passage of the same, and in the last, within thirty days next after the date of such settlement, file with the register of the proper district a written statement describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act: and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

SEC. 16. *And be it further enacted*, That the two per cent. of the net proceeds of the lands sold, or that may hereafter be sold, by the United States in the state of Mississippi, since the first day of December, eighteen hundred and seventeen, and by the act entitled "an act to enable the people of the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," and all acts supplemental thereto reserved for the making of a road or roads leading to said state, be, and the same is hereby relinquished to the state of Mississippi, payable in two equal instalments; the first to be paid on the first of May, eighteen hundred and forty-two, and the other on the first of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may accrue after said period: *Provided*, That the legislature of said state shall first pass an act declaring their acceptance of said relinquishment in full of said fund, accrued and accruing and also embracing a provision, to be unalterable without the consent of congress, that the whole of said two per cent. fund shall be faithfully applied to the construction of a railroad leading from Brandon, in the state of Mississippi, to the eastern boundary of said state, in the direction, as near as may be, of the towns of Selma, Cahaba, and Montgomery, in the state of Alabama.

SEC. 17. *And be it further enacted*, That the two per cent. of the net proceeds of the lands sold by the United States, in the state of Alabama, since the first day of September, eighteen hundred and nineteen,

and reserved by the act entitled "an act to enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," for the making of a road or roads leading to the said state, be, and the same is hereby relinquished to the said state of Alabama, payable in two equal instalments, the first to be paid on the first day of May, eighteen hundred and forty-two, and the other on the first day of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may, hereafter accrue: *Provided*, That the legislature of said state shall first pass an act, declaring theie acceptance of said relinquishment, and also embracing a provision, to be unalterable without the consent of congress, that the whole of said two per cent. fund shall be faithfully applied, under the direction of the legislature of Alabama, to the connection, by some means of internal improvement, of the navigable waters of the bay of Mobile with the Tennessee river, and to the construction of a continuous line of internal improvements from a point on the Chattahoochie river, opposite West Point, in Georgia, across the state of Alabama, in a direction to Jackson in the state of Mississippi.

APPROVED, September 4th, 1841.

AN ACT

TO SECURE HOMESTEADS TO ACTUAL SETTLERS ON THE PUBLIC DOMAIN.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: *Provided,* That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

SEC. 2. *And be it further enacted,* That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one or more years of age, or shall have performed service in the army or navy of the United States, and that he has never borne

arms against the Government of the United States, or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: *Provided however*, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry—or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death—shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: *And provided further*, That in case of the death of both father and mother, leaving an infant child, or children under twenty-one years of age, the right and fee shall enure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the state in which such children for the time being have their domicil, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.

SEC. 3. *And be it further enacted*, That the register of the land office shall note all such applications on the tract books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

SEC. 4. *And be it further enacted*, That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

SEC. 5. *And be it further enacted*, That, if at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then and in that event, the land so entered shall revert to the Government.

SEC. 6. *And be it further enacted*, That no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one-half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued; but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: *Provided*, That nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing pre-emption rights: *And provided further*, That all persons who may have filed their applications for a pre-emption right prior to the passage of this act shall be entitled to all privileges of this act: *Provided further*, That no person who has served, or may hereafter serve, for a period of not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years.

SEC. 7. *And be it further enacted*, That the fifth section of the act entitled "An act in addition to an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved the third of March, in the year eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits, required or authorized by this act.

SEC. 8. *And be it further enacted*, That nothing in this act shall be so construed as to prevent any person who has availed him or herself

of the benefits of the first section of this act from paying the minimum price, or the price to which the same may have graduated, for the quantity of land so entered at any time before the expiration of the five years, and obtaining a patent therefor from the Government, as in other cases provided by law, on making proof of settlement and cultivation as provided by existing laws granting pre-emption rights.

APPROVED, May 20, 1862.

A B S T R A C T

OF THE LAWS OF THE UNITED STATES IN RELATION TO THE NATURALIZATION OF ALIENS.

- SEC. 1. Who may be admitted as citizens.**
2. Form of declaration two years prior to the admission, and before whom made.
 3. Certain persons exempted from preceding conditions.
 4. Admission of minors who arrive in the United States when not over 18 years of age.
 5. When widow and children of deceased alien deemed citizens.
 6. Oath upon admission.
 7. Proof of character and residence, before admission, and by whom to be made.
 8. Alien to renounce hereditary title—record thereof—to be citizen of country at peace with the United States.
 9. As to aliens residing in the United States in 1812.
 10. As to aliens residing in the United States between 1802 and 1812.
 11. As to aliens residing in the United States between 1798 and 1802, what proof of residence required, and how set forth in record, to render admission valid.
 12. What children of aliens, &c., deemed citizens. Proscribed persons not to be admitted.
 13. As to aliens residing in the United States prior to 1795.
 14. What state courts may admit aliens.
 15. Five years' residence required before admission of alien who arrives in the United States after 1815.

SEC. 1. Any alien being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise :

SEC. 2. First : That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, two years at least before his admission, that it was *bona fide* his intention to become a citizen of the United States, and to renounce

forever, all allegiance and fidelity to ony foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject.

SEC. 3. From this condition are exempted, any alien being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, 1798, and the fourteenth day of April, 1802, and who has continued to reside within the same.

SEC. 4. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to be a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years, within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the second section, three years previous to his admission: but such alien shall make the declaration required therein, at the time of his or her admission: and shall further declare on oath, and prove to the satisfaction of the court, that for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.

SEC. 5. When any alien, who shall have complied with the condition specified in section second, and who shall have pursued the directions prescribed in the second section of the act of April 14, 1802, may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

SEC. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

SEC. 7. The court admitting such alien shall be satisfied that he

has resided within the United States five years, at least, and within the state or territory where such court is at the time held one year at least, and it shall further appear to their satisfaction that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant shall, in no case, be allowed to prove his residence.

SEC. 8. In case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state, from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien, who shall be a native citizen, denizen or subject of any country, state or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States.

SEC. 9. But persons resident within the United States or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration according to law, of their intention to become citizens of the United States: or who, by the existing laws of the United States, were, on that day, entitled to become citizens, without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies, at the times, and in the manner prescribed by the laws heretofore passed on that subject: *Provided*, That nothing herein contained, shall be taken or construed to interfere with, or prevent the apprehension and removal agreeably to law of any alien enemy, at any time previous to the actual naturalization of such alien.

SEC. 10. Any alien being a free white person, who was residing within the limits, and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided*, That whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the

United States, before the eighteenth day of June, one thousand, eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses; and such continued residence within the limits and jurisdiction of the United States, when satisfactorily proved, and the place or places, where the applicant has resided, for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court, admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

SEC. 11. Nothing in the foregoing section, ten, contained, shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand, eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States, according to section three. Whenever any person without a certificate of such declaration of intention as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

SEC. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. The right of citizenship shall not descend to persons whose fathers have never resided within the United States: And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the legislature of the state in which such person was proscribed. Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States.

SEC. 13. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the court that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and when the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making, in the court, an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceeding, re-

quired in this provision to be performed in the court, shall be recorded by the clerk thereof.

SEC. 14. Every court of record, in any individual state, having common law jurisdiction, and a seal and clerk or prothonctary, shall be considered as a district court, within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

SEC. 15. No person who shall have arrived in the United States, after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States,

ACT OF CONGRESS.

TO AMEND THE ACTS REGULATING THE FEES, COSTS, AND OTHER JUDICIAL EXPENSES OF THE GOVERNMENT IN THE STATES, TERRITORIES, AND DISTRICT OF COLUMBIA, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That hereafter, before the accounts of the United States marshals, district attorneys and clerks, are presented to the accounting officers of the Treasury Department for settlement, they shall be examined and certified to by the district judge of the United States in the district in which the officers presenting the accounts officiate, whether in the states or territories, and the same shall be subject to revision upon their merits by said accounting officer, as in case of other public accounts: *Provided, however,* That no accounts of fees or costs paid to any witness or juror, upon the order of any judge or commissioner, shall be so re-examined as to charge any marshal for an enormous taxation of such fees or costs.

SEC. 2. *And be it further enacted,* That the accounts of the commissioners of the United States circuit court shall be examined and certified to by the district judge of the district in which they are appointed, previous to their presentation to, or revision by, the accounting officers of the Treasury Department.

SEC. 3. *And be it further enacted,* That in no case shall the fees of more than four witnesses be taxed against the United States circuit courts, unless their materiality and importance shall first be approved and certified to by the United States district attorney for the district in which the examination shall take place, subject to revision, as in other cases.

SEC. 4. *And be it further enacted,* That in all these cases before

mentioned, an appeal shall lie from the decision of the accounting officers to the Secretary of the Interior.

SEC. 5. *And be it further enacted*, That the judges of the supreme court in each of the territories, or a majority of them, shall, when assembled at their respective seats of government, fix and appoint the several times and places of holding the several courts in their respective districts, and limit the duration of the terms thereof: *Provided*, That the said courts shall not be held at more than three places in any one territory: *And provided further*, That the judge or judges holding such courts shall adjourn the same, without day, at any time before the expiration of such terms, whenever, in his or their opinion, the further continuance thereof is not necessary.

SEC. 6. *And be it further enacted*, That all costs and fees for services rendered by the clerks of the several courts in the District of Columbia, chargeable to others than the United States, shall be payable immediately after the services are performed, and shall be collected by such rules and regulations, not incompatible with law, as may be prescribed by the courts in which such services are rendered, but shall in no case, be paid by the United States.

SEC. 7. *And be it further enacted*, That the several circuit and district courts of the United States, the district courts of the territories, and the criminal court of the District of Columbia, shall have the power to discharge the grand juries of the respective courts whenever they shall be of opinion that the public interests will not be subserved by a further continuance of the session of said grand jury.

SEC. 8. *And be it further enacted*, That no officer of the United States, including the bailiffs, guards, or deputies of the United States marshals, whether in the states, territories, or District of Columbia, shall be entitled to witness fees, either before a court or commissioners where he is officiating.

SEC. 9. *And be it further enacted*, That the United States shall hereafter be liable to the justices and constables of the county of Washington, in the District of Columbia, for their fees and services in cases of felony only, and so much of the fifteenth section of the act of May seventeen, eighteen hundred and forty-eight, entitled, "An act to continue, alter, and amend the charter of the city of Washington," as provided otherwise, is hereby repealed; said fees shall be paid by the United States marshal, upon the approval of the judge of the criminal court of the District of Columbia, subject to the revision by the accounting officers of the treasury, and to appeal to the Secretary of the Interior.

SEC. 10. *And be it further enacted,* That it shall be the duty of each of the judges of the supreme court of the respective territories of the United States to designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and to designate and retain but one such clerk where more than one is already appointed, and only such district clerks shall be entitled to a compensation from the United States except for fees taxable to the United States.

SEC. 11. *And be it further enacted,* That so much of the third section of the act of February twenty-six, eighteen hundred and fifty-three, entitled, "An act to regulate the fees and costs to be allowed to clerks, marshals and attorneys of the circuit and district courts of the United States, and for other purposes," as requires "that when the compensation of any clerk shall be less than five hundred dollars per annum the difference ascertained and allowed by the proper accounting officers of the treasury shall be paid to him therefrom," is hereby repealed.

SEC. 12. *And be it further enacted,* That all accounts of the United States district attorneys for services rendered in cases instituted in the United States or state courts, when the United States is a party in interest, but not of record; or in cases instituted against the officers of the United States or their deputies or duly appointed agents, for acts committed or omitted or suffered by them in the lawful discharge of their duties, shall be audited and allowed as in other cases, assimilating the fees, as near as may be, to those provided by said act of February twenty-six, eighteen hundred and fifty-three, for like or similar services.

SEC. 13. *And be it further enacted,* That no marshal or deputy marshal, of any of the courts of the United States, shall hold or exercise the duties of commissioner of any of said courts, nor receive compensation therefor.

SEC. 14. *And be it further enacted,* That whenever from any cause, it may be impossible for the district attorney to attend at court, it shall be his duty to see that a meet and proper person, learned in the law, residing as near the place where the court is held as possible, does attend to such business as may appertain to the duties of his office, and in all such cases, the fees and charges to be paid shall be only such as the district attorney would have been authorized by law to charge had he personally attended and performed the service: *Provided however,* That before any substitution is sanctioned, or payment made, the necessity thereof shall be shown to the satisfaction of the Secretary of the Interior.

SEC. 2. *And be it further enacted*, That all provisions of law inconsistent with this act are hereby repealed.

APPROVED, August 16th, 1856.

A N A C T

IN RELATION TO COURTS, AND THE HOLDING OF THE TERMS
THEROF, IN THE SEVERAL TERRITORIES IN THE
UNITED STATES.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the judges of the supreme court of each territory of the United States are hereby authorized to hold court within their respective districts in the counties wherein, by the laws of said territories, courts have been, or may be established, for the purpose of hearing and determining all matters and causes except those in which the United States is a party: *Provided*, That the expenses thereof shall be paid by the territories, or by the counties in which said courts may be held, and the United States shall, in no case, be chargeable therewith.

APPROVED, June 14, 1858.

A N A C T

TO SECURE FREEDOM TO ALL PERSONS WITHIN THE TERRITORIES
OF THE UNITED STATES.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That from and after the passage of this act, there shall be neither slavery nor involuntary servitude in any of the territories of the United States now existing, or which may at any time hereafter be formed or acquired by the United States, otherwise than in punishment of crimes whereof the party shall have been duly convicted.

APPROVED, June 19th, 1862.

AN ACT

TO PRESCRIBE AN OATH OF OFFICE, AND FOR OTHER PURPOSES.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That hereafter every person elected or appointed to any office of honor or profit under the government of the United States, either in the civil, military or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe to the following oath, or affirmation: "I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof: that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto: that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States: that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the constitution of the United States against all enemies foreign and domestic, that I will bear true faith and allegiance to the same: that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God;" which said oath so taken and signed, shall be preserved among the files of the court, house of congress, or department to which the said office may appertain. And any person who shall falsely take the said oath shall be guilty of perjury, and on conviction, in addition to the penalties now prescribed for that offence, shall be deprived of his office and rendered incapable forever after of holding any office or place under the United States.

APPROVED, July 2d, 1862.

A N A C T

IN RELATION TO THE COMPETENCY OF WITNESSES, AND FOR
OTHER PURPOSES.

SECTION. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the laws of the state in which the court shall be held, shall be the rules of decision as to the competency of witnesses in the courts of the United States, in trials at common law, in equity, and admiralty.

SEC. 4. *And be it further enacted,* That so much of section twenty-nine of an act entitled "An act to establish [the] judicial courts of the United States," approved September twenty-four, seventeen hundred and eighty-nine, as requires, in cases punished with death, twelve petit jurors to be summoned from the county where the offense was committed, be, and the same is hereby repealed.

APPROVED, July 16, 1862.

A N A C T

TO DEFINE THE PAY AND EMOLUMENTS OF CERTAIN OFFICERS
OF THE ARMY AND FOR OTHER PURPOSES.

* * * * *

SEC. 21. *And be it further enacted,* That any alien of the age of twenty-one years and upwards, who has enlisted, or shall enlist in the armies of the United States, either the regular or the volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become a citizen of the United States, and that he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and that the court admitting such alien shall, in addition to such proof of residence and good moral character as is now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States as aforesaid.

* * * * *

APPROVED, July 17th, 1862.

STATUTES OF WASHINGTON

TENTH SESSION.

A N A C T

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

- CHAPTER I.—Of the parties to civil actions.
- “ 2.—Of the limitation of civil actions.
 - “ 3.—Of venue of civil actions.
 - “ 4.—Manner of commencing civil actions.
 - “ 5.—Of pleadings.
 - “ 6.—Verification of pleadings.
 - “ 7.—General rules of pleading.
 - “ 8.—Amendments of pleading.
 - “ 9.—Of arrest.
 - “ 10.—Claim to recover personal property.
 - “ 11.—Injunctions and restraining orders.
 - “ 12.—Of attachments.
 - “ 13.—Of receivers and deposits in court.
 - “ 14.—Of issues in civil actions.
 - “ 15.—Of the trial of civil actions.
 - “ 16.—Of the verdict.
 - “ 17.—Trial by the court.
 - “ 18.—Trial by referees.
 - “ 19.—Arbitration and awards.
 - “ 20.—New trial.
 - “ 21.—Judgment in general.
 - “ 22.—Judgment by default.
 - “ 23.—Judgment by confession.
 - “ 24.—Of the mode of taking and entering judgments.
 - “ 25.—Lien of Judgments.
 - “ 26.—Of executions.
 - “ 27.—Of stay of execution.
 - “ 28.—Exemption.
 - “ 29.—Claim to property levied upon or attached.
 - “ 30.—Sales of property under execution.
 - “ 31.—Proceedings supplementary to execution.
 - “ 32.—Witnesses and evidence.

- CHAPTER 33.—Mode of procuring attendance of witnesses.
- “ 34.—Examination of parties.
- “ 35.—Of depositions of witnesses in the territory.
- “ 36.—Depositions of witnesses out of the territory.
- “ 37.—Proceedings to perpetuate testimony.
- “ 38.—Records, documents and books.
- “ 39.—Writs of error and appeals to supreme court.
- “ 40.—Set-off.
- “ 41.—Costs in civil actions.
- “ 42.—Of commissioners to convey real estate.
- “ 43.—Actions to recover and affecting real estate.
- “ 44.—Of waste.
- “ 45.—Nuisance.
- “ 46.—Foreclosure of mortgages.
- “ 47.—Execut.
- “ 48.—Actions of sureties against principals.
- “ 49.—Habeas corpus.
- “ 50.—Mandate and prohibition.
- “ 51.—Information.
- “ 52.—Miscellaneous provisions.
- “ 53.—Of construction.

CHAPTER I.

OF THE PARTIES TO CIVIL ACTIONS.

- SECTION 1. Common law declared in force.
- “ 2. Common law forms of action, and all distinction between law and equity abolished.
- “ 3. Parties to action, how designated.
- “ 4. Action to be in name of real party in interest.
When brought by an assignee, how defended.
Exception as to actions on negotiable notes, &c.
- “ 5. Executor, trustee, &c., may sue without joining person beneficially interested.
- “ 6. Husband, when to be joined.
Wife may sue alone; when.
- “ 7. Infant to appear by guardian.
Court shall appoint guardian; when.
- “ 8. Upon whose application guardian appointed.
- “ 9. All persons interested must be joined as plaintiffs or defendants.
- “ 10. In certain cases, one or more parties may sue or defend for all.
- “ 11. Plaintiff may include in same action, persons severally liable on same obligation, bills, &c.

- SECTION 12. No action shall abate by death, &c., if cause of action continues.
 " 13. When an order of substitution may issue.
 " 14. Intervention; who may petition.
 " 15. Petition for intervention, how tried, &c.
 Copy to be served.
 Court when to decide thereon.
 Liability of intervenor for costs.

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. All common law forms of action, and all distinctions between law and equity are hereby abolished; and hereafter there shall be in this territory but one form of action to establish and enforce private rights, which shall be called a civil action.

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

SEC. 4. Every action shall be presented in the name of the real party in interest, except as is otherwise provided by law; but in all cases where the action is brought by an assignee, the same defense may be set up as could be done were the suit brought in the name of the original party for the use of the assignee, except in cases where the action is upon a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration before due.

SEC. 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.

SEC. 6. A married woman may sue and be sued, plead and be impleaded, without joining or having her husband joined with her in the action.

SEC. 7. 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. 8. The guardian shall be appointed as follows:

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

2d.—When the infant is defendant, upon the application of the

infant, if he be of the age of fourteen years, and apply on the first day of the return term; if he be under the age of fourteen, or neglect to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

SEC. 9. All persons interested in the cause of action, or necessary to the complete determination of the questions involved, shall, unless otherwise provided by law, be joined as plaintiffs, when their interest is in common with the party making the complaint; and as defendants, when their interest is adverse to the plaintiff: *Provided*, That where good cause exists, which shall be made to appear in the complaint, why a party who should be a plaintiff cannot, from a want of consent on his part or otherwise, be made such complainant, he shall be made a defendant.

SEC. 10. 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. 11. 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. 12. 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, on motion, allow the action to be continued by or against his representatives or successor in interest.

SEC. 13. A defendant against whom an action is pending upon a contract, or for specific, real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person, and the adverse party apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property, or its value to such person as the court may direct; and the court may, in its discretion, make the order.

SEC. 14. Any person shall be entitled to intervene in an action who has an interest in the final determination thereof. An intervention takes place when a third person is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming

what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant.

SEC. 15. The intervention shall be by petition or complaint filed in the court in which the action is pending, and must set forth the grounds on which it is based, and a copy thereof be served upon the party or parties, against whom any thing is demanded, who shall thereupon be required to answer it, as if it were an original complaint in the action. The court shall determine upon the intervention at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention: *Provided*, That no intervention shall be cause for delay in the trial of an action between the original parties thereto, beyond the term to which the action is brought.

CHAPTER II.

OF THE LIMITATION OF CIVIL ACTIONS.

- SECTION 16. Actions to begin within the periods fixed by this act.
- “ In district court objection to be made by answer.
- “ 17. Actions which may be commenced within twenty years.
- “ 18. Actions which may be commenced within six years.
- “ 19. Actions which may be commenced within three years.
- “ 20. Actions which may be commenced within one year.
- “ 21. Actions to recover penalties to begin within one and two years after the offense is committed.
- “ 22. Action for relief not provided, to begin within two years.
- “ 23. Cause of action to date from the last item in an account.
- “ 24. This act to apply to actions in the name of the territory.
- “ 25. Actions against persons absent from the territory, or concealed.
- “ 26. Time of disability when not to be a part of the time limited.
- “ 27. Actions for and against decedents, limitation of.
- “ 28. Aliens not to count time of war.
- “ 29. Time of injunction not to be a part of time of limitation.
- “ 30. New action may be commenced within one year after reversal of judgment on error or appeal.
- “ 31. No person to plead disability unless it existed at the time.
- “ 32. When two disabilities exist, both to be removed.
- “ 33. Acknowledgments to be in writing.
The effect of principal and interest not altered.
- “ 34. Limitation to begin from the last payment made.
- “ 35. Limitation in other states or territories a bar in this.
- “ 36. This act not to affect actions already commenced.

SEC. 16. 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. 17. The period prescribed in the preceding section for the commencement of actions, shall be as follows :

Within twenty years,

1st—Actions for the recovery of real property, or for the recovery of the possession thereof, and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question, within twenty years before the commencement of the action.

SEC. 18. Within six years:

1st—An action upon a judgment or decree of any court of the United States.

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

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

SEC. 19. Within three years.

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

2d—An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another, not hereinafter enumerated.

3d—Actions upon all contracts, express or implied, which are not in writing, and do not arise out of any written instrument.

4th—An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

5th—An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this section shall not apply to action for an escape.

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

SEC. 20. Within one year.

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

2d—An action upon a statute for a forfeiture, or penalty to the territory.

3d—An action against a sheriff or other officer, for the escape of a prisoner arrested, or imprisoned on civil process.

SEC. 21. An action upon a statute for a penalty given in the whole, or in part to the person who will prosecute for the same, shall be 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. 22. An action for relief, not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

SEC. 23. 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 the time of the last item, proved in the account on either side.

SEC. 24. The limitations prescribed in this act shall apply to actions brought in the name of the territory, or for its benefit, in the same manner as to actions by private parties.

SEC. 25. If when the cause of action shall accrue against any person who shall be out of the territory, or concealed, such action may be commenced within the terms herein respectively limited after the return of such person into the territory, or the time of such concealment, and after such cause of action shall have accrued, such person shall depart from and reside out of this territory, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

SEC. 26. If a person entitled to bring an action mentioned in this act, 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

1st—Within the age of twenty-one years.

2d—Insane.

The time of such disability shall not be a part of the time limited for the commencement of action.

SEC. 27. 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. 28. 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. 29. 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. 30. 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. 31. No person shall avail himself of a disability unless it existed when his right of action accrued.

SEC. 32. 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. 33. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this act, unless the same is contained in some writing signed by the party to be charged thereby, but this section shall not alter the effect of any payment of principal or interest.

SEC. 34. 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. 35. 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.

SEC. 36. This act shall not extend to actions already commenced, but the statutes now in force shall be applicable to such cases according

to the subject of the action and without regard to form, nor shall any cause of action, barred by the statutes now in force, be revived by the provisions of this act, but upon any cause of action, now existing, time already elapsed prior to the passage of this act shall be computed as if the same had elapsed under this act.

CHAPTER III.

OF VENUE OF CIVIL ACTIONS.

SECTION 37. What actions shall be commenced in county in which the *subject*, or some part thereof is situated.

“ 38. What actions shall be tried in the district or county where the *cause* or some part thereof, arose.

“ 39. Other actions to be tried where defendant served, and of change of venue.

SEC. 37. 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:

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

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

SEC. 38. Actions for the following causes shall be tried in the district or county where the cause, or some part thereof, arose:

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

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

SEC. 39. In all cases, the action shall be tried in the district or county in which the defendant may be served with process except as is hereinafter specially provided for by law; *Provided*, that nothing contained in any of the foregoing sections shall be so construed as to prevent a change in the place of trial to the adjoining county or district, when it shall be made to appear to the satisfaction of the court, that a fair trial cannot be had in the district or county in which such action may be brought, by reason of the prejudice of the inhabitants or the

disqualification of the judge : *and provided further*, That 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.

CHAPTER IV.

MANNER OF COMMENCING CIVIL ACTIONS.

- SECTION 40. Civil action how commenced.
 Form of notice to be served on defendant.
- “ 41. Clerk to file complaint of date received.
 No complaint to be heard except by consent, unless filed before second day of term, and served twenty days or more before commencement of term.
- “ 42. Notice, by whom to be served ; return of notice.
- “ 43. Notice, upon whom to be served.
- “ 44. Publication of notice when allowed. Form thereof.
 Before publication, complaint to be filed.
 Copy of notice and complaint to be deposited in post office.
 Court to be satisfied that provisions of this act have been complied with.
 Affidavit of publisher to be filed.
 Personal service out of district or territory.
 Service when complete.
- “ 45. When notice may be re-issued.
- “ 46. Proceedings where there are two or more defendants, and part only served.
- “ 47. Proof of service of notice.
- “ 48. Court to have possession of case from time of filing complaint.
- “ 49. A voluntary appearance of defendant equivalent to personal service.
 Special appearance for certain purposes.

SEC. 40. Civil actions in the several district courts of this territory shall be commenced by the service upon the defendant of a copy of the

complaint, and a notice; which notice shall be signed by the plaintiff, or his attorney, and the copies shall be certified to be correct by the officer or person making the service. The notice shall be substantially as follows:

Territory of Washington, }
County of _____, } ss.

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

Dated, _____, 18_____.

SEC. 41. The clerk shall file all complaints where service of notice is had, as of the day they are received by him; and no complaint shall be heard at any term except by consent of parties, which shall not have been received and placed on file before the second day of the term, or which shall not appear to have been served on the defendant twenty days or more before the commencement of the term.

SEC. 42. In all cases, except where the service is made by publication, as is hereinafter provided for, the notice shall be served by the sheriff of the county, where the defendant is found, or by his deputy, or by a person other than the plaintiff, specially appointed by the judge, or clerk of the court where the action is brought. Such appointments shall, prior to the service, be made in writing, indorsed upon the notice, and signed by the party making them. The notice shall be returned to the office of the district clerk with the return of the sheriff, or his deputy, indorsed thereon; or, if served by a person specially appointed, his affidavit.

SEC. 43. The notice shall be served by delivering a copy thereof, together with a certified copy of the complaint as follows:

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

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

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

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

5th. In all other cases to the defendant personally, or, if he be not found, to some suitable person at the dwelling house or usual place of business of the defendant.

SEC. 44. In case personal service cannot be had by reason of the absence of the defendant, and the defendant is a proper party to an action where actual personal notice is not required by law, or is a proper party to an action relating to real estate in the district, it shall be proper to publish the notice, with a brief statement of the object and prayer of the petition or complaint, in some weekly newspaper published in this territory, which notice shall be published not less than once a week for two months prior to the commencement of the term of the court when such cause shall be heard. Said notice may be substantially as follows:

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

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

To ———: You are hereby notified that ——— has filed a complaint against you in said court, which will come on to be heard at the first term of the court, which shall commence more than two months after the (here insert the date of the publication,) and unless you appear at said term and answer, the same will be taken as confessed, and the prayer thereof granted. The object and prayer of said complaint is, (here insert a brief statement.)

(Signature of plaintiff or his attorney.)

(Date of filing complaint.)

Before publication is made, the complaint shall be filed with the clerk of the court where the action is to be tried, and forthwith, upon publication, the party shall cause a copy of the notice and complaint, certified by the clerk to be deposited in the post office, directed to the defendant, at his place of residence, unless it shall appear that such residence is not known to, or cannot, with reasonable diligence, be ascertained by the party; and before hearing the case, the court shall be satisfied by affidavit or other proof, that all the provisions herein contained have been complied with; and a printed copy of the notice published, with the affidavit of the printer or publisher of the newspaper that it has been published the requisite length of time, and as is herein provided, shall be placed upon file: *Provided*, That personal service out of the district or territory shall be equivalent to personal service within the district or territory, at the expiration of two months from the time service is made.

SEC. 45. Whenever it shall appear by the return of the sheriff, or

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

SEC. 46. When the action is against two or more defendants, upon a joint contract or liability, and one or more cannot be served with notice, the plaintiff may proceed to judgment against the defendant served; and at any time thereafter, while such judgment remains unsatisfied, the plaintiff, or his attorney, may issue a notice to the defendant not served, and upon the service thereof, with a copy of the complaint, upon such defendant, the same proceedings shall be had as though he had been originally served. When the action is against the defendants severally and jointly, or severally liable, he may proceed against the defendants served, in the same manner as though they were the only defendants.

SEC. 47. Proof of the service of the notice of the complaint shall be as follows:

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

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

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

4th.—The written admission of the defendant.

5th.—In case of personal service out of the district or territory, the return of the sheriff of the county in the state or territory in which the defendant was served, or the affidavit of the person appointed to make the service. In case of service, otherwise than by publication, the certificate, affidavit, or admission, must state the time, place and manner of service.

SEC. 48. The court shall be deemed to have obtained possession of the case from the time the complaint is filed with the clerk, after completion of the service, whether by publication or otherwise, and shall have control of all subsequent proceedings.

SEC. 49. A voluntary appearance of the defendant shall be equivalent to personal service, but no motion which may properly be made before demurrer or answer filed, shall be deemed a voluntary appearance.

CHAPTER V.

OF PLEADINGS.

- SECTION 50. Forms of pleadings abolished, and sufficiency of pleading, how determined.
- “ 51. Pleadings on part of plaintiff.
- “ 52. First pleading, the complaint.
- “ 53. What the complaint shall contain.
- “ 54. When the defendant may demur.
- “ 55. Demurrer shall specify grounds of objection.
- “ 56. When objection may be taken by answer.
- “ 57. When defendant may be deemed to have waived all objection.
- “ 58. What the answer shall contain
- “ 59. The defendant may set forth as many defences as he may have.
- “ 60. Defendant may demur and answer.
- “ 61. Sham pleadings may be stricken out.
- “ 62. When the plaintiff may reply; and how.
- “ 63. When judgment and a writ of damages may issue.
- “ 64. When defendant may demur to a reply.
- “ 65. Court to prescribe time for filing pleadings subsequent to complaint.

SEC. 50. All the forms of pleadings heretofore existing in civil actions, inconsistent with the provisions of this act, are abolished; and hereafter the forms of pleading, and the rules by which the sufficiency of the pleadings is to be determined, shall be those prescribed by statute.

SEC. 51. The only pleadings on the part of the plaintiff, shall be : 1st.—The complaint; 2d.—The demurrer; or 3d.—The reply. And on the part of the defendant: 1st.—The demurrer; or, 2d.—The answer.

SEC. 52. The first pleading on the part of the plaintiff, shall be the complaint.

SEC. 53. The complaint shall contain :

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

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

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

SEC. 54. The defendant may demur to the complaint, when it shall appear upon the face thereof, either :

1st.—That the court has no jurisdiction; or,

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

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

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

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

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

SEC. 55. The demurrer shall distinctly specify the grounds of objection to the complaint ; unless it does so, it may be disregarded ; it may be taken to the whole complaint ; or to any one of the alleged causes of action stated therein.

SEC. 56. When any of the matters enumerated in section fifty-four, do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 57. If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 58. The answer of the defendant shall contain :

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

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

SEC. 59. The defendant may set forth, by answer, as many defenses as he may have. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in any manner by which they may be intelligibly distinguished.

SEC. 60. The defendant may demur to one or more of the several causes of action, stated in the complaint, and answer the residue.

SEC. 61. Sham and irrelevant pleadings may be stricken out, and upon such terms as the court may in its discretion impose.

SEC. 62. When the answer contains new matter, constituting a defense or set-off, the plaintiff may reply to such new matter, denying specifically each allegation, controverted by him according to his knowledge or information thereof, sufficient to form a belief ; and he may allege in a plain and concise manner, without unnecessary repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer ; or he may demur to the same for insufficiency, stating in his demurrer the grounds thereof, and the plaintiff may demur to one or more of several defenses or set-offs in the answer, and reply to the residue.

SEC. 63. If the answer contain a statement of new matter constituting a defense, and the plaintiff fails to reply or demur thereto, within the time prescribed by law, the defendant may move in the court for such judgment as he shall be entitled to upon such statement, and if the case require it, a writ of damages may be issued.

SEC. 64. If a reply of the plaintiff to any defense set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof.

SEC. 65. The court shall establish the rules prescribing the time in which pleadings subsequent to the complaint shall be filed.

CHAPTER VI.

VERIFICATION OF PLEADINGS.

SECTION 66. Pleadings must be signed and verified.

“ 67. Verification of pleadings; how made, and by whom.

SEC. 66. Every pleading shall be subscribed by the party or his attorney, and except a demurrer shall also be verified by affidavit, as set forth in the next section.

SEC. 67. The verification shall be to the effect that the same is true, except as to matters stated on information, and as to those matters that he believes them to be true. The affidavit may be made by the party, or if there be several parties united in interest, and pleading jointly, by one of such parties, and shall be made before some officer authorized to administer oaths within this territory, or before any notary public, (whether attorney for the party or otherwise) or clerk of a court having a seal, of any other state or territory, and if made before a notary public, his official seal shall be sufficient evidence of his authority; or said affidavit may be made by an agent, attorney, or other person having a knowledge of the facts, which affidavit shall be made before an officer competent to administer oaths, within this territory or other state or territory as aforesaid. When the affidavit is made by another than the party, if made upon personal knowledge of the facts, the person making such affidavit, shall state therein the grounds of his knowledge; if made by a person having no personal knowledge of the facts, he shall set forth therein the grounds of his information; and in such latter case it shall be sufficient for the person making the affidavit, to swear that he believes the facts set forth in the pleading to be true. When a corpora-

tion is a party the verification may be made by any officer thereof, and when the territory or county, or any officer thereof is a party, the verification may be made by any person acquainted with the facts. No pleading shall be used in a criminal prosecution against the party, as proof of a fact alleged in such pleading.

CHAPTER VII.

GENERAL RULES OF PLEADING.

SECTION 68. A copy of the instrument which is the cause of action when to be furnished.

The court may order a bill of particulars.

- “ 69. Pleadings, how construed.
- “ 70. Irrelevant and redundant matter stricken out.
- “ 71. Pleading of judgments.
- “ 72. Of conditions precedent.
- “ 73. Private statutes.
- “ 74. Statement of libelous matter.
- “ 75. Answer thereto.
- “ 76. Answer of defendant in action to recover property distrained.
- “ 77. Joinder of causes of action.
- “ 78. Material allegation defined.
- “ 79. Material variances; how provided for.
- “ 80. Immaterial variances; how provided for.
- “ 81. What to be deemed a failure of proof.
- “ 82. Amendments of complaint in actions for recovery of personal property.

SEC. 68. It shall not be necessary for a party to set forth in pleading, a copy of the instrument of writing, or the items of an account therein alleged; but unless he file a verified copy thereof with such pleadings, and serve the same on the adverse party, he shall, within ten days after a demand thereof, in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a further account, when the one delivered is defective; and the court may, in all cases, order a bill of particulars of the claim of either party to be furnished.

SEC. 69. In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantiate justice between the parties.

SEC. 70. If irrelevant or redundant matter be inserted in a plead-

ing, 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. 71. 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. 72. 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. 73. 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. 74. In an action for libel or slander it shall not be necessary to state in the complaint any intrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff ; and if such allegation be controverted, the plaintiff shall be bound to establish on trial that it was so published or spoken.

SEC. 75. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages ; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 76. 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. 77. The plaintiff may unite all the causes of action which

he may have in the same complaint, but the causes of action so united must affect all the parties to the action and not require different places of trial, and must be separately stated: *Provided*, That where two or more persons are or claim to be interested in the subject matter of the suit whether adversely to the plaintiff or each other, or in any other manner, they may all be made either parties plaintiff or defendant as the case shall require and their respective rights be determined.

SEC. 78. 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.

SEC. 79. No variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually misled the adverse party to his prejudice in maintaining his action or 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. 80. 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. 81. 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. 82. Where the plaintiff in action to recover the possession of personal property on a claim of being the owner thereof, shall fail to establish on the trial such ownership, but shall prove that he is entitled to the possession thereof, by virtue of a special property therein, he shall not thereby be defeated of his action, but shall be permitted to amend on reasonable terms, his complaint, and be entitled to judgment according to the proof in the case.

CHAPTER VIII.

AMENDMENTS OF PLEADINGS.

- SECTION 83. Pleadings may be amended; when, and terms.
 Relief from judgment through mistake, surprise, &c.
 " 84. Suing a party by a fictitious name; when allowed.
 " 85. Error in pleading; when to be disregarded.
 " 86. Supplemental proceedings.

SEC. 83. At any time before judgment the court, on motion, may authorize any of the pleadings to be amended on such terms as shall be deemed reasonable; and at any time before the close of the next term of the court, after the term in which any judgment, order or other proceeding is had, the court, on motion, and upon good cause shown, after reasonable notice to the adverse party, or his attorney, may relieve a party from such judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect, and supply an omission in any proceedings.

SEC. 84. When the plaintiff shall be ignorant of the name of the defendant, it shall be so stated in the 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. 85. 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. 86. The court may, on motion, allow supplemental proceedings, showing facts which occurred after the former pleadings were filed.

CHAPTER XI.

OF ARREST.

- SECTION 87.** No arrest to be made in civil action, except on order of court.
- " 88. When defendant may be arrested.
- " 89. Before making order of arrest, court to be satisfied that case is one in which an arrest is provided for.
- " 90. Court to fix amount of defendant's bail, and also of plaintiff's bond.
- " 91. What the clerk shall require before issuing an order for arrest.
- " 92. An order for arrest may be vacated, or bail reduced.
Proceedings when vacated.
- " 93. Warrant not to issue, until complaint filed, and copy, with warrant served.
Order of arrest may issue before judgment satisfied; when.
- " 94. Warrant to be delivered to sheriff, and copy to be by him delivered to defendant.
- " 95. Execution of a warrant.
Custody of prisoner.
- " 96. Bond of defendant; how and when given, &c.
- " 97. What the warrant shall state.
- " 98. Surrender of defendant.
- " 99. *Ib.*
- " 100. Bail, how proceeded against.

- SECTION 101. Bail, how exonerated.
- “ 102. The return of an order for arrest.
 - “ 103. Notice of justification of bail.
 - “ 104. Qualifications of bail.
 - “ 105. Justification of bail.
 - “ 106. When bail found sufficient, duty of judge or justice.
 - “ 107. Deposit instead of bail.
 - “ 108. Payment by sheriff into court.
 - “ 109. When money deposited may be refunded.
 - “ 110. Disposition of funds deposited for bail.
 - “ 111. Sheriff when liable as bail.
His discharge from liability.
 - “ 112. Proceedings, in case judgment be recovered against sheriff.
 - “ 113. Bail, when liable to sheriff.

SEC. 87. No person shall be arrested or held to bail in any action except upon the order of the court where the action is brought, or a judge of the supreme court.

SEC. 88. The defendant may be arrested as is hereinafter provided in the following cases, and for the following causes only:—

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

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

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

4th—On the final judgment or order of any court' in this territory, while the same remains in force, when the defendant, having no property subject to execution, or not sufficient to satisfy such judgment, has money which he ought to apply in payment upon such judgment, and which he refuses to apply, with intent to defraud the plaintiff, or, when he refuses to comply with a legal order of the court, with intent to defraud the plaintiff; or, when any one or more of the causes exist for which an arrest is allowed in the first class of cases mentioned in this section.

SEC. 89. The court or judge making the order shall first be satis-

fied by the affidavit of the party and other proof, that the case is one in which an arrest is provided for in section eighty-eight, 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. 90. 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. 91. 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. 92. The defendant may, on motion, apply to the court to vacate the order of arrest, on the ground of insufficiency of the proof, or he may show that the facts alledged, upon which the order issued are untrue, or he may apply to have the amount of bail reduced. If the court, upon any such motion, shall vacate the order, the defendant shall be discharged from the arrest, and any bond he may have given shall be cancelled, but the action, unless dismissed for other cause, shall be conducted in the same manner as in cases where complaint and notice were duly served and filed.

SEC. 93. When an order of an arrest is granted prior to the filing of the complaint, the warrant shall not issue until the complaint is filed with the clerk, and a copy of said warrant shall be served on the defendant with the warrant; but an order of arrest may be granted at any time after the action is commenced, and before judgment is satisfied, when the party seeking the order shall comply with the preceding provisions in regard to arrests.

SEC. 94. The warrant must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy thereof.

SEC. 95. The sheriff shall execute the warrant by arresting the defendant and keeping him in custody until discharged by law. And the plaintiff, in first instance, shall be liable for the sheriff's fees, for the food and maintenance of any person under arrest, which, if required by the sheriff, shall be paid weekly in advance. And such fees, so paid, shall be added to the costs taxed or accruing in the case, and be collected as other costs. And if the plaintiff shall neglect to pay such fees for three days after a demand, in writing, upon the plaintiff or his attorney, for payment, the sheriff may discharge the defendant out of custody.

SEC. 96. The defendant may give bail by causing a bond to be executed by two or more sufficient sureties, stating their places of residence and occupations, conditioned that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment rendered therein; or, if he be arrested for the cause mentioned in the second subdivision of section eighty-eight, it shall be further conditioned, that the specific article of property, or instrument of writing which is the subject matter of the writ, shall be forthcoming, to abide any order which shall be made therein; or, if he be arrested for the cause mentioned in the third subdivision of said section, it shall be 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. 97. 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. 98. 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:—

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

2d.—Upon the production of a copy of the bail bond and sheriff's certificate, a judge of the district court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on such appli-

ation, they shall be exonerated accordingly. But this section does not apply to an arrest for the cause mentioned in the third subdivision of section eighty-eight.

SEC. 99. 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. 100. In case of failure to comply with the condition of the bond, the bail can be proceeded against by action only.

SEC. 101. The bail may be exonerated either by the death of the defendant, or his imprisonment in a penitentiary, or by his legal discharge from the obligation to render himself amenable to the proces, or by his surrender to the sheriff of the county where he was arrested, in exoneration thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the court.

SEC. 102. 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. 103. On the receipt of the notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff, or his attorney, notice of the justification of the same, or other bail, (specifying the places of residences and occupations of the latter,) before a judge of the court or justice of the peace, at a specified time and place, the time to be not less than five days nor more than ten thereafter. In case other bail be given, there must be a new bond, in the form prescribed in section ninety-six.

SEC. 104. The qualifications of bail shall be as follows:—1st.—Each of them shall be a resident of the territory; but no counsellor or attorney at law, sheriff, clerk of the district court, or other officer of such court, shall be permitted to become bail in any action. 2d.—Each of the bail shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced, as provided in this act, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge or justice, on justification, may allow more than two sureties to justify. severally, in amounts less than that

expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 105. 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,⁷ and subscribed by the bail, if required by the plaintiff.

SEC. 106. If the judge or justice find the bail sufficient, he shall annex the examination to the bond, indorse his allowance thereon, and cause them to be filed with the clerk ; and the sheriff shall thereupon be exonerated from liability.

SEC. 107. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff must thereupon give the defendant a certificate of deposit, and the defendant shall be discharged out of custody.

SEC. 108. The sheriff shall, within ten days after the deposit, pay the same into court, and take from the officer receiving the same two certificates of such payment, the one of which he must deliver to the plaintiff and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited, as in other cases of delinquency.

SEC. 109. If money be deposited, as provided in the last two sections, bail may be given and justified, upon notice as hereinbefore provided, at any time before judgment ; and thereupon, the judge before whom justification is had, shall direct in the order of allowance that the money deposited be refunded by the sheriff or clerk to the defendant ; and it shall be refunded accordingly.

SEC. 110. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and, after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

SEC. 111. If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the sheriff shall himself be liable as bail ; but he may discharge himself from such liability by the giving and justification of bail,

as is hereinbefore provided may be done by the defendant, at any time before process against the person of the defendant to enforce an order or judgment in the action.

SEC. 112. If the judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied, in the same proceedings may be had on the official bond of the sheriff to collect the deficiency, as in other cases of delinquency.

SEC. 113. 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.

- SECTION 114. Plaintiff may claim delivery of personal property.
 “ 115. When delivery claimed; what affidavit required
 “ 116. Security on the part of the plaintiff.
 “ 117. Exception to sureties, and proceedings thereon, or on failure to except.
 “ 118. Defendant; when entitled to re-delivery.
 “ 119. Justification of defendant's sureties.
 “ 120. Qualification and justification of sureties.
 “ 121. Sheriff to take property concealed; how.
 “ 122. Sheriff to keep property thus taken, and deliver the same; to whom and when.
 “ 123. Claim of property by other than the defendant or his agent.
 “ 124. Sheriff to file affidavit with proceedings thereon; with whom and when.

SEC. 114. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the notice, or at any time before answer, claim the immediate delivery of such property as herein provided.

SEC. 115. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

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

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

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

4th—The actual value of the property.

SEC. 116. 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. 117. 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. 118. 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 twenty-three.

SEC. 119. The defendant's sureties, upon a notice to the plaintiff or his attorney, of not less than two or more than six days, shall justify

in the same manner as upon bail upon arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed, or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

SEC. 120. The qualification of sureties and their justification, shall be as prescribed in respect to bail upon an order of arrest.

SEC. 121. If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or inclosure 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. 122. 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. 123. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim by a bond, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 124. 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.

- SECTION 125. Restraining orders and injunctions; by whom granted.
- “ 126. When an injunction may be granted—temporary injunction.
- “ 127. At what time an injunction may be granted.
- “ 128. Opposite party must have notice. Restraining order granted in emergency.
- “ 129. On hearing of application for, parties may read affidavits.
- “ 130. Terms may be imposed on party obtaining.
- “ 131. Bond to be given before injunction granted.
- “ 132. When injunction granted after restraining order.
- “ 134. A writ of injunction not necessary.
- “ 135. Whom an injunction shall bind.
- “ 136. When it is necessary to serve injunction.
- “ 137. Money collected on a judgment after injunction, subject to the order of the court.
- “ 138. Attachment for contempt; when granted; by whom issued and served.
- “ 139. Proceedings in contempt.
- “ 140. Person arrested for contempt to give bond.
- “ 141. Motion to dissolve or modify injunction.
- “ 142. When and what damages a court may award after an injunction is dissolved.
- “ 143. When an injunction is dissolved, what the damages shall include.
- “ 144. Injunction being dissolved, the court may reinstate the same.
- “ 145. Power of judge in vacation.

SEC. 125. 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. 126. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the de-

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

SEC. 128. 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. 129. On the hearing of an application for an injunction, each party may read affidavits.

SEC. 130. 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. 131. No injunction or restraining order shall be granted until the party asking it shall enter into bond, in such a sum as shall be fixed by the court or judge granting the order, with surty 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. 132. 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. 133. 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. 134. In application to stay proceedings after judgment, the plaintiff shall indorse upon his complaint a release of errors in the judgment whenever required to do so by the judge or court.

SEC. 135. An order of injunction shall bind every person and officer restrained from the time he is informed thereof.

SEC. 136. 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. 137. 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. 138. Whenever it shall appear to any court granting an order of injunction, or judge thereof in vacation, by affidavit, that any person has willfully disobeyed the order after notice thereof, such court or judge shall award an attachment for contempt against the party charged, or a rule to show cause why it should not issue. The attachment or rule shall be issued by the clerk of the court and directed to the sheriff, and shall be served by him.

SEC. 139. 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. 140. 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. 141. 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. 142. 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. 143. 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. 144. 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. 145. 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.

OF ATTACHMENTS.

- SECTION 146.** How an attachment may issue.
- “ 147. When a writ of attachment may issue.
- “ 148. No attachment shall issue when a person's family remains in the county.
- “ 149. What shall be deemed an attempt to conceal the absence of an individual.
- “ 150. Plaintiff to give bond.
- “ 151. Writ of attachment to be directed to the sheriff; what it shall require.
- “ 152. To whom writs of attachment may issue.
Several may issue at option of the plaintiff.
When the plaintiff shall have judgment on attachment.
- “ 153. Attachment may issue and be executed on Sunday.
- “ 154. Sheriff to attach and appraise property.
- “ 155. Writ of attachment binds from time served.
- “ 156. Personal property to be first attached.
Sheriff may pursue out of his county.
- “ 157. Estate of decedent liable to attachment, when.
- “ 158. Defendant may have his property returned on giving bond.
- “ 159. Right of property attached may be tried.
When the right is barred.
- “ 160. Claimant of property attached, to make oath respecting such property.
- “ 161. Attachment only to bind the interest of defendant.
- “ 162. When an attachment may be dismissed.
- “ 163. When a restitution of property may be made.
- “ 164. Personal property of a perishable nature, &c., may be sold by order of court.
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- “ 165. Sheriff to be allowed expenses for keeping attached property.

- SECTION 165.** Proceedings if such expense is not paid.
- “ 166. When a garnishee summons may issue.
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- “ 167. Garnishee accountable from date of service of summons.
- “ 168. Duty of garnishee when served with summons.
When he may be required to give information on oath.
- “ 169. Proceedings on failure of a garnishee to appear.
- “ 170. A garnishee may be arrested, when and how.
- “ 171. Final judgment against a garnishee.
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- “ 172. Return of “no property found,” not to affect proceedings against garnishee.
- “ 173. When a guaranties shall, or shall not pay costs.
- “ 174. A garnishee only bound as to the defendant.
- “ 175. A garnishee may pay over moneys and be released, and not to be liable for costs.
- “ 176. Examination of garnishee, and bond thereof.
- “ 177. Any creditor of defendant may summon garnishee, &c., and enforce answer like first attaching creditor
- “ 178. Defendant may move a discharge of attachment.
Judgment on attachment stands against a person as other judgment
Plaintiff may file an additional bond.
- “ 179. When judgment is rendered for defendant.
- “ 180. When for plaintiff.
Court shall give judgment against garnishee, when.
- “ 181. After judgment, property may be sold.
- “ 182. Money realized from attachment to be paid over to creditors, after paying costs.
- “ 183. Defendant entitled to an action on plaintiff's bond.
Set-off against judgment on bond.
- “ 184. Return by sheriff of order of attachment.
- “ 185. Power of judge in vacation.

SEC. 146. In an action for the recovery of money, the plaintiff at the time of commencing suit, by placing in the hands of the sheriff of the proper county, the complaint and notice, or at any time afterwards, may have the property of the defendant attached in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 147. A writ of attachment shall be issued by the clerk of the court in which the action is brought, whenever the plaintiff, his agent, or attorney, shall make affidavit that a cause of action exists against such defendant, specifying the amount of such claim over and above all legal set-offs, and the nature thereof; that suit thereon has been commenced, and that, as the affiant verily believes, the defendant,

1st—Is a foreign corporation; or

2d—Is a non-resident of this territory; or

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

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

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

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

SEC. 148. No attachment for the causes mentioned in the second and third clauses of the preceding section, shall issue against any debtor while his family remains settled within the county where he usually resided prior to his absence, if he shall not continue absent from the territory more than one year after he shall have absented himself, unless an attempt be made to conceal his absence.

SEC. 149. If the wife or family of the debtor shall refuse, or be unable to give an account of the cause of his absence, or the place where he may be found, or shall give a false account of either, such refusal, inability, or false account, shall be deemed an attempt to conceal his absence.

SEC. 150. The plaintiff, or some one in his behalf, shall, before the writ issues, execute a bond in a sum equal to the amount claimed, with sufficient surety, to be approved by the clerk, payable to the defendant, to the effect that the plaintiff will duly prosecute his proceeding in attachment, and will pay all damages which may be sustained by the defendant, if the proceedings of the plaintiff shall be wrongful and oppressive.

SEC. 151. The writ shall be directed and delivered to the sheriff. It shall require him to seize and take into his possession, the property of the defendant in his county, not exempt from execution, or sufficient thereof to satisfy the amount of the plaintiff's claim and costs.

SEC. 152. Writs of attachment may be issued to the sheriff of any other county, and several of them may, at the option of the plaintiff, be issued at the same time, or in succession : but the costs only of such as have been executed, in whole or in part, shall be removed against the defendant, unless otherwise directed by the court. The plaintiff shall not have judgment in any such action, except in some one of the following cases, viz :

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

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

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

SEC. 153. A writ of attachment may be issued and executed on Sunday, if the plaintiff will show in his affidavit that the defendant is about to abscond on that day to the injury of the plaintiff.

SEC. 154. The sheriff shall proceed, with the assistance of a disinterested and credible householder of the county, to attach the lands and tenements, goods and chattels of the defendant, subject to execution, and shall, with the assistance of such householder, make an inventory and appraisal thereof, and return the same with the writ.

SEC. 155. A writ of attachment binds the defendant's property from the time it is served.

SEC. 156. The defendant's personal property shall be first taken under an attachment; if enough thereof is not found to satisfy the plaintiff's claim and costs of the action, then his real estate. If, after a writ of attachment is placed in the hands of the sheriff, any property of the defendant is removed from the county, the sheriff may pursue and seize the same in any county within three days after the removal thereof.

SEC. 157. The estate, property, and interest descended to non-resident heirs, or devisees, or vested in non-resident executors or administrators of decedents, shall be liable to an attachment for debt, or other demands against decedent's estate.

SEC. 158. The defendant, or other person, having possession of property attached, may have the same, or any part thereof, delivered to him, by executing and delivering to the sheriff a bond, with surety approved by the sheriff, payable to the plaintiff, to the effect that such property shall be properly kept and taken care of, and shall be delivered to the sheriff on demand, or so much thereof as may be required to be sold on execution, to satisfy any judgment which may be recovered against him in the action, or that he will pay the appraised value of the property, not exceeding the amount of the judgment and costs.

SEC. 159. Whenever any person, other than the defendant, shall claim any property attached, the right of property may be tried, as in cases of property taken in execution, and the claimant, having notice of the attachment, shall be bound to prosecute his claim, as in such cases, or be barred of his right against the officer or person serving the writ,

SEC. 160. The defendant or claimant of any attached property,
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may be required by the court to attend before it, and give information, on oath, respecting the property.

SEC. 161. An attachment shall only bind the interest of the defendant, subject to the rights existing at the time of the attachment, of any other person to the property. .

SEC. 162. If the defendant, at any time before judgment, shall appear and answer to the complaint of the plaintiff, and shall satisfy the court or judge in vacation, that the property attached is exempt from attachment or that the cause alleged in the affidavit did not exist at the time the writ issued, the attachment shall be dismissed at the cost of the plaintiff, who shall also be liable to the defendant; and the attachment shall also be dismissed at any time after answer before judgment, when the defendant shall satisfy the court, or judge in vacation, that the alleged causes upon which the writ issued, have ceased to exist; in this case the costs to abide the issue of the action, and in case the attachment shall be dismissed as above, the action may be further prosecuted to final judgment, as in cases where the notice has been served.

SEC. 163. If the defendant, or other person in his behalf, at any time before judgment shall execute a bond to the plaintiff, and to each plaintiff who has filed his complaint under the attachment, with sufficient surety, to be approved by the court, clerk, or sheriff, to the effect that the defendant will appear to the action, and will perform the judgment of the court, the attachment shall be discharged, and restitution made of any property taken under it, or the proceeds thereof.

SEC. 164. When personal property attached is of a perishable nature, or its keeping expensive, the court may direct the sheriff to sell it at public auction, on reasonable notice. If the property is liable to immediate damage, the sheriff, in vacation, may sell it, by giving ten day's notice, without an order of court, and the proceeds of all sales shall be deposited with the clerk.

SEC. 165. The sheriff shall be allowed his reasonable and necessary expenses for keeping attached property, to be paid by the plaintiff and taxed in the bill of costs; and if the plaintiff shall fail to pay such expenses, as they accrue, or advance them to the sheriff, the sheriff may give the plaintiff written notice, that unless so paid or advanced, he will release the property, and after the expiration of forty-eight hours from the service of such notice upon the plaintiff or his attorney, the sheriff may, if such expenses are not paid or advanced, return, at the cost of the plaintiff, said property to the person from whom, or to the place

where it was taken ; and if all the property so attached shall be so returned, the action shall be dismissed at the cost of the plaintiff.

SEC. 166. If at the time a writ of attachment issues, or at any time afterwards, the plaintiff, or other person in his behalf, shall file with the clerk an affidavit, that he has good reason to believe that any person (naming him) has property of the defendant, of any description, in his possession or under his control, which the sheriff cannot attach by virtue of such writ ; or that such person is indebted to the defendant, or has the control or agency of any property, moneys, credits, or effects ; or that the defendant has any shares or interest in the stock of any association or corporation, the clerk shall issue a summons, notifying such person, corporation or association, to appear at the ensuing term of the court, and answer as garnishee in the action. The summons shall be directed to the sheriff, and served and returned by him in the same manner as notice is served and returned in the commencement of civil actions.

SEC. 167. From the day of the service of the summons, as provided in section one hundred and sixty-six, the garnishee shall be accountable to the plaintiff in the action, for the amount of money, property, or credits in his hands, or due and owing from him to the defendant.

SEC. 168. It shall be the duty of any officer or agent of an association or corporation, and of every other person summoned as a garnishee, when served, or within fifteen days afterwards, to furnish the sheriff with a certificate of the number of shares or rights of the defendant in the stock of such corporation or association, or a description of the property held by such corporation, association, or person belonging to or for the benefit of the defendant, or the amount of the debt owing to the defendant by such association, corporation, or person, whether due or not : which certificate shall be returned by the sheriff with the summons. If such officer, agent or person refuse so to do, he may be required by the court to attend before it, and be examined on oath concerning the same, and obedience to the orders may be enforced by attachment, as for contempt.

SEC. 169. Whenever any garnishee, being duly summoned, fail to appear and make discovery as required by law, or fails to answer or demur to the matters set forth against him in the affidavit, or additional complaint or interrogatories, such matters may be taken for confessed, or judgment entered by default, as the case may require, or he may be examined under oath touching all the matters charged in the affidavit or

additional complaint ; and all such proceedings, pleadings and process, shall be had according to the practice in other cases, as shall be necessary to determine the rights of the parties under a final judgment.

SEC. 170. If any plaintiff, or any other person in his behalf, shall satisfy the court or judge in the manner required in this act, of the existence of any of the causes authorizing an arrest in civil action against any garnishee, he may have an order for a warrant of arrest, which shall be issued, and the same proceedings had thereon as in ordinary cases of arrest in civil action.

SEC. 171. Final judgment shall not be rendered against a garnishee until the action against the defendant in attachment is determined ; and if the plaintiff fails to recover judgment either against the defendant or the garnishee, the garnishee shall be discharged, and recover his costs.

SEC. 172. The return of "no property found," upon the writ of attachment, shall not affect the proceedings against the garnishee.

SEC. 173. If the plaintiff recover judgment against the defendant, and the garnishee deliver up to the sheriff, before judgment against him, all the defendant's goods and chattels, or other effects in his possession, subject to execution, or a sufficient amount thereof to satisfy the plaintiff's judgment, or an inventory thereof, and pay to the sheriff, or into court, all moneys due from him or belonging to the defendant, or a sufficient amount thereof to satisfy the plaintiff's judgment, the costs in the proceeding against the garnishee shall be paid by the defendant ; but if the garnishee shall not appear, or if appearing, shall refuse truly to confess the matter alleged, and on the trial the plaintiff shall recover judgment against him, or if he admit that he has moneys, credits, or effects belonging to the defendant in his hands, and shall refuse to pay or deliver the same as above provided, he shall pay costs.

SEC. 174. A garnishee in attachment shall not be compelled in any case, to pay or perform any contract in any other manner, or at any other time than he would be bound to do for the defendant in attachment.

SEC. 175. A garnishee may pay the moneys owing to the defendant by him, to the sheriff, or into court, and shall be discharged from liability to the defendant for money so paid, not exceeding the plaintiff's claim ; and not be liable for costs if paid at or before the first term after the writ or notice is served upon the garnishee, or as soon as the same shall be done.

SEC. 176. A garnishee, or officer of a corporation summoned as

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

SEC. 177. Any creditor of the defendant, upon commencing his suit, or afterwards, upon filing bond and affidavit as hereinbefore required, shall have a writ of attachment issued, or any person summoned as garnishee, or held to bail, and propound interrogatories to the garnishee, and enforce answer thereto, in like manner as the first attaching creditor.

SEC. 178. Any defendant against whom a writ of attachment has been issued, may, after appearing to the action, move to have the attachment discharged and restitution awarded of any property taken under it; but an appearance to the action shall not operate to discharge the attachment, unless a bond be filed as required in section one hundred and sixty-three. If the defendant appear and judgment be rendered in favor of the plaintiff, and any part thereof remain unsatisfied, after exhausting the property attached, such judgment shall be deemed a judgment against the defendant personally, and shall have the same effect as other judgments, and execution shall issue thereon accordingly for the collection of such residue. If the plaintiff's bond be insufficient, he shall have a reasonable time to file an additional one.

SEC. 179. If the judgment in the action is rendered for the defendant, the attachment shall be discharged, and the property attached or its proceeds returned to him.

SEC. 180. If judgment in the action be rendered for the plaintiff, or one or more of several plaintiffs, and sufficient proof be made of the goods, chattels, rights, credits, moneys and effects in possession of the garnishee, the court shall also give judgment in favor of the plaintiff or plaintiffs, against the garnishee, or the property of the defendant, or both, as the case may require, which may be enforced by execution.

SEC. 181. After judgment for the plaintiff, or one or more of several plaintiffs, property attached and remaining unsold may be sold on execution as in other cases.

SEC. 182. The money realized from the attachment and garnishee, shall under the direction of the court, after paying all costs and expenses, and the debt of the creditor who commenced the attachment, provided sufficient shall have been attached on writs issued by him, be paid to the several attaching creditors in the order of their several claims as adjusted, and the surplus, if any, shall be paid to the defendant.

SEC. 183. Every defendant shall be entitled to an action on the bond of the plaintiff or creditor, by whose proceedings in attachment he shall have been aggrieved, if it shall appear that the proceedings were wrongful and oppressive, and he shall recover damages at the discretion of a jury: *Provided*, if the plaintiff shall have recovered judgment against the defendant in the original suit, the amount of such judgment may be set off against any judgment recovered on the bond.

SEC. 184. When an order of attachment is fully executed, or discharged, the sheriff shall return the same, with his proceedings therein, to the court.

SEC. 185. 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.

OF RECEIVERS, AND DEPOSITS IN COURT.

SECTION 186. When a receiver may be appointed by the court.

“ 187. No attorney or party interested, to be appointed.

“ 188. Receiver must take oath and give bond.

“ 189. Court to control certain fund.

“ 190. Court may order sheriff to compel obedience to its orders.

“ 191. Money deposited in court not to be loaned, unless by consent of all parties.

“ 192. Powers of the receiver.

“ 193. When part of the claim admitted, court may order defendant to satisfy same.

SEC. 186. A receiver may be appointed by the court in the following cases: 1st—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. 2d—In an action between partners, or other persons jointly interested in any property or fund. 3d—In all actions where it is shown that the property, fund, or rent and profits in controversy are in danger of being lost, removed, or materially injured. 4th—In action by a mortgagee, for the foreclosure of a mortgage and the sale of the mortgaged

property, when it appears that such property is in danger of being lost, removed, or materially injured; or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had. 5th. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights. 6th. And in such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

SEC. 187. No party or attorney, or other person interested in an action, shall be appointed receiver therein.

SEC. 188. 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. 189. 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. 190. 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. 191. 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. 192. The receiver shall have power, under the control of the court, to bring and defend actions; to take and keep possession of the property; to receive rents, collect debts; and, generally, to do such acts respecting the property as the court may authorize.

SEC. 193. 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.

- SECTION 194. Issues arise, when. Are of two kinds.
 “ 195. Issues of law.
 “ 196. Issues of fact.
 “ 197. Issues of law and fact in same action.
 Which to be first tried.

SEC. 194. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party, and controverted by the other, and are of two kinds—1st, of law, and 2d, of fact.

SEC. 195. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

SEC. 196. An issue of facts arises—1st, upon a material allegation in the complaint, controverted by the answer: or 2d, upon new matter, or a set-off, controverted by the reply; or 3d, upon new matter in the reply.

SEC. 197. Issues, both of law and of fact, may arise upon different parts of the pleadings in the same action. In such cases, the issues of law shall be first tried, unless the court otherwise direct.

CHAPTER XV.

OF THE TRIAL OF CIVIL ACTIONS.

- SECTION 198. How tried.
 “ 199. Affidavit required to grant a continuance.
 Trial not to be continued, when.
 “ 200. Jury, how empaneled.
 “ 201. Challenge of jurors.
 “ 202. On what ground challenges for cause may be taken.
 “ 203. How tried.
 “ 204. Oath of jurors.
 “ 205. Ballots to be returned.
 “ 206. Jury to be kept together.
 May be permitted to separate, when.
 “ 207. Proceedings when a juror is taken sick.
 “ 208. Address of counsel; charge of court; exception to charge.
 “ 208. Exception not to be regarded by supreme court, unless it specify particulars of objection.
 “ 209. Either party may request charge to be made in writing.
 May ask instructions, and if not given, may except.
 “ 210. Deliberations of the jury, where to take place.
 Duty of officer in charge.
 “ 211. Jury may take with them certain papers.
 “ 212. Jury may ask information after retiring.

SECTION 213. The court always open for purposes connected with the pending cause.

A final adjournment of the court discharges the jury.

SEC. 198. An issue of law shall be tried by the court, unless referred upon consent, as provided in this act. An issue of fact shall be tried by a jury, unless a jury trial be waived, or a reference be ordered, as provided in this act.

SEC. 199. A motion to continue a trial on the ground of the absence of evidence, shall only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued.

SEC. 200. When the action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned, who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if, from any cause, a juror or jurors be excused or discharged, the sheriff, under the direction of the court, shall summon from the bystanders, citizens of the county, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three, and such consent shall be entered by the clerk on the minutes of the trial.

SEC. 201. 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. 202. Challenges for cause may be taken on one or more of the following grounds: 1st.—A want of any of the qualifications prescribed by law to render a person competent as a juror. 2d.—Consanguinity or affinity within the third degree, to either party. 3d.—Standing in relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any bond for either party. 4th.—Interest on the part of

the juror in the event of the action, or in the main question involved in the action. 5th.—Having formed or expressed an unqualified opinion or belief as to the merits of the action. 6th.—The existence of a state of mind in the juror evincing enmity against either party, or under bias, in favor of either party.

SEC. 203. Challenges for cause shall be tried by the court. The juror challenged, and any other person as a witness, may be examined on the trial of the challenge.

SEC. 204. As soon as the jury is full, an oath or affirmation shall be administered to the jurors, in substance, that they will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give, according to the evidence.

SEC. 205. When the jury is full and sworn, the ballots containing the names of the jurors sworn shall be laid aside till the jury so sworn is discharged, and then they shall be returned to the box; and every ballot drawn containing the name of a juror not so sworn, shall be returned to the box as soon as the jury is completed.

SEC. 206. The jurors may be kept together, in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the case to the jury, be permitted to separate. In either case, they may be admonished by the court that it is their duty not to converse with any person, or allow any other person to converse with them, or among themselves on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

SEC. 207. If, after the impanneling of the jury, and before a verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury, then or afterwards, impanneled.

SEC. 208. When the evidence is completed, the plaintiff or party having the burden of proof, may, by himself, or counsel, address the court and jury upon the law and facts of the case; after which the other party may address the court and jury in like manner, and be followed by the party first addressing the court, by himself or one counsel. The court shall then proceed to charge the jury upon the law in the case, to which charge, or any part thereof, at any time before the jury return the verdict, either party shall have the right to except; but no exception shall be regarded by the supreme court, unless the same shall specify the

particular parts accepted to. No court shall charge a jury as to what facts have or have not been proved by either party.

SEC. 209. Either party shall have the privilege of requesting said charge to be made in writing, and may also ask the court to give instructions, and if the court refuse to give such instructions, the party asking the same may except.

SEC. 210. The jury may either decide in the court room, or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons. He shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered communicate to any person the state of their deliberations, or the verdict agreed upon.

SEC. 211. Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers, except depositions, which have been received as evidence on the trial, or copies of such parts of the public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession.

SEC. 212. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information may be given in the presence of, or after notice to the parties or counsel.

SEC. 213. While the jury are absent, the court may adjourn from time to time, in respect to other business; but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged. A final adjournment of the court discharges the jury.

CHAPTER XVI.

OF THE VERDICT.

SECTION 214. General and special verdicts defined.

“ 215. When and how jury may assess value of property, and damages.

“ 216. When a verdict may be general or special at discretion of jury.

and when at that of the court.

- " 217. A special shall control a general verdict ; when.
- " 218. When jury may assess amount of verdict.
- " 219. Verdict may be corrected by jury.
Jury fee to be paid before verdict recorded.

SEC. 214. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounces generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

SEC. 215. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof; and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention, or taking and withholding such property.

SEC. 216. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of facts, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered on the minutes.

SEC. 217. 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. 218. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a set-off for the recovery of money is established beyond the amount of the plaintiff's claim established, the jury shall also assess the amount of the recovery when the court give judgment for the plaintiff on the answer.

SEC. 219. If the verdict be informal, it may be corrected by the jury under the advice of the court, or the jury may be again sent out. When rendered, the party in whose favor the verdict shall be, shall, before the same is recorded, pay to the clerk the sum of twelve dollars as a jury fee, which shall be taxed against the opposite party as a part of the costs, and no other jury fee shall be taxed in the case.

CHAPTER XVII.

TRIAL BY THE COURT.

SECTION 220. When trial by jury may be waived.

" 221. Decision of court to be filed; how given.

SEC. 220. Trial by jury may, with the assent of the court, be waived by the several parties, in the manner following:

1st—By failing to appear at the trial.

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

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

SEC. 221. 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.

CHAPTER XVIII.

TRIAL BY REFEREES.

SECTION 222. Issues may be referred by consent of parties.

" 223. When a referee may be directed, without consent.

" 224. Reference may be ordered to any person or persons, not exceeding three.

" 225. Qualification of a referee.

" 226. How trial by referees shall be conducted.

" 227. Exceptions defined.

What exceptions shall be disregarded.

" 228. Exceptions to be in writing, and may be signed by judge, and filed with the clerk.

" 229. No particular form required.

" 230. When notice of exception not necessary.

SEC. 222. All or any of the issues in the action, whether of fact or law, or both, may be referred, upon the written consent of the parties.

SEC. 223. When the parties do not consent, the court, or any judge of the district court in vacation, shall, upon application of either, or of its own motion, order a reference in any civil action which has been commenced ten days or more before the application for said order. The pleadings before and at the trial by referees, shall be subject to the same

rules and restrictions in all respects as in cases tried by the court and the court may direct a reference in the following cases :

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

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

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

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

SEC. 224. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three, who reside in the county in which the action is brought, or the proceedings are triable.

SEC. 225. When the appointment of referees is made by the court or judge, each referee shall be :

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

2d. Competent as a juror between the parties.

SEC. 226. The trial by referees shall be conducted in the same manner as a trial by the court. They shall first be sworn well and faithfully to discharge their duties as such referees, and shall have the same power to administer oaths to witnesses, and to grant continuances as the court upon such trial. They shall state the facts found and the conclusions of law, separately, and their decision shall be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon at the next term of the court after the decision is made, in the same manner as if the action had been tried by the court. When the reference to report the fact, the report shall have the effect of a special verdict.

SEC. 227. An exception is an objection taken at the trial to a decision upon matter of law, whether such trial be by jury, court or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for

a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties.

SEC. 228. The point of exception shall be taken at the time when the decision is made; be particularly stated in writing, and may be signed by the judge and filed with the clerk, or may, by order of the court, be entered at large upon the journal.

SEC. 229. No particular form of exception shall be required. The objection shall be stated, with so much of the evidence or other matter as is necessary to explain it, but no more.

SEC. 230. 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 XIX.

ARBITRATION AND AWARDS.

- SECTION 231. Suits, &c., not respecting title to real estate, may be submitted to arbitration.
- “ 232. Agreement to arbitrate; requisites of.
- “ 233. Arbitrators to be sworn.
To whom and how award to be delivered.
Court to enter judgment thereon; when.
- “ 234. Compensation of referees, costs, &c.
Forfeiture by arbitrator.
- “ 235. Exception to award, for what cause may be taken.
- “ 236. Court may refer cause back to referees, and on their failure to correct, shall be possessed of the case.
- “ 237. Powers of arbitrators.
- “ 238. Laws relative to evidence and witnesses to govern in arbitrations.
- “ 239. Proceedings for contempt.
- “ 240. Taxation of costs against losing party, and execution thereon.
- “ 241. Effect of such award, and of a transcript of judgment thereon.

SEC. 231. 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. 232. 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. 233. The said arbitrators shall be duly sworn to try and determine the cause referred to them, and a just award make out under

the hands and seals of a majority of them, agreeably to the terms of the submission. Said award, together with the written agreement to submit, shall be sealed up by the referees and delivered to the party in whose favor it shall be made, who shall deliver the same, without breaking the seal, to the clerk of the district court of the district, including the county wherein said arbitration is held, who shall enter the same on record in his office. A copy of the award, signed by said arbitrators, or a majority of them, shall also be delivered to the party in whose favor it is so rendered, who shall, if the matter be not settled, serve a copy of the same on the adverse party, at least twenty days before the commencement of the next term of the said district court, and if no exceptions be filed against the same by or before the second day of said term, the judgment of the court shall be entered upon said award, with like effect as though said award were the verdict of a jury, and execution may issue therefor, and the same proceedings had as in civil actions.

SEC. 234. The referees chosen under the provisions of this act, shall each be allowed three dollars per day, to be taxed with other costs of suit; but if either party fail to appear on the day agreed upon for the referees to meet, said party shall be liable for all costs accruing that day, unless his absence was unavoidable, and shall be so decided to the satisfaction of said referees. And any arbitrator failing to attend on the day appointed, unless delayed by sickness or unavoidable accident, shall forfeit and pay the sum of five dollars to the school fund of the county, to be recovered by action before a justice of the peace in the name of the county commissioners of the county, as other fines are recoverable.

SEC. 235. The party against whom an award may be made, may except thereto for either of the following causes:

1st—That the arbitrators or umpire misbehaved themselves in the case.

2d—That they committed an error in fact or law.

3d—That the award was procured by corruption or other undue means.

SEC. 236. If, upon exceptions filed, it shall appear to the said district court, that the referees have made a mistake in fact or law, the court may refer the cause back to said referees, directing the amendment of said award forthwith, returnable to the current term of said court, and on the failure so to correct said proceedings, the court shall be possessed of the case, and proceed to its determination.

SEC. 237. Arbitrators, or a majority of them shall have power—

1st—To compel the attendance of witnesses duly notified by either party, and to enforce from either party the production of all such books, papers and documents as they may deem material to the cause.

2d—To administer oaths or affirmations to witnesses.

3d—To adjourn their meetings from day to day, or for a longer time, and also from place to place, if they think proper.

4th—To decide both the law and the fact that may be involved in the cause submitted to them.

SEC. 238. The laws in force in this territory relating to evidence, and the manner of procuring the attendance of witnesses, shall govern in arbitrations.

SEC. 239. 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. 240. 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. 241. 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 XX.

NEW TRIAL.

SECTION 242. A new trial defined.

“ 243. Causes for which a new trial may be granted.

“ 244. When facts on application for, to be stated by affidavit.
When by written statement.

“ 245. Notice of motion for; when to be given.

“ 246. When counter affidavits may be used; when to be filed.

SEC. 242. 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. 243. The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

1st—Irregularity in the 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.

2d—Misconduct of the jury or prevailing party.

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

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

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

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

SEC. 244. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last preceding section, the facts upon which it is based shall be made to appear by affidavit. For any other cause, it shall be made upon a written statement.

SEC. 245. Notice of an intended motion for a new trial shall be on the day when the verdict is rendered, or within two days thereafter; and all motions shall be made during the term at which a cause is tried, unless for good cause the court allow further time.

SEC. 246. If the application be made upon affidavit filed, the adverse party may use counter affidavits on the hearing, but such counter affidavits shall be filed with the clerk previous to the hearing.

CHAPTER XXI.

JUDGMENT IN GENERAL.

SECTION 247. A judgment defined.

“ 248. Against whom judgment may be given; extent thereof.

“ 249. In action against several defendants, court may give several judgment.

“ 250. When action may be dismissed or non-suit entered.

“ 251. In all other cases, judgment to be rendered on the merits.

SEC. 247. A judgment is the final determination of the rights of the parties to the action.

SEC. 248. Judgment may be given for one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

SEC. 249. In an action against several defendants, the court may, in its discretion, render the judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

SEC. 250. An action may be dismissed, or a judgment of non-suit entered in the following cases :

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

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

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

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

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

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

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

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

SEC. 251. In every case, other than those mentioned in the last section, the judgment shall be rendered on the merits.

CHAPTER XXII.

JUDGMENT BY DEFAULT.

SECTION 252. When judgment may be had on failure to answer.

SEC. 252. Judgment may be had on proof of the service of the complaint and notice, if the defendant fail to answer the complaint as follows :

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

ter the default of the defendant, and immediately thereafter enter judgment for the amount mentioned in the complaint, including the costs against the defendant, or against one or more of the several defendants, in the cases provided for in section forty-six of this act.

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

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

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

CHAPTER XXIII.

JUDGMENT BY CONFESSION.

SECTION 253. Clerk's duty upon confession of judgment.
His fee.

- SECTION 253. What the docket shall show.
 " 254. Effect of judgment by confession.
 From what time a lien.

SEC. 253. It shall be the duty of any clerk of a district court in this territory, on the application of any person being the original holder, or assignee of such holder, of a note, bond, or other instrument of writing, in which judgment is confessed, or containing a warrant to any attorney or other person to confess a judgment, to enter judgment against the person or persons who executed the same, for the amount which from the face of said instrument may appear to be due, without the agency of an attorney, or complaint or notice filed; said judgment to bear the rate of interest specified in said note, bond or instrument of writing, and if no rate of interest is specified therein, the legal rate of interest, with such stay of execution as may be mentioned therein; for which entry, said clerk shall be entitled to receive from said defendant a fee of one dollar. Said clerk shall particularly enter on his docket the date and tenor of the instrument of writing on which said judgment is founded, which shall have the same force and effect as if complaint and notice had been duly served and filed, or judgment obtained in open court, and in term time: and the defendant shall not be liable for any other costs of enforcing the collection thereof.

SEC. 254. Judgments confessed in accordance with the preceding section shall be similar in all respects to other judgments, and shall take effect and be a lien from the day upon which they are rendered: *Provided*, That a certified transcript thereof shall be filed in the office of the auditor of the county in which property may be situated, before such judgment shall be a lien thereon.

CHAPTER XXIV.

OF THE MODE OF TAKING AND ENTERING JUDGMENTS.

- SECTION 255. Judgment in trials by jury, when to be entered.
 " 256. When case is reserved for argument, by whom and when it may be brought up.
 " 257. Judgment for excess, in set-off.
 " 258. Judgment for possession.
 Judgment for return of property.
 " 259. Clerk to keep all the papers in the case.
 " 260. Each clerk to keep an execution docket.
 " 261. Within what time, and what to be entered therein.
 " 262. Further entries therein.
 " 263. *Ib.*

- SECTION 264. Clerk to prefix index to docket.
- “ 265. County auditors to keep record of transcript of judgment from supreme or district courts.
What records to contain.
- “ 266. Sheriff to present execution and all proceedings had thereon, to auditor for record.
- “ 267. Clerk to keep book of levies.
What to be entered.
Index to be prefixed.

SEC. 255. 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. 256. 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. 257. 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. 258. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

SEC. 259. Immediately after entering the judgment, the clerk shall attach all the papers in the case, and carefully keep them in his office.

SEC. 260. 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. 261. Within twenty days after the close of any term of the court, the clerk shall enter in said execution docket, a statement of each final judgment rendered at such term, containing :

- 1st—The names, at length, of all the parties.
- 2d—The date of the judgment, and against whom rendered.
- 3d—The amount or nature of the judgment and costs.

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

SEC. 262. The clerk shall also enter in his execution docket, a minute, in like manner, of any transcript of a judgment from the supreme court, or from any other district court of the territory, or from a justice of the peace, when the same are presented to him for that purpose, as shall be provided for by law.

SEC. 263. 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, or any judgment, the minutes of which are entered in his execution docket, the entry shall be: "levied upon real estate," noting the date, and shall refer to the page upon the book of levies where the same is entered, as is hereinafter provided. When any execution issued to any other county, is returned, levied upon real estate in such county, the entry in the execution docket shall be "levied on real estate of ——, in —— county," noting the date, county, and defendant, whose estate is levied upon: and when the money is made, or any part thereof, the amount and time when made shall be entered; also, when a writ of error has been taken, or the judgment is appealed, 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. 264. The clerk shall prefix to the execution docket, a full and correct alphabetical index, containing the names of all persons, parties to judgments, plaintiffs and defendants, in separate columns.

SEC. 265. The auditor of each county shall keep in his office, a well-bound book, which shall be a public record, open to inspection at all reasonable hours, in which he shall enter, whenever a transcript of a judgment from the supreme or district courts, or an execution shall be presented to him for that purpose:

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

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

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

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

SEC. 266. It shall be the duty of every sheriff into whose hands an execution may come from the district or supreme courts, before he shall proceed to execute the same, to present it to the auditor of the county for record in the “execution docket.” And he shall present to the auditor, for a like purpose, copies of all levies and proceedings made and had by him under and by virtue of said execution.

SEC. 267. The clerk shall also keep in his office a well-bound book, to be called a book of levies, which shall be a public record, and open during the usual business hours to all persons desirous of inspecting the same, in which he shall enter all levies upon real estate in his county, when delivered to him by the sheriff, as provided by law. An alphabetical index shall be prefixed to the book of levies, containing the names of all persons upon whose real estate such levies have been made, and when such levies are discharged in any manner, an entry thereof shall be made in the margin of the book of levies, where the levy is recorded.

CHAPTER XXV.

LIEN OF JUDGMENTS.

SECTION 268. Rate of interest which judgments shall bear.

“ 269. Judgment a lien on real estate.

Duration of lien.

Lien to be suspended, when.

Appeal, &c., not to affect lien.

“ 270. Personal property, from what time to be held.

SEC. 268. Judgment 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. 269. The real estate of any judgment debtor, and such as he may acquire, shall be held and bound to satisfy any judgment of the

district or supreme court, or any judgment of a justice of the peace, authorized by law to be levied upon real estate, for the period of five years from the day on which said judgment was rendered: *Provided*, That unless a certified transcript of the said judgment be lodged with the county auditor of the county where the lands lie, or unless a copy of an execution, directed to the sheriff of said county, be presented to said auditor for entry in his execution docket, within twenty days after the close of the term at which it is rendered, the lien upon real estate in that county shall be suspended, until the transcript of such judgment is so lodged for entry, or the execution so presented. An appeal to the supreme court, writ of error, or stay of execution shall not affect any existing lien; and in all cases of an appeal or writ of error, the date of final judgment in the supreme court shall be the time from which said five years shall commence to run.

SEC. 270. Personal property shall only be held from the time it is actually levied upon.

CHAPTER XXVI.

OF EXECUTION.

- SECTION 271. Execution within five years.
- “ 272. After five years, execution to issue only by leave of court.
- “ 273. How judgments may be enforced.
- “ 274. Four kinds of executions. Order to collect costs.
- “ 275. Form and requisites of an execution.
- “ 276. To what counties execution may be issued.
- “ 277. Returnable within sixty days.
- “ 278. Execution against the person, in what cases issued.
Sheriff not to arrest, when.
- “ 279. Where, and at whose expense, persons arrested to be kept.
- “ 280. What property liable to execution.
- “ 281. Assignment of judgment.

SEC. 271. The party in whose favor judgment is given, may, at any time within five years thereafter, issue a writ of execution for its enforcement, as prescribed by law.

SEC. 272. After the lapse of five years from the date of the judgment, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent or non-resident, or cannot be found, in which case it may be given by publication, or in such other manner as the court shall direct. Such leave shall not be given unless it be established by oath of the party, or other

satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due.

SEC. 273. 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. 274. There shall be four kinds of executions; one against the property of the judgment debtor; another against his person, the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same; and the fourth commanding the enforcement of, or obedience to, any special order of the court. And in all cases there shall be an order to collect the costs.

SEC. 275. The writ of execution shall be issued in the name of the United States, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff of the county in which the property is situated, or coroner, when the sheriff is a party, or interested, and shall intelligibly refer to the judgment, stating the court, the district or county where the judgment was rendered, the names of the parties, the amount of the judgment, if it be for money, and the amount actually due thereon, and shall require the sheriff substantially as follows:

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

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

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

4th—If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may

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

SEC. 276. 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. 277. The sheriff shall indorse upon a writ of 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 the 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. 278. If the action be one in which the defendant may be arrested, as provided by law, an execution against the person of the judgment debtor may be issued to any county in the territory: *Provided*, That the sheriff shall not arrest the defendant, if he shall deliver to him property subject to levy sufficient to satisfy said judgment.

SEC. 279. A person arrested on execution shall be imprisoned within the jail, or the liberties thereof, and kept at his own expense, until satisfaction of the execution or his legal discharge; but the plaintiff shall be liable to the sheriff, in the first instance, for such expense, as in other cases of arrest, in the same manner, and to the same extent as herein prescribed.

SEC. 280. All property, real and personal, of the judgment debtor not exempt by law, shall be liable to execution.

SEC. 281. In all cases in which a judgment has been recovered in any of the courts of this territory, and 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 XXVII.

OF STAY OF EXECUTION.

SECTION 282. In judgments of supreme court.
In district court.

“ 283. Bond for stay of execution.

“ 284. Judgment upon stay bond at subsequent term of court.

“ 285. Qualification of sureties.

“ 286. Defendant may have stay for unexpired term.

“ 287. Bonds where filed.

SEC. 282. Stay of execution shall be allowed on judgments rendered in the supreme court and district courts as follows:

In the supreme court—

1st—On all sums under five hundred dollars, thirty days.

2d—On all sums over five, and under fifteen hundred dollars, sixty days.

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

On judgments rendered in the district court :

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

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

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

SEC. 283. 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. 284. If the judgment is not satisfied at any time after the expiration of the period for which execution had 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. 285. The sureties upon a bond for stay of execution shall possess the same qualification, and justify in the same manner as bail upon arrest, in civil actions.

SEC. 286. 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. 287. 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 XXVIII.

EXEMPTION.

SECTION 288. Separate estate of married woman, not liable for debts of husband.

 Liable for her debts before marriage.

“ 289. Schedule of property exempt from attachment or execution.

 Said property not exempt, in judgment for its price, &c.

 A mortgage on exempted property, to be executed by husband and wife.

“ 290. Of waiver of benefit of exemption.

“ 291. Defendant may select property as exempt.

“ 292. Trial of whether property is exempt.

SEC. 288. 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. 289. The following property shall be exempt from execution or attachment, except as is hereinafter specially provided:

1st—A homestead, not exceeding five hundred dollars in value, to include the dwelling house and other buildings, and the land or lots upon which they stand.

2d—All wearing apparel of every person and family.

3d—All private libraries, family pictures and keepsakes.

4th—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 in value.

5th—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 stock and retain other animals not to exceed one hundred and fifty dollars in value.

6th—To a farmer, the tools, implements and farming utensils actually used about the farm, two yoke of oxen with yokes and chains, or one span of horses with harness, and one wagon.

7th—To a mechanic, the tools and instruments used to carry on the trade, occupation or business in which he is engaged for his support, or the support of his family. Also, material not exceeding in value one hundred and twenty-five dollars.

8th—To physicians, their libraries, and medicines to the amount of one hundred and fifty dollars.

9th—To attorneys, clergymen, and other professional men, their libraries.

10th—All fire-arms kept for the use of any person or family.

11th—To any person, a canoe, skiff or small boat with its oars, sails and rigging not exceeding in value fifty dollars.

12th—To a person engaged in lightering for the support of himself and family, one or more lighters, barges or scows, and a small boat, with oars, sails and rigging, not exceeding in value, in the aggregate, two hundred dollars.

13th—A sufficient quantity of hay or grain, or feed for keeping for six weeks the animals mentioned in the several subdivisions of this section as exempted from execution and attachment.

But no article of property mentioned in this section, shall be exempt from an execution issued upon a judgment for its price, or upon a mortgage thereon, or for any tax levied thereon, *Provided*, That no mortgage made by a married man of any property exempted from execution and attachment in this act, shall be of any validity, unless the wife shall join in said mortgage, and the same be witnessed and acknowledged by her as is required in case of a deed conveying her interest in real estate.

SEC. 290. This act shall not be so construed as to prevent any single man, or a married man, his wife joining him in the waiver, from waiving, by agreement in writing, to any person or persons the benefit of this act; *Provided*, That any agreement of waiver made by a married man and his wife, shall be witnessed and acknowledged by them in the same manner required in case of a deed made by them conveying real estate.

SEC. 291. In all cases the defendant himself may select the property which is exempt.

SEC. 292. When a sheriff or other officer has levied upon or attached, or is about to levy upon or attach, personal property which is claimed to be by law exempt from execution or attachment, the sheriff or other officer shall, if required by the person claiming, forthwith summon three discreet and disinterested men having the qualifications of jurors, being householders and resident in the vicinity where the property is found, and administer to them an oath impartially to examine and determine how much, if any, of said property is so exempt. Such persons shall have full power to summon witnesses, administer the necessary oaths, and adjourn from time to time not longer than three days in all. They shall also have power to appraise the property claimed, and the other property of the claimant, so far as may be necessary to determine what portion, if any, is so exempt. They shall deliver their decision to the sheriff, in writing, and he shall forthwith deliver to the person claiming, such property as is by them decided exempt from execution; but nothing in this section contained shall prevent the person claiming the property from giving a bond and trying his right before the

district court, as is provided in cases for trying the rights of property claimed by other persons than the judgment debtor.

CHAPTER XXIX.

CLAIM TO PROPERTY LEVIED UPON AND ATTACHED.

- SECTION 293. Any person may claim property levied upon; how.
 “ 294. Bond for delivery of property to adverse claimant.
 “ 295. Claimant to be plaintiff, and sheriff and plaintiff in execution, defendants.
 “ 296. Trial of title to property, and judgment.

SEC. 293. 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. 294. 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. 295. The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution defendants.

SEC. 296. 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 a less amount as shall not exceed the amount due on the original execution or attachment. Where the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs; where the claimant recovers all the property, judgment shall be given in favor of the claimant for costs; where the claimant recovers a portion of the property only, the costs shall be apportioned. When the plaintiff prevails, the costs may be taxed against the defendant who was plaintiff in the execution or attachment, or the court may, if they shall be of opinion that the sheriff attached or levied upon said property without the exercise of due caution, adjudge him to pay the costs or any portion thereof.

CHAPTER XXX.

SALES OF PROPERTY UNDER EXECUTION.

- SECTION 297. Notice of sale shall be given; requirements.
 " 298. Sales under execution, how made.
 " 299. Form and manner of the sale of real estate.
 " 300. Land sold by the acre, how measured.
 " 301. Land sold by tract or parcel not to be measured.
 " 302. Land to go to highest bidder; money to be returned, &c.
 " 303. Proceedings upon the return of sale of real estate.
 " 304. Perfection of title to real estate sold under execution.
 " 305. Personal property may be retained by defendant giving bond.
 " 306. Postponement of sale by sheriff.
 " 307. Delivery of personal property to purchaser.
 " 308. Lease and sale when confirmed, absolute.
 " 309. In execution against several defendants, contribution, when.

SEC. 297. Before the sale of property on execution, notice thereof shall be given as follows:

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

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

SEC. 298. All sales of property under execution, shall be made by auction, between nine o'clock in the morning and four in the afternoon; after sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser, or be interested in any purchase at such sale; when the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price, and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or where a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. Sales of real property shall be made on the premises if occupied by the defendant or any person holding under him, otherwise such sales shall be made at the court house door.

SEC. 299. The form and manner of sale of real estate by execution shall be as follows: The sheriff shall proclaim aloud at the place of sale, in the hearing of all the bystanders—"I am about to sell the following tracts of real estate: (here reading the description) upon the following execution:" (here reading the execution.) He shall also state the amount which is required to be made upon the execution, which shall include damages, interests and costs up to the day of sale and increased costs. If town property, and divided into two or more known lots, he shall ask:

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

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

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

to pay the debt. If he has no bid for the whole, or any portion equal to the amount of the debt, he shall then offer the land for sale, the lots and parcels separately or together, as he shall deem most advantageous. All land, except town lots, shall be sold by the acre.

SEC. 300. 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. 301. When an entire tract or parcel is sold by the acre, it shall not be measured, but shall be deemed and taken to contain the number of acres named in the description, and be paid for accordingly; and when the number of acres is not contained in the description, the officer shall declare, according to his judgment, how many acres are contained therein, which shall be deemed and taken to be the true number of acres.

SEC. 302. The officer shall strike off the land to the highest bidder, who shall forthwith pay the money bid to the officer, who shall return the money with his execution, and his doings thereon, to the clerk of the court from which the execution issued, according to the order thereof.

SEC. 303. Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause on which the execution issued by its title in the docket of the term next after such return, and mark opposite the same—"sale of land for confirmation," and if no objection is made, the court, at such term, shall confirm such sale, and order the officer to make out and deliver to the purchaser a deed or release of the land sold, as the case may require. If the court shall be satisfied that by any irregularity of the officer, or from any cause, injustice has been done, the court shall set aside the sale or lease, and order a new execution. When the sale is confirmed, the money shall be paid to those entitled thereto. When the sale is set aside, the money shall be repaid to the purchaser.

SEC. 304. The party to whom such lease or deed is given, shall, upon the receipt thereof, take the same to the clerk of the district court of the district or county where the land lies, who shall enter in his book of levies, where the levy is recorded, what disposition has been

made of such portion of real estate, and shall endorse the fact upon the deed or lease, with the date when presented to him and when made. And no county auditor shall record any such deed or lease without such endorsement.

SEC. 305. When the sheriff shall levy upon personal property, by virtue of an execution, he may permit the defendant to retain the same or any part thereof in his possession until the day of sale, upon the defendant executing a bond to the sheriff, with sufficient sureties, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale, and for non-delivery thereof, an action may be maintained upon such bond by the sheriff or the plaintiff in the execution.

SEC. 306. If, at the time appointed for the sale, the sheriff should be prevented from attending at the place appointed, or, being present, should deem it for the advantage of all concerned, to postpone the sale for want of purchasers, or other sufficient causes, he may postpone the sale, not exceeding one week next after the day appointed, and so from time to time for like causes, giving notice of every adjournment by public proclamation, made at the same time, not exceeding the life of the execution.

SEC. 307. When the purchaser of any personal property capable of manual delivery, shall pay the purchase money, the sheriff shall deliver to him the property, and shall give him a receipted bill of sale. When such personal property shall not be capable of manual delivery, the sheriff shall execute and deliver to the purchaser a receipted bill of sale.

SEC. 308. The lease and sale of real estate under execution, after the same is confirmed, shall be absolute.

SEC. 309. Where property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases, the person so paying or contributing, shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contri-

bution or repayment; upon filing such notice, the clerk shall make the entry thereof in the margin of the docket where the judgment is entered.

CHAPTER XXXI.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

- SECTION 310. Discovery when judgment debtor refuses to satisfy judgment.
- “ 311. Examination of judgment debtor.
 - “ 312. Debtors of the judgment debtor may satisfy execution.
 - “ 313. Examination of persons indebted to judgment debtor.
 - “ 314. On examination, garnishee to answer on oath.
 - “ 315. Garnishee required to make answer; in default thereof, judgment creditor to take judgment by default, &c.
 - “ 316. Judgment by default may be proceeded with to final judgment.
 - “ 317. Exception may be taken to answer.
When body of garnishee may be attached.
 - “ 318. Issues between judgment creditor and debtor; how tried; when answer deemed sufficient.
 - “ 319. Proceedings when answer of garnishee is not excepted to.
 - “ 320. Garnishee may be discharged by delivering property to sheriff.
 - “ 321. Judgment debtor, &c., may be examined concerning property in hands of garnishee.
 - “ 322. Costs in issues between judgment creditor and garnishee.
 - “ 323. Execution to issue as in other cases.
 - “ 324. What earnings of a judgment debtor not liable.
 - “ 325. Public officers not liable as garnishee.

SEC. 310. After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the district court, or any judge thereof, that the judgment debtor has property or effects liable to execution which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by order require the judgment debtor to appear and answer under oath concerning the same before such court, or judge, or before a referee appointed by such court or judge, at the time and place specified in the order, the place to be within the county in which the judgment debtor resides, and disobedience to such order may be punished as for contempt.

SEC. 311. The judgment debtor, on his appearance, may be examined on oath concerning his property, and his answers reduced to writing, and filed with the clerk of the court by whom the execution was issued. Either party may also examine witnesses in his behalf; and if,

during such examination, any property, rights or credits of such judgment debtor, not exempt by law, be discovered, they may be levied upon by execution.

SEC. 312. 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; *Provided*, Such indebtedness has not arisen from the personal earnings of the judgment debtor within sixty days prior to the time of payment.

SEC. 313. After the issuing or return of an execution against property of a judgment debtor, or any one of several debtors in the same judgment, and upon an affidavit that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding twenty-five dollars, the district court, or any judge thereof, may, by order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before such court or judge, and answer concerning the same. If before a referee, the examination shall be taken by the referee and certified to the court or judge. The court or judge may also, in their discretion, require notice of such proceeding to be given to any party to the action, in such manner as may seem proper.

SEC. 314. At any time after the making of such order, the judgment creditor may exhibit written allegations and interrogatories touching the property, stock or credits of the judgment debtor, in the possession of, or held by such person or corporation as garnishee, or debts owing to judgment debtor by him or it, and such garnishee shall be required to make full, direct and true answers to the same on oath.

SEC. 315. On the day when the garnishee shall be required to attend before the court, judge or referee, he shall exhibit on oath his answer to the allegations and interrogatories of the judgment creditor, unless for cause shown, a further time shall be allowed; in default of such answer, the judgment creditor may take judgment by default against him at the next term thereafter, or the court or judge may punish him as for a contempt.

SEC. 316. Such judgment by default may be proceeded on to final judgment, in like manner as action against defendants; but no final judgment shall be rendered against the garnishee for a greater amount than that specified in the execution.

SEC. 317. The judgment creditor may except to the answer of any

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

SEC. 318. The judgment creditor may deny the answer of the garnishee, in whole or in part, and the issue shall be tried as ordinary issues between plaintiff and defendant. If the answer of the garnishee be not excepted to, or denied in such time as the judge or court may deem proper, it shall be taken to be true and sufficient.

SEC. 319. If by the answer not excepted to or denied, or if upon trial it shall appear that the garnishee is possessed of property or effects of the judgment debtor, or is indebted to him the value of such property or effects, or of the debt being ascertained, judgment may be rendered against the garnishee for the proper amount in money; but if such debt be not yet due, execution shall not be awarded against the garnishee until it becomes due; and in such cases, the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund in his hand.

SEC. 320. When any property, effects, money or debts belonging or owing to the judgment debtor, shall be confessed or found by the court, judge, or referee or jury, to be in possession of the garnishee, he may, at any time before final judgment, discharge himself by delivering the same to the sheriff.

SEC. 321. The judgment debtor or claimant may be required to attend before the court, judge or jury, for the purpose of giving any necessary information respecting property or effects alleged to be in the possession of the garnishee, and may be thereupon examined on oath concerning the same.

SEC. 322. In all cases of controversy between the judgment creditor and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

SEC. 323. Execution may be issued to collect any judgment rendered against a garnishee as in ordinary cases of judgment against defendants.

SEC. 324. The earnings of a judgment debtor for personal services, at any time within sixty days next preceding the judgment against a garnishee, shall not be included in such statement.

SEC. 325. No territorial or county treasurer, sheriff, constable or other public officer, shall be liable to answer as garnishee for moneys in

his possession as such public officer, belonging to or claimed by any judgment debtor.

CHAPTER XXXII.

WITNESSES AND EVIDENCE.

- SECTION 326. Who are competent witnesses.
- “ 327. Interest affects credibility.
- “ 328. Party to action, or for whom maintained, excepted from preceding section.
If assignor made witness, adverse party may testify.
In certain cases, assignor incompetent.
- “ 329. Conviction of crime affects credibility.
Perjury destroys competency.
- “ 330. Incompetent witnesses.
- “ 331. To encourage confidence, certain parties incompetent.
1st.—Of husband and wife.
2d.—Of client and counsel.
3d.—Of confessions to priests and clergymen.
4th.—Of knowledge of physician or surgeon.

SEC. 326. Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action or proceeding.

SEC. 327. No person offered as a witness shall be excluded from giving evidence by reason of his interest in the event of the action, but such interest may be shown to affect his credibility.

SEC. 328. The last section shall not apply to a party to the action, nor to any person for whose immediate benefit it is prosecuted or defended. When any assignor of a thing in action, or contract is examined as a witness on behalf of any person deriving title through or from him, the adverse party may offer himself as a witness to the same matter in his own behalf, and he shall be so received. But such assignor shall not be admitted to be examined in behalf of any person deriving title through or from him against any executor or administrator.

SEC. 329. No person offered as a witness shall be excluded from giving evidence by reason of conviction for crime, but such conviction may be shown to affect his credibility: *Provided*, That no person who shall have been convicted of the crime of perjury, shall be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon.

SEC. 330. The following persons shall not be competent to testify:

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

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

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

4th—Negroes or Chinamen in actions or proceedings to which a white person is a party.

SEC. 331. In order to encourage confidence, and to preserve it inviolate, the following persons shall not be examined as witnesses :

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

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

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

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

CHAPTER XXXIII.

MODE OF PROCURING ATTENDANCE OF WITNESSES.

- SECTION 332. Of notice to witnesses, and tender of fees.
 “ 333. What notice may require, and production of books, papers, &c.
 “ 334. How served, and proof thereof.
 “ 335. Person in attendance required to testify, without notice.
 “ 336. Witness served liable for damages for non attendance.
 “ 337. Further penalty for witness failing to attend.
 “ 338. Attachment may issue for witness.
 “ 339. Testimony of prisoner, how obtained.

SECTION 340. Order to procure testimony of prisoner.

“ 341. Fees of witnesses ; taxation of.

Affidavit of witness to claim, what it shall contain.

SEC. 332. Witnesses in civil causes, pending before the district court, shall not be required to attend unless they shall be served with a notice signed by the clerk, or the party, or his attorney, requiring their attendance at the time and place specified, and shall also be tendered payment for one day's attendance and mileage, or such other compensation in lieu thereof as may be allowed for going to and returning from the place where the court is held, if such fees for attendance and mileage, or such compensation, be demanded by him at the time notice is served upon him.

SEC. 333. The notice may require not only the personal attendance of the person to whom it is directed, at a particular time and place to testify as a witness, but may also require him to bring with him any books, documents, or things under his control ; but no public officer or person having the possession or control of public records or papers, which by law are required to be kept in any particular office or place, shall be compelled to produce the same in any court.

SEC. 334. Such notice may be served by any white person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

SEC. 335. A person present in court or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a notice served by a party desiring his testimony.

SEC. 336. If any person duly served with a notice, and obliged to attend as a witness, shall fail so to do, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action.

SEC. 337. Such failure to attend as required by the notice, shall also be considered a contempt, and upon due proof, the witness may be punished for 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. 338. The court, judge, justice of the peace, or other officer in such case, may issue an attachment to bring such witness before them to answer for contempt, and also to testify as witness in the cause in which he was notified to attend.

SEC. 339. 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. 340. 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.

SEC. 341. Every person shall be entitled to one day's fees for attendance as witness in any case in which he shall have been actually sworn and given testimony, but no person shall be entitled to any greater amount of fees in any case, unless immediately after the case is tried or disposed of, he shall apply to the clerk of the court to tax his fees in such case, and shall file with such clerk his affidavit setting forth :

1st—The number of days he was in attendance as a witness in said case.

2d—The number of miles he actually traveled, in order to be in attendance.

3—Whether he attended in obedience to a notice or otherwise.

4th—That he attended the number of days set forth, solely and exclusively as a witness in said case, and that no part of said time was he in attendance as a party to any action pending in said court, or as a juror, attorney, or other officer of said court, or as a witness before the grand jury, or witness in any other case pending in said court.

CHAPTER XXXIV.

EXAMINATION OF PARTIES.

- SECTION 342. A party to action may be examined by adverse party.
- “ 343. Discovery may be sought, instead of examination on trial.
- “ 344. Of answer to interrogatories filed.
- “ 345. Filing interrogatories no bar to examination on trial.
- “ 346. Rebuttal of testimony of adverse party.
- “ 347. Refusal of adverse party to answer, &c., penalty.
- “ 348. Adverse party introduced may testify in his own behalf.
If testimony not responsive, or new matter, examining party may give testimony.
- “ 349. A party for whom action is maintained, subject to same rules.

SEC. 342. A party to an action or proceeding may be examined as a witness at the instance of the adverse party, or 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. 343. 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. 344. 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. 345. A party to an action having filed interrogatories to be answered by the adverse party, as provided by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial.

SEC. 346. The testimony of a party, either upon an examination at the trial, or upon interrogatories filed, may be rebutted by adverse testimony.

SEC. 347. 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 contempt: *Provided*, That the preceding sections shall not be construed so as to compel any person to to answer any question where such answer may tend to criminate himself.

SEC. 348. A party examined by an adverse party, as in this act provided, may be examined on his own behalf in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answer thereto, or to discharge when his answer would charge himself, such adverse party may offer himself as a witness on his own behalf, in respect to such new matter, and shall be received.

SEC. 349. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner and subject to the rules of examination as if he were named as a party.

CHAPTER XXXV.

OF DEPOSITIONS OF WITNESSES IN THE TERRITORY.

- SECTION 350. When depositions in this territory may be taken.
 When party calling witness, liable for said witness's fees.
- " 351. Who may take depositions and form of certificate.
- " 352. Deposition subject to all legal exceptions, as to witness, &c.
 Objection to form of interrogatory disregarded, without exception
 taken on examination.
 Manner of taking depositions by officer, &c.
- " 353. Deposition may be excluded; proviso.
- " 354. When depositions may be used in different action; proviso.
- " 355. Deposition may be used in appellate court.
- " 356. Officer taking same may compel witness to attend.

SEC. 350. In all civil cases, the testimony of a witness residing thirty miles or more from the place of holding court, a going witness, or one sick, infirm or aged, rendering it impossible he will be able to attend, may be taken by deposition, by giving notice to the opposite party or his attorney of the time and place when, and the officer before whom the deposition of the witness will be taken, which notice shall be served a reasonable time prior to the taking of the deposition, to enable the adverse party or his counsel to attend; and any party may, by notice, require a witness to attend from any part of the district: *Provided*, That in all cases when the judge shall not decide that the personal attendance of the witness was necessary, and that his testimony could not properly be taken by deposition, the party calling the witness shall be liable for and pay all the mileage or traveling expenses of the witness for the distance beyond thirty miles from the place of holding the court, without regard to the final determination of the suit.

SEC. 351. The deposition may be taken before any judge of a court of record, justice of the peace, clerk of a court of record, mayor of a city, or notary public, and shall be written by the officer taking the same, or by witness, or by some disinterested person, in the presence and under the direction of such officer. When completed, it shall be carefully read to, or by the witness, corrected if desired, and subscribed by him, and certified by the officer substantially as follows:

Territory of Washington,

County of _____.

ss.

I, A. B., (judge, clerk, &c., as the case may be,) do hereby certi-

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

Dated at ——, the —— day of ——, 18——.

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

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

SEC. 352. Such deposition may be used by either party, upon the trial, or other proceedings against any party giving or receiving the notice, subject to all legal exceptions, to the competency or credibility of the witness, or the manner of taking the deposition; but if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination. It shall be the duty of the person taking the deposition, to propound to the witness every question proposed by either party, and to note all objections to the form of any interrogatory; and when any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question, and before the answer, the words, "objected to;" and when any witness declines to answer a question on the ground that it will tend to criminate himself, that fact shall also be noted after the question is written down. The deposition may be taken in the form of a narrative, or by question and answer, or partly in either form, as either party present at the examination shall require. When taken by question and answer, the officer shall first write down the question, and then the answer, as nearly as may be in the language of the witness; but when the deposition is read to the witness, previous to signing it, he shall be permitted to amend his answer to any question, or any part of his deposition; such amendment, however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added to the end of the deposition, under the title, "amendment by the witness," and such amendment shall intelligibly refer to the part so amended.

SEC. 353. 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. 354. When the plaintiff in an action shall discontinue it, or when it shall be dismissed for any cause, and another action shall afterwards be commenced for the same cause between the same parties, or their respective representatives, all depositions lawfully taken in the first action may be used in the other, in the same manner, and subject to the same conditions and objections as if originally taken for such other action: *Provided,* That the deposition shall have been duly filed in the court where the first action was pending, and shall remain in the custody of the court, from the termination of the first action until the commencement of the other.

SEC. 355. When any action shall have been appealed from one court to another, all depositions lawfully taken to be used in the court below, may be used in the appellate court in the same manner, and subject to such exceptions for informality or irregularity, and none other, as were taken to such depositions in writing in the court below.

SEC. 356. Any witness may, upon service of notice, be 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 compelled to attend as a witness in any court.

CHAPTER XXXVI.

DEPOSITIONS OF WITNESSES OUT OF THE TERRITORY.

SECTION 357. Deposition of witness out of this Territory.

“ 358. Witness residing within 100 miles, treated as within the Territory.

“ 359. Commission to issue for deposition of non-resident of Territory.

“ 360. Written interrogatories to be settled by judge granting commission.

Parties may agree to take deposition, without interrogatories.

“ 361. Power of commissioner to take depositions.

“ 362. Non-return of commission, when ground for continuance.

SEC. 357. The testimony of a witness out of this Territory may be taken by deposition, to be read in evidence in any action, suit, or proceeding pending in any court in this Territory.

SEC. 358. The deposition of a witness out of the Territory, but

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

SEC. 359. In other cases, the deposition of a witness out of the Territory shall be taken upon a commission issued by the clerk, under the seal of the court, upon an order of the court, a judge thereof, or any of the judges of the supreme court, which order may be made on the application of either party, upon giving to the adverse party, or his attorney, ten days previous notice, in writing, together with a copy of the interrogatories intended to be put to such witness. It shall be issued to a person or persons, not exceeding three in number, agreed upon by the parties, or their attorneys; or, if they do not agree, to any judge, justice of the peace, notary public, or other competent person selected by the court or judge granting the order for the commission.

SEC. 360. Such proper interrogatories, as well on part of the plaintiff as on part of the defendant, as the respective parties may prepare to be settled, if they disagree as to form, by the court or judge thereof granting the order for the commission, shall be annexed to the commission; or where the parties agree to that mode the examination may be without written interrogatories.

SEC. 361. The commission shall authorize the commissioner or commissioners to administer an oath to the witness and take his deposition in answer to the several interrogatories, annexed to such commission; or when the examination is to be without interrogatories, in respect to the question in dispute, to certify the deposition to the court, and to direct it to the clerk of the court or such other person designated or agreed upon, and forward it to him by mail or other usual channel of conveyance.

SEC. 362. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon affidavit or other evidence satisfactory to the court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

CHAPTER XXXVII.

PROCEEDINGS TO PERPETUATE TESTIMONY.

- SECTION 363. Testimony, how perpetuated.
 " 364. Proceedings preparatory to taking such testimony.
 " 365. Commission when to issue.
 " 366. Deposition, how taken.
 " 367. To be filed when returned.
 May be used subject to legal objection.

SEC. 363. 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. 364. 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. 365. 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 shall direct a commission to issue therefor, in like manner as a commission to take the testimony of witnesses as in other cases.

SEC. 366. 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. 367. 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 one of them, or their successors in interest, upon proof of the death or insanity of the witness, or of his inability to attend the trial, by reason of age, 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 XXXVIII.

RECORDS, DOCUMENTS, BOOKS, &C.

- SECTION 368. Court may order party to exhibit documents, &c., to adverse party. If compliance refused, document excluded as evidence.
- “ 369. When an instrument may be read without proof of its genuineness.
- “ 370. Records of other courts admissible, when.
- “ 371. Copies of instruments of writing, when admissible.
- “ 372. Of certified copies of official papers.
- “ 373. Surveyor General's certificate of residence, &c.
- “ 374. Of the validity of official seal.
- “ 375. Of printed copies of statutes of other states and territories.

SEC. 368. 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 a contempt. This section shall not be construed to prevent a party from compelling another to provide books, papers or documents, where he is examined as a witness.

SEC. 369. 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. 370. The records and proceedings of any court of the United States, or of any state or territory, shall be admissible in evidence in all cases in this territory, when authenticated by the attestation of the

clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

SEC. 371. Whenever any deed, conveyance, bond, mortgage, or other writing shall have been recorded or filed, in pursuance of law, copies of such deed, conveyance, bond, or other writing, duly certified by the officer having the lawful custody thereof, with the seal of office annexed, if there be such seal, if there be no seal, then with the official certificate of such officer, shall be received in evidence to all intents and purposes, as the originals themselves.

SEC. 372. Copies of all papers on file in the offices of the Surveyor Generals of Oregon and Washington, Secretary of Washington Territory, Territorial Treasurer, Territorial Auditor and County Treasurer, or any matter recorded in either of said offices, duly certified by the respective officers, with the respective seals of office annexed, shall be evidence in all the courts of this territory.

SEC. 373. Any certificate of residence and cultivation upon the public lands, issued by the Surveyor General of Oregon or of Washington territory, in pursuance of law, shall be evidence in all the courts of this territory.

SEC. 374. A seal of court or public office, when required to any writ, process, or proceeding, or to authenticate a copy of any record or document, may be affixed by making an impression directly on the paper which shall be as valid as if made upon a wafer or on wax.

SEC. 375. Printed copies of the statute laws of any state, territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this territory, and on all other occasions as presumptive evidence of such laws.

CHAPTER XXXIX.

WRITS OF ERROR AND APPEALS TO SUPREME COURT.

SECTION 376. What may be re-examined on a writ of error.

" 377. Term at which such writ of error must be prosecuted.

" 378. Proceedings to obtain a writ of error.

Clerk to issue notice of filing of precept.

" 379. Notice, how to be issued and served, and return thereof.

" 380. Notice by clerk to defendant.

Clerk to send transcript of record to clerk of Supreme Court.

" 381. What the transcript to contain.

- “ 382. Provision in event of non-reception, or loss of transcript.
When failures arise from neglect of plaintiff.
Diminution of record.
- “ 383. Term at which case shall stand for trial.
- “ 384. Assignment of, and joinder in error.
- “ 385. Bond may be given by plaintiff to stay execution on original judgment.
- “ 386. Supreme Court may reverse, affirm or modify judgment complained of.
Enforcement of judgment of Supreme Court.
- “ 387. When defendant in error shall have damages, costs, &c., awarded.
- “ 388. Any party aggrieved, or privy to judgment, may prosecute writ of error.
Only one writ of error for the same cause is allowed.
- “ 389. Court may order other person to be made a party.
- “ 390. Title to property sold on execution, when not affected by reversal of judgment.
- “ 391. Supreme Court equally divided in opinion, continues suit.
- “ 392. Of special verdicts and agreed cases in District Court.
Judgment of District Court *pro forma* and appeal.
In all other cases a writ of error necessary
- “ 393. The court shall regard all errors, by which plaintiff was prejudiced.
All amendments regarded as made.
No judgment reversed, except on affidavit of injustice.
- “ 394. All cases heretofore decided may be reviewed on error, within time limited in this act.

SEC. 376. Every final judgment, order or decision of a district court, in a civil action, may be re-examined upon a writ of error in the same court for error in fact, and in the supreme court for error in law.

SEC. 377. Every such writ shall be prosecuted at the term of the supreme court, which shall be held three months or more next succeeding the term of the district court, at which the final judgment, order, or decision, of the district court is made, and not afterwards: *Provided*, That a party by giving the opposite party twenty days notice prior to the commencement of the term of the Supreme Court next succeeding the term of the District Court at which such final judgment, order or decision is made, may have his writ of error heard at such term, whether the three months have elapsed or not, prior to the said first day of the Supreme Court. But, if the party entitled to have such writ, shall be absent from the Territory, and shall not have been personally served with process, nor appeared to the action, or if such party be an infant, married woman, or imprisoned, or insane, then such writ may be prosecuted at the next term of the supreme court after the removal of such disability, and not afterward. And a writ of error dismissed, for want of diligence in the prosecution thereof, or laches of the plaintiff in er-

ror, shall be conclusive against said plaintiff, and entitle the defendant in error to affirmance of the judgment below, with costs.

SEC. 378. The party desirous of taking his writ of error shall file with the clerk of the court, in which the judgment was rendered, a precipe, containing a particular description of the judgment, order, or decision, upon which he wishes to bring his writ of error and his claim, whether upon error in fact or error in law; which precipe shall also contain an order directing the clerk to issue, under the seal of the court, notice to the adverse party of the filing of such precipe, and of the court and term at which such writ of error will be prosecuted; and the writ of error shall be deemed to have issued at the time of the filing of such precipe.

SEC. 379. The notice shall be issued and served in the same manner as other process is served, and shall be returned to the court in which such writ of error is to be prosecuted, by the first day of the term at which said writ of error is to be heard. It may be served on the defendant, or his attorney of record, in any county in the Territory. And if service of the notice cannot be had from any cause, the court, at such term, upon being satisfied that the precipe has been filed and notice issued, may direct the manner in which such notice may be given; and after the order for giving notice has been fully complied with, may proceed as though notice had actually been given.

SEC. 380. Upon the filing of such precipe, the plaintiff in error shall pay to the clerk his fees for the transcript of the judgment, and the precipe, and notice to the defendant in error; which transcript shall, by the clerk, be forwarded immediately to the clerk of the supreme court; and he shall make out a full transcript of the record; and send the same to the clerk of the supreme court, by mail or other safe opportunity (upon the payment of his fees by the plaintiff in error,) at least ten days before the commencement of the term of said supreme court.

SEC. 381. The transcript of the record shall contain a copy of the writ and return, the pleadings, the journal entries, judgment, order or decision, bills of exceptions, execution and return, and all matters pertaining to the case, but it shall not be necessary to send copies of notices to witnesses, motions or depositions, unless the same, by bill of exceptions, have been made part of the record.

SEC. 382. Whenever from any cause the transcript of the record shall not be received by the clerk of the supreme court, or shall be lost, the court shall order a new transcript to be sent up, in such time and manner as they shall see fit: *Provided*, That in all cases where the failure arises from the neglect of the plaintiff in error to comply with the

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

SEC. 383. If the notice shall have been served ten days or more before the term of the court to which the record is returnable, the case shall stand for trial at such term; and it may stand for trial if the parties appear in court, bringing in the record, and waive the notice.

SEC. 384. The court of error may fix the time for assigning errors and filing joinders; if errors in law be assigned, no joinder shall be necessary. One or more errors in fact may be assigned, and the defendant may put in the common joinder as a demurrer thereto, or may traverse or confess, and avoid the fact assigned for error, and a separate issue shall be made on each.

SEC. 385. If at the time of filing the precipe with the clerk, or at any time thereafter the plaintiff in error shall file with the clerk a bond, with sureties to the satisfaction of the clerk, in double the amount of the judgment, if it is for money, and if the judgment is for the restraining or performing any other act, or the determination of any other right, then in such a sum as a judge of the supreme court shall direct, conditioned that the plaintiff pay all costs and damages, and perform such judgment as the court on the trial of the writ of error shall adjudge against him, then no further execution shall be had upon the original judgment, until the determination of the writ of error, and any execution previously issued shall be recalled.

SEC. 386. The judgment, or other matter complained of, may be affirmed, or may be reversed, or set aside, in whole or in part, or may be modified, or a different order or judgment may be substituted for that complained of, or the writ of error may be dismissed by the plaintiff in error, or by the court, and the cause be remitted to the district court for such further proceedings as the supreme court by mandate shall direct; and execution may issue from the supreme court to satisfy the judgment of the court below, together with all costs and accruing costs, in the case of dismissal or other order or judgment of the supreme court aforesaid; or its judgment may be executed by the district court, on a mandate for that purpose.

SEC. 387. In case the judgment in the court below shall have been for a sum of money, and shall be affirmed against the plaintiff in error, or the writ of error dismissed, damages shall be awarded to the defendant in error not exceeding ten per cent. on the amount, exclusive

of interest and costs of such judgment, and in all cases damages, interest and costs shall be allowed on the original judgment, together with reasonable expenses of the prevailing party in the supreme court.

SEC. 388. Any person who may be a party, or privy to any judgment, order or decision, may prosecute a writ of error to reverse the same, and the reversal shall enure to the benefit of all the parties and privies therein, and no other party or privy shall afterwards prosecute a writ of error for the same cause.

SEC. 389. When it shall appear that any other person should be made a party to any proceeding upon a writ of error, the court shall require such person to be made a party, and shall direct in what manner notice shall be given.

SEC. 390. The reversal of a judgment, order, or decision, shall not affect the title of property sold upon an execution issued upon such judgment, order, or decision, if such property be purchased at the sale by a stranger, but if purchased by the judgment creditor, the plaintiff in error may bring an action for the recovery thereof, and the court may award restitution, or render such other judgment as justice shall require.

SEC. 391. When the supreme court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

SEC. 392. Whenever upon the trial of any civil action in the district court, it shall be found to turn upon important questions of law, the court may direct a special verdict to be found; and in all cases the parties may make an agreed statement of facts, signed by themselves or their attorneys, which shall be entered of record; and all questions of law, arising on special verdicts, agreed statements, motions for new trial, and others, in any manner arising in the district court, may, under the direction of the district court, be taken to the supreme court by way of appeal; and for that purpose the court shall render a judgment in form only, which shall not be executed until the final decision of the cause; and the supreme court on hearing the appeal may give judgment, or remand the cause, or make any order, according to the law and justice of the case. In no other cases except as provided in this section, can any order, judgment or decree of the district court be reviewed in the supreme court, except upon writ of error.

SEC. 393. In all cases of writs of error or appeals in the supreme court, the court shall consider and adjudge upon all errors and mistakes which shall appear in the entire record by which plaintiff in error may have been prejudiced, if the same were excepted to at the time, whether interlocutory or final, and whether the plaintiff in error had, according

to the strict rules of law, waived the same by proceeding with the case, under the order of the court, after such exception: *Provided*, That the court shall consider all amendments which could have been made, as made, and in such case shall not reverse any judgment, order, or decision, unless it shall appear that injustice may have been done, and the plaintiff in error or his attorney shall make oath that injustice has been done him in the judgment which is sought to be reversed.

SEC. 394. All cases, either in law or equity, which have heretofore been decided in this territory, may at any time within the time limited in this act, be examined upon a writ of error, under the provisions of this act, and in adjudging upon such cases, the court shall be governed in their judgment on errors by the rules of the law in force at the time such alleged error was committed.

CHAPTER XL.

SET-OFF.

- SECTION 395. When set-off may be made.
- “ 396. Set-off when plaintiff is a trustee, or has no real interest in matter of action.
- “ 397. In actions by executors and administrators, of demand against testators or intestates.
- “ 398. Balance found for defendant.
- “ 399. Set-offs by executors, trustees, and others, sued in a representative character.
- “ 400. Set-off must be set forth in answer.
- “ 401. When set-off equal, or is less than plaintiff's demand.
- “ 402. Judgment against plaintiff.

SEC. 395. 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. 396. If the plaintiff be a trustee for 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. 397. 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. 398. 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. 399. 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. 400. To entitle a defendant to a set-off he must set the same forth in his answer.

SEC. 401. If the amount of the set off duly established, be equal to the plaintiff's debt or demand, judgment shall be entered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

SEC. 402. 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 XXI.

COSTS IN CIVIL ACTIONS.

- SECTION 403. Compensation of attorneys.
Costs.
- " 404. Costs shall be allowed to party obtaining judgment; exceptions.
 - " 405. Plaintiff in certain cases not entitled to costs.
 - " 406. Plaintiff entitled to no more costs than damages; when.
 - " 407. Costs when several actions are brought on one instrument of writing, &c.
 - " 408. When defendant to have judgment in his favor for costs, &c.
 - " 409. When allowed to one or more of several defendants.
 - " 410. Amount of costs allowed.
 - " 411. Necessary disbursements allowed, in addition to costs.
 - " 412. Referee's fees.
 - " 413. Cost of postponement of trial.
 - " 414. Where tender is made, as to costs.
 - " 415. Plaintiff refusing to receive a deposit made.
Who liable for subsequent costs.
 - " 416. Costs in appeals from justice of the peace.
 - " 417. Guardian, when responsible for costs.
 - " 418. Costs against executors, &c., on what estate chargeable.
 - " 419. Against assignee.
 - " 420. Against territory or county.
 - " 421. On appeal from inferior court in action or special proceeding.
 - " 422. Costs of appeal to supreme court, when at discretion of court.
 - " 423. When costs may be allowed or not; and if allowed, apportionment thereof.
 - " 424. Costs may be re-taxed on application.
 - " 425. Security for costs may be required by defendant of non-resident plaintiff.
Such requirement stays proceedings till bond filed.
Additional security may be required.
Plaintiff may deposit, in lieu of filing bond.

SEC. 403. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement expressed or implied of the parties, but there may be allowed to the prevailing party upon the judgment, certain sums by way of indemnity for his expenses in the action, which allowance are termed costs.

SEC. 404. Costs shall be allowed the party in whose favor the judgment is rendered, except as is otherwise provided by law.

SEC. 405. The plaintiff shall not be entitled to costs on 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. 406. In an action for an assault or 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. 407. 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. 408. 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. 409. 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 of defendants as have judgments in their favor, or one of them.

SEC. 410. When allowed to either party, costs shall be as follows :

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

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

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

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

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

SEC. 411. The prevailing party, in addition to allowance for costs as provided in the last section, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The disbursement shall be stated in detail and verified by affidavit, which shall be filed with the clerk of the court, within two days after the conclusion of the trial.

SEC. 412. The fees of referees shall be four dollars to each, for

every day spent in the business of the reference, but the parties may agree in writing upon any rate of compensation, and thereupon such rate shall be allowed.

SEC. 413. 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. 414. 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. 415. 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. 416. 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. 417. 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. 418. In 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. 419. 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. 420. 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. 421. 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. 422. In the following cases the costs of an appeal to the supreme court shall be in the discretion of the court:

1st—When a new trial shall be ordered.

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

SEC. 423. In all actions and proceedings than those mentioned in this chapter, where no provision is made for the recovery of costs, they may be allowed or not, and if allowed, may be apportioned between the parties in the discretion of the court.

SEC. 424. 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. 425. 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 XLII.

OF COMMISSIONERS TO CONVEY REAL ESTATE.

- SECTION 426. District Court may appoint; when.
- “ 427. Deed of commissioner must refer to judgment of court.
- “ 428. What title passes by such conveyance.
- “ 429. On sale ordered by the court, what title passes.
- “ 430. Conveyance must be examined and approved by court.
- “ 431. Signature of commissioner sufficient.
Names of parties to be recited in conveyance.
- “ 432. Conveyance, in what office to be recorded.
- “ 433. Court may enforce judgment to execute a conveyance of real estate.

SEC. 426. The several district courts may, whenever it is necessary, appoint a commissioner to convey real estate:

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

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

SEC. 427. 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. 428. A conveyance made in pursuance of a judgment, shall pass to the grantee the title of the parties ordered to convey the land.

SEC. 429. 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. 430. 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. 431. It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the names of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance.

SEC. 432. 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. 433. 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 XLIII.

ACTIONS TO RECOVER, AND AFFECTING REAL ESTATE.

- SECTION 434. Who may maintain such action.
 Who shall be defendant in such action.
- “ 435. When defendant is tenant, landlord substituted.
- “ 436. Proof required in action between tenants in common, or joint tenants.
- “ 437. Actions for partition of real property.
- “ 438. Complaint to conform to provisions regulating civil practice.
 Partition or sale may be ordered by court.

SEC. 434. 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. 435. Whenever it appears that the defendant is only a tenant, the landlord may be substituted, reasonable notice thereof being given.

SEC 436. 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. 437. Action may be brought in the district court for the partition of real property, held or possessed by joint tenants, or tenants in common, or for the special assignment or determination of any right or interest therein by any person interested.

SEC. 438. The complaint shall conform as far as is practicable to the provisions of law regulating the practice in civil actions, and the court may require and cause to be made by order, a partition of the premises or a special assignment of the interest, or in case the partition or assignment is impracticable, may order a sale of the property, and a division of the proceeds, and shall in all respects adjudge as the nature of the cases may require.

CHAPTER XLIV.

OF WASTE.

- SECTION 439. Wrongs heretofore remediable, by action of waste shall be subjects of action, as other wrongs.
 Judgment of eviction, &c., in whose favor to be given.

- “ 440. Injunction to restrain waste on lands; when to issue.
Notice and bond required.

SEC. 439. Wrongs heretofore remediable by action of waste, shall be subjects of action as other wrongs in which there may be judgment for damages, forfeiture of the estate of the party offending, and eviction from the premises. Judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, where injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

SEC 440. 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 XLV

NUISANCE.

- SECTION 441. A nuisance defined.
Is a subject of action.
- “ 442. Who may bring action for nuisance.
- “ 443. May be enjoined or abated, and damages recovered.

SEC. 441. 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.

SEC. 442. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

SEC. 443. Where a proper case is made, the nuisance may be enjoined or abated, and damages recovered therefor.

CHAPTER XLVI.

FORECLOSURE OF MORTGAGE.

- SECTION 444. Mortgage may be foreclosed, when, and in what court.
- “ 445. Remedy of mortgagee confined to property mortgaged; when.
- “ 446. Mortgaged premises, or part thereof to be sold.
Payment prior to sale shall satisfy judgment.
- “ 447. When other property of the mortgage debtor shall be levied upon.
- “ 448. Duty of clerk of court and sheriff when mortgage foreclosed.
- “ 449. Plaintiff not to proceed to foreclose mortgage while prosecuting another action for same debt, &c.
- “ 450. Complaint for foreclosure may be dismissed or proceeding stayed; when.
Court, what to direct in final judgment.
- “ 451. Court may direct sale of only a portion of the property.
Judgment to be enforced on subsequent default.
- “ 452. When property cannot be sold in parcels, proceedings to be had.
- “ 453. Plaintiff to indorse on execution description of mortgaged premises.
A sale upon execution forecloses equity of redemption.
- “ 454. Supplementary proceedings, after first sale of property.
- “ 455. Proceedings by third parties on confirmation.
- “ 456. Proceedings by wife on confirmation.

SEC. 444. 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. 445. 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 mortgagee shall be confined to the property mortgaged.

SEC. 446. In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs at any time before sale, shall satisfy the judgment.

SEC. 447. When there is an express agreement for the payment of the sum of money secured, contained in the mortgage, or any separate instrument, the court shall direct, in the order of the sale, that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be levied of any property of the mortgaged debtor.

SEC. 448. A copy of the order of sale and judgment shall be issued and certified by the clerk, under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises, or so much thereof as may be necessary to satisfy the judgment, interest and costs, as upon execution; and if any part of the judgment, interest and cost remain unsatisfied, the sheriff shall forthwith proceed to levy the residue of the property of the defendant.

SEC. 449. 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. 450. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or instalment of the principal, and there are other instalments 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. 451. 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. 452. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue due do not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of 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. 453. Whenever an execution shall issue upon a judgment recovered for a debt secured by a mortgage of real property, the plaintiff shall endorse thereon a brief description of the mortgaged premises,

and a sale of the mortgaged premises, upon such execution shall foreclose the equity of redemption.

SEC. 454. When a judgment of foreclosure upon a mortgage of real estate has been rendered, and a further judgment, that if the mortgaged premises do not satisfy the demand, other property of the judgment debtor shall be seized and sold to satisfy any remaining balance and cost of suit, after the application of the proceeds of the sale of such mortgaged premises to said judgment, has also been rendered, and after the sale and application of the proceeds of the sale of such mortgaged premises as by law provided, there shall remain a balance due upon such judgment, then in selling other and real estate of the judgment debtor to satisfy such judgment, it shall only be necessary to advertise the sale of such other real estate for the period of two weeks prior to the sale, in a newspaper published in the county, or judicial district where the same is located, and if there be no newspaper published in the district or county, then in some newspaper having circulation in such district or county.

SEC. 455. Any person, other than the judgment debtor, claiming title in real estate and a right to the possession thereof, that has been sold upon order of sale or execution issued from the supreme or district courts, and which has been entered by the clerk in his docket for confirmation of sale, may, at any time during the term of court at which confirmation of sale is asked, and before the same is confirmed, come into court and file an affidavit of such title and right of possession, and it shall thereupon be the duty of the court to order the party asking the confirmation of sale, to file an answer to the statements and allegations of the said affidavit, verified as pleadings in civil actions are by law required to be; and if the allegations of said affidavit are not denied by such answer, or if such party fail or refuse to answer as directed, then it shall be the duty of the court to refuse the confirmation of such sale; but if answer be filed as required, and the statements and allegations of said affidavit are denied by such answer, then the issue or issues made, shall be tried as issues of fact are tried in civil actions in the district court.

SEC. 456. In case of a judgment of foreclosure having been rendered upon a mortgage executed by a married man, upon real estate, upon which the dwelling house occupied by his family is situate, and in the execution of which said mortgage the wife did not join, and the said premises have been sold pursuant to order of sale, she may at any time during the term of the court, at which such sale has been entered by

the clerk in his docket for confirmation, and before the same has been confirmed, come into court and file her affidavit, stating that the dwelling house occupied by her, or her family, is situate on the premises, the sale of which is docketed for confirmation, and that said premises do not exceed in value the sum of five hundred dollars, and that she claims the same to be exempt from execution and sale, and it shall thereupon be the duty of the court to order the party asking confirmation of the sale, to make and file an answer to the statements and allegations of the said affidavit, and if the same are not denied by such answer, or if such party shall fail or refuse to answer as directed, then it shall be the duty of the court to refuse the confirmation of such sale; but if answer be filed as required, and the allegations of the affidavit of claimant denied, then the issue or issues thus made, shall be tried as issues of fact are tried in civil actions in the district court.

CHAPTER XLVII.

NE EXEAT.

- SECTION 457. When actions may be commenced before time for performance of contract expires.
- „ 458. Order of arrest and service thereof.
Bond to be filed.
- “ 459. Defendant to give special bail, or be committed.
Liability and right of such bail.
- “ 460. Defendant may be discharged without special bail; when.
- “ 461. In whose favor this proceeding may be had.
- “ 462. Defendant may have remedy by writ of *habeas corpus*.
- “ 463. Proceedings may be had before justice of the peace.
- “ 464. Proceedings may be had in district where defendants may be found.

SEC. 457. 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. 458. 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. 459. 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. 460. 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. 461. This proceeding may be had in favor of any surety, or other person jointly bound with the defendant. It may also be prosecuted by the person in whose favor the contract exists, against any one or more of the persons bound thereby, upon filing such affidavit, when the co-contractors are non-resident or probably insolvent, or at the request of any one of them, when they are residents and solvent.

SEC. 462. The defendant may have the same remedy by writ of habeas corpus, as in other cases of arrest and bail.

SEC. 463. The proceedings may be had before justices of the peace, in all cases within their jurisdiction.

SEC. 464. The affidavit and bond may be filed, and proceedings had in any district where the defendants may be found.

CHAPTER XLVIII.

ACTIONS OF SURETIES AGAINST PRINCIPALS.

- SECTION 465. Surety may require action to be instituted.
 “ 466. When surety to be discharged from liability.
 “ 467. Trial of securityship between co-defendants not to affect plaintiff.
 “ 468. When finding is in favor of surety, property of principal to be first exhausted.
 “ 469. Judgment satisfied by sureties, does not discharge the principal.
 “ 470. Sureties paying judgment have remedy against co-defendants.
 “ 471. No surety shall confess judgment if notified of valid defense.
 “ 472. Provisions of this act extended to legal representatives.

SEC. 465. 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. 466. 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. 467. 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. 468. 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. 469. 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. 470. 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. 471. 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. 472. The foregoing provisions of this act shall extend to heirs, executors, and administrators of deceased persons, but the provisions of the four hundred and sixty-sixth section shall not operate against persons under legal disabilities.

CHAPTER XLIX.

HABEAS CORPUS.

- SECTION 473. Every person shall have the benefit of habeas corpus.
- “ 474. Application for writ of.
How to be made, and what to specify.
- “ 475. Writs granted in term or vacation, and without delay.
- “ 476. To whom directed, and what to command.
- “ 477. If directed to sheriff, to be delivered by clerk.
- “ 478. When directed to any other person.
- “ 479. How served, when person to whom directed cannot be found.
- “ 480. Immediate return to be made.
- “ 481. Return to be verified, and what it shall contain.
- “ 482. Traverse and decision on said return.
- “ 483. Cause to be heard and decided summarily.
- “ 484. Court granting writ restricted from inquiring into legality of custody.
1st—Upon a process or final judgment of a court.
2d—Upon a commitment for contempt.
3d—Upon a warrant upon indictment.
- “ 485. Authority of the court to discharge, to commit, admit to bail, &c.
- “ 486. Writ may be had to admit prisoner to bail.
Person interested in detention to be notified.
- “ 487. Court may compel attendance of witnesses, &c.
- “ 488. No officer liable to action for obeying writ.
- “ 489. When a person may be forthwith brought before the court by warrant.
- “ 490. Court may command apprehension of person causing restraint.
- “ 491. Writ how executed and returned.
- “ 492. Temporary order may be made.
Court may change custody of prisoner.
- “ 493. Writ or process may be served on Sunday.
- “ 494. Writs, &c., by whom to be issued, &c.
Return thereof.
Defects in writs, &c.
Amendments and temporary commitments.
- “ 495. Writs shall be granted in favor of parents, &c., and of infants and insane persons.

SEC. 473. Every person restrained in his liberty under any process whatever, may prosecute a writ of habeas corpus to inquire into

the cause of the restraint, and shall be delivered therefrom when illegal.

SEC. 474. Application for the writ shall be made by complaint, signed and verified either by the plaintiff or by some person in his behalf, and shall specify :

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

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

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

SEC. 475. 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. 476. 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. 477. If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay.

SEC. 478. 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. 479. If the person to whom such writ is directed cannot be found, or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by fixing of the same on some conspicuous place, either of his dwelling house, or where the party is confined or under restraint.

SEC. 480. 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. 481. The return must be signed and verified by the person making it, who shall state :

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

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

3d—If he has had the party in his custody, or under his restraint,

and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party at the hearing, unless prevented by sickness or infirmity, which must be shown in the return.

SEC. 482. The court or judge, if satisfied of the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return, or any part thereof, or allege any new matter in evidence. The new matter shall be verified, except in cases of commitment on a criminal charge. The return and pleadings may be amended without causing delay.

SEC. 483. 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. 484. 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:

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

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

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

SEC. 485. No person shall be discharged from an order of commitment issued by any judicial or peace officer, for want of bail, or in cases not bailable on account of any defect in the charge or process, or for alleged want of probable cause; but in all cases the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, admit to bail, or recommit the prisoner as may be just and legal, and recognize witnesses when proper.

SEC. 486. The writ may be had for the purpose of admitting a prisoner to bail in civil and criminal actions. When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

SEC. 487. 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. 488. 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. 489. 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. 490. 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. 491. The officer shall execute the writ by bringing the person therein named before the court or judge, and the like return of proceedings shall be required and had, as in case of writs of habeas corpus.

SEC. 492. 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. 493. Any writ or process authorized by this chapter, may be issued and served in case of emergency on Sunday.

SEC. 494. 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. 495. 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 L.

MANDATE AND PROHIBITION.

- SECTION 496. Writs of, may issue from supreme and district courts.
 Limitation as to supreme court.
- “ 497. To whom and for what they may issue.
- “ 498. How issued and made returnable.
- “ 499. First writ may be alternative and peremptory.
- “ 500. Issues of law and fact upon the return, tried as in civil actions.
- “ 501. When plaintiff may recover damages.
- “ 502. Court may enlarge time of making return and pleadings, &c.
- “ 503. Obedience to enforce such writs, how enforced.
- “ 504. Writs of prohibition, what to command.
- “ 505. What judgment may be rendered.
- “ 506. Costs.

SEC. 496. Writs of mandate and prohibition may issue from the supreme and district courts of the Territory, but such writs shall issue from the supreme court only when necessary for the exercise of its functions and powers.

SEC. 497. Writs of mandate may be issued to any inferior tribunal, corporation, board or person to compel the performance of any act which the law specially enjoins, or a duty resulting from an office, trust or station.

SEC. 498. 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. 499. The first writ shall be in the alternative or peremptory, as the court shall direct.

SEC. 500. 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. 501. 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. 502. 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. 503. Obedience to such writs may be enforced by attachment, and fine and imprisonment, or both.

SEC. 504. The writ of prohibition shall command the court and party to whom it shall be directed, to refrain from any further proceedings in the matter therein specified, until the return of the writ, and the further order of the court thereon, and upon the return, to show cause why they shall not be absolutely restrained from any further proceedings in the matter.

SEC. 505. 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. 506. Costs shall be awarded in these proceedings as in civil actions.

CHAPTER LI.

INFORMATION.

- SECTION 507. When and against whom an information may be filed.
- “ 508. When and by whom it may be filed.
- “ 509. Information, of what to consist.
- “ 510. When against a party for usurping an office, what to set forth.
- “ 511. Notice signed by relator to be served and returned.
Defendant to suffer default, when.
Subsequent proceedings, in what manner had.
- “ 512. Judgment where right to office contested.
- “ 513. If judgment be in favor of relator, his rights.
- “ 514. Court may enforce its order.
- “ 515. Limitation of plaintiff's action for damages.
- “ 516. One information may be filed against several claimants to same office, &c.
- “ 517. When defendant found guilty, what judgment shall be rendered.
And herein of corporations.
- “ 518. Collection of costs against a corporation.
- “ 519. Recovery of property forfeited to the Territory.
Title thereof.
- “ 520. Prosecuting attorney not liable for costs, relator may be.
- “ 521. Information to annul or vacate letters, patent, deeds, &c., when may be prosecuted.
- “ 522. By whom information may be filed in such case.
Subsequent proceedings.

SEC. 507. An information may be filed against any person or corporation in the following cases :

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

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

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

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

SEC. 508. The information may be filed by the prosecuting attorney of the district court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise, or corporation, which is the subject of the information.

SEC. 509. The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court.

SEC. 510. 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. 511. 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. 512. In every case wherein the right to an office is contested, judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself entitled to, if any, to the time of the judgment.

SEC. 513. If judgment be rendered in favor of the relator he shall proceed to exercise the functions of the office, after he has been qualified as required by law, and the court shall order the defendant to deliver over all the books and papers in his custody, or within his power, belonging to the office from which he shall have been ousted.

SEC. 514. 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. 515. 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. 516. When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons in order to try their respective rights to the office or franchise.

SEC. 517. Whenever any defendant shall be found guilty of any usurpation of, or intrusion into, or unlawfully exercising any office or any franchise within this territory, or any office in any corporation, created by the authority of this territory, or when any public officer thus charged, shall be found guilty of having done or suffered any act, which by the provisions of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation, without having been legally incorporated, the court shall give judgment of ouster against the defendant or defendants, and exclude him or them from the office, franchise, or corporate rights; and, in case of corporations, that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff.

SEC. 518. 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 executors 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. 519. Whenever any property shall be forfeited to the territory, for its use the legal title shall be deemed to be in the territory, from the time of the forfeiture; and an information may be filed by the prosecuting attorney in the district court, for the recovery of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in a civil action for the recovery of property.

SEC. 520. 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. 521. An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate or deed granted by the proper authorities of this territory, when there is reason to believe that the same were obtained by fraud, or through mistake or ignorance

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

SEC. 522. 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 proceedings, 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 LII.

MISCELLANEOUS PROVISIONS.

- SECTION 523. Pleadings sworn to, how regarded.
- " 524. New party to an action, entitled to notice.
- " 525. Time how computed, Sunday when excluded.
- " 526. Process of district court to be directed to sheriff and executed.
- " 527. Provision where there is no sheriff, or he disqualified, &c.
And herein of service of process.
- " 528. Notice to be in writing, and duly served.
Return, and proof of service.
- * " 529. Certain charges actionable, as in case of slanderous words.
- " 530. Person authorized to take bail may administer necessary oaths.
- " 531. Bonds under this act valid to their full intent, however defective.
- " 532. Of actions for recovery of purchase money for sale of lands.
- " 533. Husband and wife, in what actions they may join.
- " 534. Deposit in lieu of bail.
- " 535. Action against a corporation may be brought in county where it has office.
- " 536. Action for personal injury not to abate by death.
- " 537. Right of action of widow and children of a man killed in a duel.
- " 538. Action for damages in seduction, in name of injured party.
Damages to go to party injured.
- " 539. All other forms and rights of action for seduction abolished.
Proviso as to action for support of bastards.
- " 540. Lien upon real estate of judgment against a defendant who is tenant in common, &c.
Of execution against defendant's interest in personal property of copartnership.
- " 541. Judgment of justice of peace, may become judgment of district court.
How made a lien upon real estate of defendant.

SEC. 523. 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. 524. 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. 525. 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. 526. All process issuing out of the district court shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law.

SEC. 527. When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty, to appoint some suitable person, a citizen of the county, to execute the same: *Provided*, That final process shall, in no case, be executed by any other person than the legally authorized officer: or in case he is disqualified, some suitable person, appointed by the court or judge thereof, out of which the process issues, who shall make such appointment in writing, and before such appointment shall take effect, the person so appointed shall give surety to the party interested, for the faithful performance of his duties, which bond of suretyship shall be in writing, be approved by the court or judge appointing him, and be placed on file with the papers in the case.

SEC. 528. 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. 529. 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. 530. 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. 531. No bond required under the provisions of this act, and

intended as such bond, shall be void for want of form, or substance, or recital, or condition; nor shall the principal or surety on such account be discharged; but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond.

SEC. 532. 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 the purchaser to be sold or transferred to the plaintiff, upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser, in case a sale be ordered.

SEC. 533. Husband and wife may join in all causes of action arising from injuries to the person of character of either, and both of them, or from injuries to the property of either, and both of them, or arising out of any contract in favor of either or both of them.

SEC. 534. 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. 535. 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. 536. 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. 537. The widow, or widow and children, or child or children, if no widow, of a man killed in a duel, shall have a right of action against the person killing him, and against the seconds, and all aiders and abettors, and shall recover such a sum as to the jury shall seem reasonable.

SEC. 458. The seduction of an innocent unmarried female, shall in itself constitute a good cause of action, in the name of the party injured, and against the party committing the injury, his aiders and abet-

tors: *Provided*, That in all cases the damages recovered shall be for the exclusive benefit of the said injured party.

SEC. 539. All other forms and rights of action, to recover damages for seduction, or for the consequences thereof, by any other person than the party injured, are hereby abolished: *Provided*, That nothing herein contained shall be construed to prevent actions for the support of bastards being maintained by the proper authorities.

SEC. 540. 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 defendant, or any person interested in such property, subjecting the same to the payment of the debts of the co-partnership.

SEC. 541. 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, or a copy of the execution issued thereupon, shall, as in other judgments, be recorded by the county auditor, and remain a lien upon real estate in the county where so recorded.

CHAPTER LIII.

OF CONSTRUCTION.

- SECTION 542. "District" and "county," convertible terms.
The powers of county officers not extended.
- " 543. Of the term "officer."
- " 544. Of words importing number and gender.
- " 545. Actions already commenced to conform to this act, as far as practicable.
- " 546. This act to be liberally construed.
- " 547. Repealing section.
- " 548. Time of taking effect of this act.

SEC. 542. For all necessary purposes connected with the district court, each district shall be considered and held to be but one county; and whenever in this act the words district or county occur, the same may be rendered county or district, as may be necessary to conform the practice of the courts to the act of congress, approved August 16th, 1856: *Provided*, That nothing herein contained shall be construed to confer jurisdiction upon county officers, or extend their powers beyond the limits of their counties.

SEC. 543. 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. 544. 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. 545. 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. 546. The provisions of this act shall be liberally construed, and shall not be limited by any rule of strict construction.

SEC. 547. 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. 548. This act to take effect and be in force from and after its passage.

PASSED, January 28th, 1863.

A N A C T

DEFINING THE JURISDICTION AND PRACTICE IN THE PROBATE
COURTS OF WASHINGTON TERRITORY.

- CHAPTER 1.—The probate court, its powers and jurisdiction.
- “ 2.—Practice in civil cases.
- “ 3.—Practice in criminal cases.
- “ 4.—Practice in probate cases.
- “ 5.—Wills, and rules applicable to and governing their construction.
- “ 6.—Venue.
- “ 7.—Of the proof of wills.
- “ 8.—Letters testamentary, of administration, and bonds of executors and administrators.
- “ 9.—Of the inventory and effects of deceased persons.
- “ 10.—Provision for the support of the family.
- “ 11.—Of claims against the estate.
- “ 12.—Sales of property by executors and administrators, and of the management of the estate.
- “ 13. Of the powers and duties of executors and administrators, &c.
- “ 14.—Of the conveyance of real estate by executors and administrators in certain cases.
- “ 15.—Of accounts to be rendered by executors or administrators, and of the payment of debts.
- “ 16.—Of the partition and distribution of the estate.
- “ 17.—Descent of real estate.
- “ 18.—Distribution of personal estate.
- “ 19.—The appointment and duties of guardians.
- “ 20.—Relating to idiots and insane persons.
- “ 21.—Miscellaneous provisions.
- “ 22.—Appeals in certain cases.

CHAPTER 1.

THE PROBATE COURT, ITS POWERS AND JURISDICTION.

- SECTION 1. Election of judge, title, style of court, and term of office.
Proviso.
- “ 2. Governor to commission judge.
- “ 3. Jurisdiction of court.
- “ 4. Court to provide and keep seal.
- “ 5. To be a court of record.
- “ 6. Terms when to be held.
- “ 7. To appoint their clerks.
- “ 8. To make rules.
- “ 9. Books of record to be kept by clerk.
- “ 10. Process from court, how attested, sealed and served.
- “ 11. Powers of court to enforce its orders.

- SECTION 12. May by attachment, enforce return of writs.
 " 13. Disqualification of judge in certain cases.
 " 14. Proceedings when judge disqualified.
 " 15. Adjournment and special terms of court.
 " 16. Judge to be a conservator of the peace.
 " 17. Orders in vacation.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be elected at the next general election, and every three years thereafter, in each county in this territory, one suitable person, who shall have the qualifications of an elector, who shall be styled the Judge of the Probate court, and the court hereby constituted, shall be called the probate court, and such judge shall hold his office for three years, and until his successor is duly elected and qualified: *Provided,* That the probate judges heretofore elected in the several counties of this territory, shall hold their offices for the terms for which they were elected, and shall bear the style and have the jurisdiction conferred by this act.

SEC. 2. The clerk of the board of county commissioners of each county shall certify the name of the person elected under this act, to the governor of the territory, who shall thereupon commission said person judge of the probate court of said county.

SEC. 3. That said probate courts shall have and possess the following powers: Exclusive original jurisdiction within their respective counties in all cases relative to the probate of last wills and testaments; the granting of letters testamentary and of administration, and revoking the same; the appointment, and displacing guardians of orphan minors, and of persons of unsound mind, and the binding of apprentices; in the settlement and allowance of accounts of executors, administrators and guardians; to hear and determine all disputes and controversies between masters and their apprentices; to allow or reject claims, against estates of deceased persons as hereinafter provided; to award process, and cause to come before said court all and every person or persons whom they may deem it necessary to examine, whether parties or witnesses, or who, as executors, administrators, or guardians, or otherwise, shall be entrusted with, or in any way be accountable for any lands, tenements, goods or chattels, belonging to any minor, orphan, or person of unsound mind, or estate of any deceased person, with full power to administer oaths and affirmations, and examine any person touching any matter of controversy before said court, or in the exercise of its jurisdiction. The probate court shall also have concurrent jurisdiction with the district court of the Territory, in all civil actions when

the amount in controversy shall not exceed five hundred dollars ; concurrent jurisdiction with the district courts in all criminal cases where the punishment of the crime shall be by fine, by fine and imprisonment in the county jail, or by imprisonment in the county jail, and concurrent jurisdiction in all cases of appeals and writs of certiorari from justices of the peace in their respective counties.

SEC. 4. The said court shall provide and keep a suitable seal.

SEC. 5. That the court established by this act shall be a court of record, and shall keep just and faithful records of its proceedings, and shall have power to issue any and all writs which may be necessary to the exercise of its jurisdiction.

SEC. 6. A regular term of the probate court shall be held at the county seat of each county, commencing on the fourth Monday in January, April, July, and October, for the transaction of all business of which said court has jurisdiction ; *Provided, however,* That if the district court of the district embracing any county, be in session at such time, the probate court of the county in which said district court is held, shall stand adjourned until the first Monday of the ensuing month.

SEC. 7. The judges of the several probate courts in the territory shall have power to appoint their own clerks, who shall qualify in the same manner and have the same power, and be entitled to the same fees as are allowed to the clerks of the district courts for similar services.

SEC. 8. The judges of the said courts shall have power to make such rules for the transaction of business in said courts as shall not be inconsistent with law.

SEC. 9. The clerk of the probate court shall keep the same number and kind of books of records in civil and criminal cases, as are now kept by the clerks of the district courts.

SEC. 10. That all process issuing out of the probate court, shall be attested by the clerk, and sealed with the seal of the court, and shall be served in the same manner as process issuing out of the district court.

SEC. 11. That the probate court shall have the same power and authority under like restriction and rules of law, to enforce and execute their orders, rules, judgments and decrees, as the district courts of this territory.

SEC. 12. The said court may enforce by attachment, the return of any writ or process, and the payment of any moneys over which it has jurisdiction, and to compel the production or delivery of any papers which are subjects of, or necessary to its judicial action.

SEC. 13. That no judge of the probate court shall sit on the de-

termination of any cause or proceeding in which he is interested, or related within the fourth degree to either party, or shall have been counsel.

SEC. 14. That if the judge be disqualified from any cause for sitting on the determination of any cause or proceeding pending before him, the same shall be certified with the original papers to the district court of the district including the county, which shall proceed thereon to final judgment and determination.

SEC. 15. That if said court shall not be held on the first day of the term, such court shall stand adjourned from day to day until the evening of the third day. If at that time the judge shall not have appeared and opened court, the same shall stand adjourned until the next regular term. Special adjourned terms may be held in continuation of the regular term, upon its being so ordered by the court in term time, and entered by the clerk upon the record of the court.

SEC. 16. That each judge of the probate court shall be a conservator of the peace throughout his county.

SEC. 17. Letters of administration, or letters of guardianship, may be granted; inventory or account of sale of property returned during term time or vacation, and entered on record of the same day that such grant or return shall be made.

CHAPTER II.

PRACTICE IN CIVIL CASES.

SECTION 18. Practice to conform to practice in district courts.

- “ 19. Service of complaint and notice.
- “ 20. Powers of courts and judges.
- “ 21. Power to grant certain writs.
- “ 22. Appeals and certiorari from justices court.
- “ 23. Juries to consist of six.
- “ 24. Venire and challenges.
- “ 25. Compensation of juries in civil cases.

SEC. 18. The practice of the probate courts in civil cases shall conform to, and be governed by the laws now regulating the practice in the district courts in civil cases, except as is hereinafter provided.

SEC. 19. It shall not be necessary for the plaintiff in a civil action in the probate court, to serve a copy of his complaint and notice on the defendant more than ten days prior to the first day of a regular term of said court.

SEC. 20. In all civil cases within their jurisdiction, the probate courts and the judges thereof shall have the same power to grant all orders, writs and process, which the district courts or the judges thereof have power to grant within their jurisdiction, and to hear and determine all questions arising within their jurisdiction, as fully and completely as the district courts or the judges thereof have power to do under the laws of the territory.

SEC. 21. The probate court and the judges thereof shall have power to grant writs of habeas corpus, mandate and prohibition, and to determine all questions arising thereon.

SEC. 22. The laws providing for appeals and writs of certiorari from justices of the peace to the district courts, shall be applicable to appeals and writs of certiorari from justices of the peace to probate courts.

SEC. 23. Juries in all civil actions in the probate courts shall consist of six persons having the qualifications of electors, who shall not be summoned until the cause is at issue and set for trial, and a demand is made in writing therefor by one or more of the parties, and their legal fees paid into the hands of the clerk by the party making the demand.

SEC. 24. The clerk shall issue a venire returnable on the day upon which the cause is set for trial, and if on the return day the panel be not full, it may be filled by summoning talesmen. No challenges shall be allowed either party except for cause.

SEC. 25. In all civil actions, the jurisdiction of which has been given by this act to the probate courts, the party plaintiff shall, before his complaint and notice, writ, record or papers upon which his action is founded, be filed by the clerk of the court, pay into the hands of said clerk a docket fee of ten dollars, which shall be paid to the probate judge by the clerk, and no docket fee shall be allowed attorneys in the probate courts.

CHAPTER III.

PRACTICE IN CRIMINAL CASES.

- SECTION 26. Practice in district courts to apply to probate courts.
- “ 27. Affidavit to be made.
- “ 28. What affidavit shall contain.
- “ 29. When information to be filed.
- “ 30. What information shall contain.
- “ 31. When and how amended.

- SECTION 32. When warrant to issue.
- “ 33. Court shall fix time for trial.
 - “ 34. Jury to be summoned.
 - “ 35. Challenges.
 - “ 36. Recognizances to be filed with clerk.
 - “ 37. Appeals to be tried *de novo*.
 - “ 38. Jury to find whether proceedings malicious or not.
 - “ 39. If malicious, how judgment rendered.
 - “ 40. Compensation of judge.
 - “ 41. Fees of prosecuting attorney.

SEC. 26. All laws regulating the practice and proceedings in criminal cases in district courts shall apply to and govern the proceedings in criminal cases in the probate courts, except as is hereinafter provided.

SEC. 27. Any person having knowledge of the commission of any offense of which the probate court has jurisdiction, may make his affidavit before any person authorized to administer oaths, setting forth the offense and the person charged, in plain and concise language, and file the same with the clerk, or deposit it with the prosecuting attorney, at any time between the first and last day of a regular term.

SEC. 28. The person making the affidavit shall also set forth in it the names of all persons whom he knows, of his personal knowledge, are cognizant of the facts sworn to, and also, the names of all persons whom he is informed have any knowledge of the facts set forth, and if he knows of no person having such knowledge, and has no information of any person having such knowledge, these facts must also be set forth.

SEC. 29. The prosecuting attorney shall then apply to the court for leave to file an information against the party charged with the offense, and if, from an examination of the affidavit or affidavits, the court is satisfied that a crime has been committed of which the court has jurisdiction, leave shall be granted, and the prosecuting attorney shall as soon as practicable file his information.

SEC. 30. The information shall contain :

1st. The title of the action, specifying the name of the court and the county in which the information is presented, and the names of the party or parties.

2d. A statement of the facts constituting the offense in plain and concise language, without repetition.

SEC 31. An information may be amended, in matter of substance and form, at any time before the defendants pleads without leave, and at any time after the defendant pleads with leave of the court. The information may be amended on the trial as to all matters of form and va-

riance at the discretion of the court, when the same can be done without prejudice to the rights of the defendants, but no amendment shall cause any delay of the trial, unless for good cause shown by affidavit.

SEC. 32. When information is filed the court shall direct the clerk to issue a warrant returnable forthwith, and if the warrant be returned not served the prosecuting attorney may, at any time thereafter, order the issuance of *alias* warrants.

SEC. 33. When any person charged with an offense shall have plead to the information, the court shall fix the time for the trial, and the clerk shall issue a venire for six persons, residents of the county, having the qualifications of jurors, to attend at the time set for the trial and serve as jurors in the case to be tried.

SEC. 34. The sheriff of the county shall summon said jurors, and if any of them be not present at the time specified, he shall complete the number of six by summoning talesman.

SEC. 35. No challenge shall be allowed, either to the Territory or the prisoner, except for cause. The fees of the jurors in each case shall be paid out of the county treasury, but the amount of them shall be taxed as costs, and when collected shall immediately be paid over to the county treasurer of the county by the clerk of the court.

SEC. 36. All recognizances for offenses of which the probate court has jurisdiction, together with the complaint and testimony of witnesses, shall be filed with the clerk of the probate court immediately after the examination is had, by the magistrate before whom the party was examined, and the like proceedings shall be had as upon affidavits filed in term time.

SEC. 37. All appeals from justices of the peace in criminal cases, shall be tried *de novo* in the probate court.

SEC. 38. In all criminal cases tried in the probate court, if the jury find the defendant not guilty, they shall also find whether the prosecution is malicious and without probable cause, and it shall be the duty of the judge, specially to charge the jury in relation to such finding.

SEC. 39. If the jury find the defendant not guilty, and that the prosecution is malicious and without probable cause, judgment shall be rendered by the court against the person making the affidavit or complaint upon which the information is filed for all costs of the case.

SEC. 40. In all criminal cases tried in the probate court, the sum of ten dollars in each case shall be taxed in the costs of the case, if the judgment be against the defendant, and such sum shall be paid over by the clerk, to the judge of the court, when collected on execution; if

the judgment be against the Territory no judge's fees shall be taxed, and if the judgment be against the defendant, and he be imprisoned until the judgment and costs be paid by operation of law, said sum shall be paid out of the county treasury.

SEC. 41. The prosecuting attorney shall receive the same fees in each criminal case in the probate courts, as is now provided by law in the district courts for similar services, and one dollar per day for attendance on the court, to be paid out of the county treasury; and when the prosecuting attorney shall not be in attendance, the court shall have power to appoint some suitable person to act for the term, who shall have the same powers and be entitled to the same fees as the prosecuting attorney.

CHAPTER IV.

PRACTICE IN PROBATE CASES.

SECTION 42. Practice to conform to that of district court so far as applicable.

- " 43. How writs to be tested.
- " 44. What citation to contain.
- " 45. How served.
- " 46. Service in special cases.
- " 47. When orders and trials to be made.
- „ 48. How entered on record.
- " 49. Trial by jury.
- " 50. Power to grant new trials.

SEC. 42. The practice in the district court shall be applicable to proceedings in the probate court, so far as the same does not conflict with any enactment specially applicable to the probate court, or is not inconsistent with the provisions of this act.

SEC. 43. All writs and process issued from the probate court, shall be signed by the clerk and under the seal of the court.

SEC. 44. Whenever personal notice is required by this act to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation, issued from the court, signed by the clerk and under the seal of the court, directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings.

SEC. 45. The officer to whom the citation is directed, shall serve it by delivering a copy to the person named therein, or to each of them,

if there be more than one, and shall return the original to the court according to its direction, endorsing thereon the time and manner of service.

SEC. 46. In all cases in which citations are issued from the probate court, they shall be served at least ten days before the first day of the term, except when issued from the court in cases where the law requires the judge to issue them upon his own motion, and he does so issue them, and in such cases they shall be served in sufficient time to allow the person served to be in attendance on the court, and may be made returnable on any day of the term.

SEC. 47. All orders, settlements, trials, and other proceedings intrusted by this act to the probate court, shall be had or made in the county in which letters testamentary, or of administration, were granted.

SEC. 48. All orders and decrees made by the probate court during its term, shall be entered at length on the records of the court, and also all orders which the judge is empowered to make out of the term time, and which are by this act specially required to be so entered, and upon the close of each term, the judge shall sign the minutes of the proceedings.

SEC. 49. When any issue is pending, proper to be tried by a jury, the court may order a jury to be summoned by the sheriff, not to exceed six in number, who shall possess the qualifications and be entitled to the same compensation for their services as jurors of the district court.

SEC. 50. Trials by jury in said court shall be governed in all cases as similar trials in the district court, and writs of inquiry may in like manner be awarded and executed, the verdicts of juries be set aside, and new trials granted.

CHAPTER V.

WILLS, AND RULES APPLICABLE TO AND GOVERNING THEIR CONSTRUCTION.

- SECTION 51. Who competent to make wills.
Of dower of widow and estate by courtesy.
- “ 52. Of rights of married women as to real estate.
- “ 53. Requisites and execution of a will.
- “ 54. When testator's name shall be signed by another.
- “ 55. How written will revoked.
- “ 56. When subsequent marriage works a revocation.
- “ 57. Will of unmarried woman, revoked by marriage.
- “ 58. Bond, &c., to convey property not a revocation.

- SECTION 58** Devisee takes subject to.
- “ 59. Charge or incumbrance of estate not a revocation.
Estate subject to said incumbrance.
 - “ 60. Of children of testators, not provided for in will.
 - “ 61. Last section inoperative, if advancements made by testator.
 - “ 62. Of devise, if devisee dies before testator.
 - “ 63. How far cancelling said will, &c., may revive first.
 - “ 64. Nuncupative will, when deemed good.
 - “ 65. Of wages of mariners and soldiers.
 - “ 66. Proof of nuncupative will.
 - “ 67. Legacy to subscribing witness, when void.
But a charge to pay creditors does not render creditors incompetent.
 - “ 68. When attesting witness is heir at law, as well as devisee.
If will established, what he shall receive.
 - “ 69. Estate conveyed by a devise in will.
 - “ 70. Estates for life, created by will.
Remainder to revert to heirs at law of testator.
 - “ 71. Of estate acquired subsequent to execution of will.
 - “ 72. When contribution to be made by devisees and legatees.
 - “ 73. Such contribution enforced by court.
 - “ 74. Codicils included in term “will.”
 - “ 75. Will and intent of testator to be regarded.

SEC. 51. Every person who shall have attained the age of majority, of sound mind, may, by last will, devise all his estate, real and personal. This section shall not be construed as depriving a widow of her dower, nor a husband of his interest as tenant by the courtesy.

SEC. 52. A married woman may by will, dispose of any real estate held in her own right, subject to any rights which her husband may have as tenant by courtesy.

SEC. 53. Every will shall be in writing, signed by the testator or by some other person under his direction in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator.

SEC. 54. Every person who shall sign the testator's name to any will by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

SEC. 55. No will in writing, except in cases hereinafter mentioned, nor any part thereof, shall be revoked except by a subsequent will in writing, or by burning, canceling, tearing, or obliterating the same, by the testator, or his presence, or by his consent and direction.

SEC. 56. If, after making any will, the testator shall marry, and the wife shall be living at the death of the testator, such will shall be deemed revoked, unless provision shall have been made for by her marriage contract, or unless she be provided for in the will, or in such way men-

tioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation, shall be received.

SEC. 57. A will made by an unmarried woman shall be deemed revoked by her subsequent marriage.

SEC. 58. A bond, covenant, or agreement, made for a valuable consideration by a testator, to convey any property, devised or bequeathed in any last will, previously made, shall not be deemed a revocation of such previous devise or bequest, either in law or equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance, or otherwise against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

SEC. 59. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance.

SEC. 60. If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as he shall regard such child or children, or their descendants, not provided for, shall be deemed to die intestate, and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part.

SEC. 61. If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding sections.

SEC. 62. When any estate shall be devised to any child, grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator.

SEC. 63. If, after making any will, the testator shall duly make

and execute a second will, the destruction, canceling or revocation of such second will shall not revive the first will unless it appears by the terms of such revocation, that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

SEC. 64. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, nor unless the same be proved by two witnesses, who were present at the making thereof, nor unless it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness, and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home, and died before his return.

SEC. 65. Any mariner at sea, or soldier in the military service, may dispose of his wages, or other personal property, as he might have done by common law, or by reducing the same to writing.

SEC. 66. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may contest the will if they think proper.

SEC. 67. All beneficial devises, legacies and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void, unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

SEC. 68. But if such witness, to whom any beneficial devise, legacy or gift, may have been made or given, would have been entitled to any share in the testator's estate, in case the will is not established, then so much of the estate as would have descended, or would have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will, in proportion to, and out of the parts devised and bequeathed to him.

SEC. 69. Every devise of land in any will shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

SEC. 70. If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and without the remainder is specially devised to the heirs of said devisee, it shall revert to the heirs at law of the testator.

SEC. 71. Any estate, right or interest in lands acquired by the testator after the making of his or her will, shall pass thereby, and in like manner as if it passed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

SEC. 72. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs, shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

SEC. 73. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the probate court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made, and enforce such order with like effect as a judgment of the district court.

SEC. 74. The term "will," as used in this act, shall be so construed as to include all codicils attached to any will.

SEC. 75. All courts and others concerned in the execution of last wills, shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them.

CHAPTER VI.

VENUE.

SECTION 76. In what county will to be proved, &c.

" 77. If estate in more than one county, and testator died out of Territory.

SEC. 76. Wills shall be proved and letters testamentary or of administration shall be granted:

1st—In the county of which the deceased was a resident, or had his place of abode at the time of his death.

2d—In the county in which he may have died, leaving estate therein, and not being a resident of the territory.

3d—In the county in which any part of his estate may be, he hav-

ing died out of the territory, and not having been a resident thereof at the time of his death.

SEC. 77. When the estate of the deceased is in more than one county, he having died out of the territory, and not having been a resident thereof at the time of his death, the probate court of that county in which application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate.

CHAPTER VII.

OF THE PROOF OF WILLS.

- SECTION 78. Within what time will to be delivered to court.
- " 79. Within what time executor to present will to court.
- " 80. Duty of executor declining to act, or intending to accept.
- " 81. Penalty for violating the foregoing sections.
- " 82. Executor not having will, may petition court to have same produced.
- " 83. Any person having an interest in will may petition in like manner.
- " 84. Court may compel production of will.
- " 85. Applications for probate, &c., may be made in vacation.
- " 86. Reception of proof and certificate of probate or rejection.
- " 87. Court may issue commission to take testimony of absent witness.
- " 88. Testimony before a commission of same force as if taken before court.
- " 89. When hand writing of testator and absent witnesses, &c., may be proved.
- " 90. When witnesses dead, residence unknown, &c., proof.
- " 91. Testimony to be reduced to writing, signed and certified.
- " 92. Wills to be recorded and originals filed.
- " 93. Wills properly proved, may be read as evidence.
- " 94. Record of will and exemplification to be received as evidence.
- " 95. When lands devised are in different counties, copy of will to be recorded in each county.
In what office, and within what time.
- " 96. Wills may be contested within one year, rejection.
Proceeding in such case.
- " 97. Upon filing of petition, a citation shall issue to the executors, &c.
- " 98. After one year, probate or rejection final.
- " 99. Oath of witness at time of probate, when admissible on trials respecting validity of will.
- " 100. Will and probate thereof, when to be annulled and revoked.
- " 101. Upon revocation, powers of executor to cease.
Not liable for acts done previous to service of written notice of intention to contest.
- " 102. Fees, &c., by whom to be paid.
- " 103. When will shall be lost or destroyed, its execution may be proved.
- " 104. When will established, duty of the probate court.
- " 105. Restraint of administrators, &c., during pendency of application to prove a lost or destroyed will.

SEC. 78. Any person having the custody of any will shall, within thirty days after he shall have knowledge of the death of the testator, deliver said will into the probate court which has jurisdiction of the case, or to the person named in the said will as executor.

SEC. 79. Any person named as executor in any will, shall, within thirty days after he has knowledge that he is executor, present the will, if in his possession, to the probate court which has jurisdiction.

SEC. 80. An executor named in the will may decline to act by filing a written renunciation at the time of filing said will; but if he intends to accept, he shall present with the will a petition praying that the will be admitted to probate and that letters testamentary be issued to him.

SEC. 81. Any person violating the three preceding sections of this act without reasonable excuse, shall be liable to every person interested in the will for damages caused by such neglect.

SEC. 82. Any person named as an executor in a will, not having the same in his possession, may petition the court of proper jurisdiction for an order to have the same produced, that it may be admitted to probate, and that letters testamentary may be issued to him.

SEC. 83. Any person having an interest in the will, may in like manner present a petition praying that it may be required to be produced and admitted to probate.

SEC. 84. The said court may compel, by citation and attachment, any person in whose possession any will may be, to produce it in court at such time as the court may order.

SEC. 85. Applications for the probate of a will, or for letters testamentary, may be made to the judge of the probate court in vacation, and he may, also, at any time, issue all necessary orders and process to enforce the production of any will.

SEC. 86. When any will is exhibited to be proven, the court may immediately receive the proof, and grant a certificate of probate, or if such will be rejected, issue a certificate of rejection.

SEC. 87. If any witness be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the territory, or more than thirty miles from the place where the will is to be proven, such court may issue a commission, annexed to such will, and directed to any judge, justice of the peace, or mayor, or other person, empowering him to take and certify the attestation of such witness.

SEC. 88. If such witness appear before such officer, and make oath or affirmation that the testator signed the writing annexed to such

commission, as his last will, or that some other person signed it by his direction, and in his presence, that he was of sound mind, that the witness subscribed his name thereto in the presence of the testator, the testimony, so taken, shall have the same force as if taken before the court.

SEC. 89. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the handwriting of the testator, and of the witnesses dead, insane, or residence unknown, and of such other circumstances as would be sufficient to prove such will.

SEC. 90. If it shall appear to the satisfaction of the court that all the subscribing witnesses are dead, insane, or their residence unknown, the court shall take and receive such proof of the handwriting of the testator and subscribing witnesses to the will, and of such other facts and circumstances as would be sufficient to prove such will.

SEC. 91. All the testimony adduced in support of the will, shall be reduced to writing, signed by the witnesses, and certified by the judge of the probate court.

SEC. 92. All wills shall be recorded in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed.

SEC. 93. Every will proved according to the provisions of this act, recorded and certified by the judge of the probate court, and attested by the seal of said court, may be read as evidence without any further proof.

SEC. 94. The record of any will made, proved and recorded as aforesaid, and the exemplification of such record by the judge of probate, in whose custody the same may be, shall be received as evidence, and shall be as effectual, in all cases, as the original would be if produced and proven.

SEC. 95. In all cases where lands devised by last will are situated in different counties, a copy of such will shall be recorded in the county auditor's office in each county, within six months after probate.

SEC. 96. If any person interested in any will shall appear within one year after the probate or rejection thereof, and by petition to the probate court having jurisdiction, contest the validity of said will, or pray to have the will proven which has been rejected, he shall file a statement containing his objections and exceptions to said will, or to the rejection thereof. An issue shall be made up in said probate court respecting the competency of the deceased to make last will and testa-

ment, or respecting the execution by the deceased of such last will and testament under restraint, or undue influence, or fraudulent representations, or for any other cause affecting the validity of such will; such issue or issues shall, at the request of either of the parties interested, be certified immediately to the district court of the district which may embrace the county where probate jurisdiction has been exercised, for trial by jury; or may, by the consent of the parties, be tried by the probate court. Such issue or issues of fact shall be made up and tried in the same manner as is or may be provided by law for the trial of issues of fact in other cases. The jury trying the same shall render a special verdict thereon, subject, nevertheless, to the like objections and exceptions to the decisions of the court as in civil actions. After the trial of such issue, without an appeal or writ of error shall be taken in said case to the supreme court, as hereinafter allowed, the district court shall remit the proceedings upon such trial, together with the findings and decision, to the probate court. The probate court shall render judgment according to the decision of the district court, or upon appeal to the supreme court, then upon the judgment or decision of said supreme court.

SEC. 97. Upon the filing of the petition referred to in the next preceding section, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators with the will annexed, and to all the legatees named in the will residing in the territory, or to their guardians, if any of them are minors, or their personal representative, if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified, to show cause why the petition should not be granted.

SEC. 98. If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a period of one year after their respective disabilities are removed.

SEC. 99. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness examined at the time of probate, may be admitted as evidence.

SEC. 100. If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked.

SEC. 101. Upon the revocation being made, the powers of the executor or administrator with the will annexed shall cease, but such

executor or administrator shall not be liable for any act done in good faith previous to service of written notice of intention to contest said will.

Sec. 102. The fees and expenses shall be paid by the losing party. If the probate be revoked, or the will annulled, the party who shall have resisted such revocation shall pay the cost and expenses of the proceedings out of the property of the deceased.

Sec. 103. Whenever any will be lost or destroyed, by accident or design, the probate court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to persons interested having first been given; such proof shall be reduced to writing and signed by the witnesses. But no will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses.

Sec. 104. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the probate judge, under his hand and the seal of the court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the will annexed, shall be issued thereon, in the same manner as upon wills produced and only proved.

Sec. 105. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the court shall have authority to restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees, claiming under the lost or destroyed will.

CHAPTER VIII.

LETTERS TESTAMENTARY AND OF ADMINISTRATION, AND BONDS OF EXECUTORS AND ADMINISTRATORS.

- SECTION 106. Letters testamentary to be granted to persons named as executors. If part or all refuse to act, or be disqualified, proceedings thereupon.
- “ 107. Objections to granting letters to executors named may be filed, and the objection shall be heard and determined by court.
- “ 108. Proceedings when executor is a minor, or absent from territory.

- SECTION 100. Proceedings when will is found after letters of administration are granted.
- “ 110. Proceedings when such will is set aside.
- “ 111. Marriage of executrix or administratrix extinguishes her powers.
- “ 112. Court to revoke letters granted in certain cases.
- “ 113. No executor of an executor as such, to administer on estate of first testator.
Proceedings on death of sole or surviving executor.
- “ 114. When a part only of executors named are appointed, their acts to be as effectual as if all were appointed.
- “ 115. Authority of administration with the will annexed.
- “ 116. Letters to be signed by clerk of probate, to be under seal of court, and to have copy of will attached.
- “ 117. Administrators, &c., to make oath that he knows of no other or subsequent will.
- “ 118. Letters testamentary, &c., to be recorded.
- “ 119. Certified copies to be received as evidence.
- “ 120. Form of letters testamentary to executors.
- “ 121. Form of letters of administration, with the will annexed.
- “ 122. To what persons administration to be granted, and in what order.
When judge may appoint any person to administer estate.
- “ 123. Application for letters of administration, how to be made.
Applicant to make affidavit as to names and residence of heirs, &c.
- “ 124. Similar affidavit required from administrators of goods remaining unadministered, and during contest about will, or granting letters.
- “ 125. Letters of administration to be signed and sealed.
Form thereof.
- “ 126. Executors and administrators to give bond.
Form, and condition thereof.
Additional bond may be required; when.
Additional security for rents, &c.
- “ 127. Court may take a separate or joint bond.
- “ 128. Certain persons not to be taken as security.
- “ 129. Judge to take good security.
May examine on oath, persons offered.
- “ 130. Bonds to be recorded, and originals filed.
- “ 131. As to insolvency, &c., of principal or surety.
- “ 132. Like examination upon complaint by surety.
- “ 133. Court may order another bond, &c., to be given.
- “ 134. Effect of said bond as to former securities.
- “ 135. Effect of failure to give said bond.
- “ 136. Letters testamentary may issue without bond; when.
Executor afterwards required to give bond.
- “ 137. Special administrator may be appointed; when.
- “ 138. Bond of special administrator.
- “ 139. Duty and power of special administrator.
His compensation.
- “ 140. Upon grant of letters, his power to cease.
As to suit commenced by special administrator.
- “ 141. Not liable to action by creditor of deceased.
From what time limitation as to suits to commence.
- “ 142. Special administrator to render an account, on oath, of proceedings.
- “ 143. Executor may resign; how.

- SECTION 144. Released executor, &c., liable for costs of application.
- “ 145. Surviving executors to perform all duties.
- “ 146. In case the executors, die, resign, &c., to whom letters to be granted
- “ 147. Legal representatives of deceased executor, to deliver to successor all moneys, deeds, &c.
- “ 148. Succeeding administrator may proceed against any delinquent, former executor, &c.
- “ 149. Suits against securities, within what time to be commenced.
- “ 150. Of executors failing to make settlement.
- “ 151. *Ib.*, as to those who have surrendered their letters, or legal representatives of deceased executors, &c.
- “ 152. Delinquents in such cases, to pay costs.
- “ 153. Inventory of an estate when deceased was member of a partnership.
- “ 154. Delivery of co-partnership property, to whom to be made.
Bond required.
- “ 155. Condition of bond.
- “ 156. Authority of court to cite surviving partners.
Remedies of interested parties against survivors.
- “ 157. In case surviving partners refuse to give bond, who to administer on partnership estate.
- “ 158. Executor so administering, to give further bond.
- “ 159. Surviving partners to exhibit to appraisers, certain property of the firm.
- “ 160. Penalty for breach of preceding section.
- “ 161. Surviving partner, when allowed to retain the partnership property.
- “ 162. Bond of executor, &c., administering on partnership property.
- “ 163. If property withheld, executors may have process.
- “ 164. Non-residents, not to have letters granted them.

SEC. 106. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed, shall be granted to the person to whom administration would have been granted, if there had been no will.

SEC. 107. Any person interested in a will may file objections in writing to the granting of letters testamentary, to the persons named as executors, or any of them, and the objection shall be heard and determined by the court.

SEC. 108. If the executor be a minor, or absent from the territory, letters of administration with the will annexed, shall be granted during the time of such minority or absence, to some other person; unless there be another executor, who shall accept the trust; in which case the estate shall be administered by such other executor, until the disqualification shall be removed; when such minor, having arrived at full age, or such absentee shall be admitted as joint executor with the former.

SEC. 109. If, after letters of administration are granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked, and letters testamentary or of administration with the will annexed shall be granted.

SEC. 110. If, after a will has been found and letters thereon granted, the will shall afterwards be set aside, the letters shall be revoked, and letters of administration granted on the goods unadministered.

SEC. 111. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve on him, but the marriage shall extinguish her powers and the letters be revoked.

SEC. 112. If any executor or administrator become of unsound mind, or be convicted of felony or other infamous crime, or become an habitual drunkard, or otherwise incapable of, or unsuitable for executing the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or co-administrator, the probate court upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if they find it just, shall revoke the letters granted.

SEC. 113. No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator left unadministered, shall be issued.

SEC. 114. When all the executors named shall, not be appointed by the court, such as are appointed shall have the same authority to perform every act, and discharge every trust required by the will, and their acts shall be as effectual for every purpose, as if all were appointed and should act together.

SEC. 115. Administrators with the will annexed, shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

SEC. 116. Letters testamentary and of administration, with the will annexed, shall be signed by the clerk of probate, and be under the seal of the court, and a copy of the will shall be attached to the letters.

SEC. 117. Every administrator with the will annexed, and executor at the time letters are granted him, shall make an affidavit that he knows of no other and subsequent will of the deceased.

SEC. 118. The judge of probate shall cause his clerk to record in a well-bound book, kept for that purpose, all letters testamentary and of administration, before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded.

SEC. 119. Copies of such letters, or copies of the records thereof, certified by the probate judge, and under the seal of the probate court, shall be received as evidence in any court in this territory.

SEC. 120. Letters testamentary to be issued to executors under the provisions of this act, may be in the following form :

United States of America, }
Territory of Washington. } ss.

In the probate court of the county of _____.

Whereas the last will of A. B., deceased, was on the _____ day of _____, A. D., _____, duly exhibited, proven and recorded in our said probate court, a copy of which is hereto annexed; and whereas, it appears in and by said last will, that C. D. is appointed executor thereon. Now, therefore, know all men by these presents, that we do hereby authorize the said C. D. to execute said will according to law.

In testimony whereof, I, E. F., clerk of the probate court my of said county, on this _____ day of _____, A. D. _____, at office in said county, have herunto set my name and affixed the seal of said court.

SEC. 121. Letters of administration with the will annexed, may be substantially, in the following form :

United States of America, }
Territory of Washington. } ss.

In the probate court of the county of _____.

The last will of A. B., deceased, a copy of which is hereunto annexed, having been proved and recorded in the said probate court, and _____ (as the case may be,) _____, C. D. is hereby appointed administrator with the will annexed.

In testimony whereof, I, _____, clerk of the probate court of said county, on this _____ day of _____, A. D. _____, have hereunto affixed my hand and the seal of said court.

SEC. 122. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order :

1st—The surviving husband, or wife, or such person as he or she may request to have appointed.

2d—The children.

3d—The father or mother.

4th—The brothers.

5th—The sisters.

6th—The grand children.

7th—Any other of the next of kin, entitled to share in the distribution of the estate; *Provided*, That nothing hereinbefore mentioned shall be so construed as to prevent the judge of the probate court from appointing any disinterested and competent person or persons to administer such estate, when requested so to do, by petition of any person or persons interested in a just administration thereof.

SEC. 123. Application for letters of administration shall be made by petition in writing, signed by the applicant or his attorney, and filed in the probate court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and such applicant, at the time of making such application, shall make an affidavit, stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased, and that the deceased died without a will.

SEC. 124. A similar affidavit, with such variations as the case may require, shall be made by administrators of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the granting of letters of administration.

SEC. 125. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form :

United States of America,
Territory of Washington. } ss.

Whereas, A. B., late of ———, on or about the ——— day of ———, A. D.—, died intestate, leaving at the time of his death, property in this territory subject to administration. Now, therefore, know all men by these presents, that we do hereby appoint ———, administrator upon said estate, and hereby authorize him to administer the same according to law.

In testimony whereof, I, E. F., clerk of the probate court of said county, on this ——— day of ———, A. D. ———, at my office in said county, have hereunto set my name and affixed the seal of said court.

SEC. 126. Every executor or administrator, before entering upon the execution of his trust, shall give bond with sufficient sureties, resident in this territory, in such sum as the judge of the probate court shall order, payable to the territory of Washington. The form of the bond shall be joint and several, and the penalty shall not be less than twice the value of the estate; which value shall be ascertained by the

said judge, by examination, on oath, of the party applying, and of any other persons he may think proper to examine. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of his trust according to law. In the discretion of the court, an additional bond may be required whenever any real estate is ordered to be sold by the court; and also, the court may require additional security for the annual rents, issues and profits of all real estate in the charge of said executor or administrator.

SEC. 127. When two or more persons have been appointed executors or administrators, the probate court may take a separate bond, with securities, from each of them, or a joint bond, with securities, from all of them.

SEC. 128. No judge of the probate court, no sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as security in any bond required to be taken by this act.

SEC. 129. The judge of the probate court shall take special care to take as securities, men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy himself, he may take testimony, and examine, on oath, the applicant or persons offered as security.

SEC. 130. The judge of the probate court shall cause his clerk to record in a well-bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular files.

SEC. 131. If any heir, legatee, creditor or other person interested in any estate, file in the probate court an affidavit, stating that the affiant has sufficient cause to believe that the security in the executor's or administrator's bond, has, or is likely to become insolvent, or has died or removed from the territory, or that the principal in such bond has, or is likely to become insolvent, or is wasting the estate, or that the penalty of such bond is insufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond at least ten days' notice of the complaint, the court shall examine into the complaint.

SEC. 132. If any person bound as security in any executor's or administrator's bond, file in the probate court an affidavit stating that the affiant has sufficient reason to believe, and does believe his co-surety has died, or is likely to become insolvent, or has removed from the territory, or the principal in such bond has or is likely to become insolvent, or is wasting the estate, and shall have given to the principal in such bond at least ten days notice of such complaint, the court shall examine into the same.

SEC. 133. If the probate court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond and sufficient surety to be given.

SEC. 134. Such additional bond when given and approved, shall discharge the former securities from any liability arising from the misconduct of the principal after the filing of the same, and such former securities shall only be liable for such misconduct as happened prior to the giving such new bond.

SEC. 135. If such person fail to give such additional bond and security for ten days after making such order, or in such other time as the court may prescribe, his letters from thenceforth shall be deemed to be revoked, and his authority from that time cease.

SEC. 136. When it is expressly provided in the will of a testator that no bond shall be required of the executor, letters testamentary may issue without any bond having been given; but an executor to whom letters have been issued without bond, may at any time afterwards, whenever it may be shown from any cause to be necessary and proper, be required to appear and file a bond as in other cases.

SEC. 137. When by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of the probate court may, in his discretion, appoint a special administrator, (other than one of the parties,) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he shall nevertheless proceed in the execution of his trust, until he shall be otherwise ordered by the district court to which such appeal is taken.

SEC. 138. Every such administrator shall, before entering on the duties of his trust, give bond with sufficient surety or sureties, in such sum as the judge of the probate court shall order, payable to the territory of Washington, with condition as required of an executor, or in other cases of administration, to make and return into the probate court within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come into his possession or knowledge; and that he will truly account for all the goods, chattels, debts and effects of the deceased, that shall be received by him as special administrator, whenever required by the probate court, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

SEC. 139. Such special administrators shall collect all the goods,

chattels and debts of the deceased, and preserve the same for the executor or administrator who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the probate court shall order to be sold, and he shall be allowed such compensation for his service as the said court shall deem reasonable.

SEC. 140. Upon granting letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased, in his hands, and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

SEC. 141. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate, shall begin to run from the time of granting letters testamentary or of administration in usual form, in like manner as if such special administration had not been granted.

SEC. 142. The special administrator shall also render an account on oath of his proceedings, in like manner as other administrators are required to do.

SEC. 143. If any executor or administrator, having first settled his accounts, shall publish for six weeks in some newspaper in this territory, in general circulation in the county wherein his letters were granted, a notice of his intention to apply to the probate court to resign his letters, and the court on proof of such publication believe that he should be permitted to resign it, shall so order; said publication of notice in the newspaper, upon application to the probate court for that purpose, may be dispensed with, and instead thereof, the probate court may require said executor or administrator to post ten written or printed handbills containing said notice, in ten of the most public places in the county where his letters were granted, at least twenty days before the term of the court at which he makes application to resign his letters.

SEC. 144. Such person shall then surrender his letters, his power from that time shall cease, and he shall pay the expenses of publication, and of all the proceedings on such application.

SEC. 145. If there be more than one executor or administrator of an estate, and the letters or part of them, be revoked or surrendered, or

a part die, or in any way become disqualified, those who remain shall perform all the duties required by law respecting the estate.

SEC. 146. If the executors or administrators of an estate shall die, resign, or their letters be revoked, in case not otherwise provided for, letters of administration of the goods remaining unadministered, shall be granted those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators.

SEC. 147. If any executor or administrator resign, or his letters be revoked, or he die, he or his legal representatives shall account for, pay and deliver to his successor or to the surviving or remaining executor or administrator, all money and property of every kind, and all rights, credits, deeds, evidences of debt and papers of every kind of the deceased at such time and in such manner as the court shall order, on final settlement with such executor or administrator or his legal representatives.

SEC. 148. The succeeding administrator, or remaining executor or administrator, may proceed by law against any delinquent, former executor or administrator, or his legal representatives, or the securities of either, or against any other person possessed of any part of the estate.

SEC. 149. All suits against securities shall be commenced within six years after the revocation or surrender of letters of administration, or death of the principal.

SEC. 150. If any executor or administrator fail to make either annual or final settlement as required by law, and do not show good cause for such failure, after having been cited for that purpose by the probate court, it shall order such executor or administrator to give notice when required, and to make such settlement, and may enforce obedience to such order by attachment, and may revoke his letters.

SEC. 151. If any person who has surrendered his letters testamentary or of administration, or whose letters have been revoked, or the legal representatives of any deceased executor or administrator shall fail to make final settlement as required by law after being cited for that purpose by the probate court, it shall order such delinquents to make such settlement, and may enforce obedience to such order by attachment.

SEC. 152. In all cases where citations or attachments may be is-

sued against any executor, administrator or other person for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

SEC. 153. The executor or administrator on the estate of any deceased member of a co-partnership shall include in the inventory, which he is required by law to return to the probate court, the whole of the partnership property, goods, chattels, rights and credits appraised at their true value as in other cases, but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the co-partnership interest.

SEC. 154. The co-partnership property thus appraised shall remain with, or be delivered over, as the case may be, to the surviving partner or partners, who may be disposed to undertake the management thereof, agreeably to the conditions of a bond which he or they shall be required to give to the territory of Washington, in such sum and with such securities as are required in other cases of administration.

SEC. 155. The condition of such bond shall, in substance, be as follows:

The condition of the above bond is, that if A. B., or A. B. and C. D., surviving partner or partners of the late firm of _____, shall use due diligence and fidelity in closing the affairs of the said co-partnership, apply the proceeds thereof towards the payment of the co-partnership debts, render a true account on oath to the probate court, whenever required so to do by said court, of all the co-partnership affairs, and pay over within one year, unless a longer time be allowed by the probate court, to the executor or administrator the excess, if any there be beyond satisfying the partnership debts, then this bond shall be void, otherwise remain in full force.

SEC. 156. It shall be the duty of the surviving partner undertaking the management of the co-partnership property, within thirty days after he shall assume the management thereof, unless longer time is allowed, and whenever ordered by the court, to return upon oath to the court a full and complete inventory of all property and demands of every kind belonging to said co-partnership, and a list of all the indebtedness and obligations of said co-partnership, whether due or to become due. And he shall proceed with due diligence to close up the affairs of such co-partnership by selling the property, real or personal, collecting the demands and paying the debts in the same manner as the estates of deceased persons are closed up; and shall, from time to time, as the court may order, render to the court an account of his doings in the premises, and when the co-partnership business is fully settled up, he shall render his final account in the same manner as administrators are re-

quired to do. The probate court shall have the same authority to compel the return of inventories and accounts from such surviving partner, to order the sale of real and personal estate, and direct the mode thereof, to pay co-partnership debts, to adjudicate in all matters pertaining to such co-partnership estate as in case of ordinary administration, and parties interested shall have like remedies upon the bond or otherwise against such survivor, for his neglect or misconduct, as may be had against administrators; *Provided*, That nothing in this act contained, shall impair the right of parties interested to proceed against such survivor as they might have done, had this act not been passed, and whenever any notes, obligations, or contracts, upon which any other person than the deceased may be liable, are on file in the probate court, the person having a right to prosecute them, his lawful agent or attorney, may, with the permission of the said court, take them from the files, giving a receipt therefor, and leaving upon file a copy certified to be correct by the judge.

SEC. 157. In case the surviving partner or partners having been duly cited for that purpose, shall all neglect or refuse to give the bond required in this act, the executor or administrator on the estate of such deceased partner, on giving a bond as provided in the following sections, shall forthwith take the whole partnership estate, goods, chattels, rights and credits into his own possession, and shall be authorized to use the name of the survivor or survivors in collecting the debts due the late firm, if necessary, and shall, with the partnership property, pay the debts due from the late firm, and return or pay to the survivors his or their proportion of the excess, if any.

SEC. 158. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond to its satisfaction, conditioned that he will faithfully execute his trust according to law, which bond may be enforced like other administration bonds.

SEC. 159. Every surviving partner, on the demand of any administrator of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement; and in case of the administration thereof shall devolve upon such administrator, the said survivor or survivors shall surrender to him, on demand, all the property of such partnership, including their books, papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

SEC. 160. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal, to appear before the probate court; and unless he comply with such provision, or show sufficient cause for his omission, the probate court may commit him to the jail of the county, there to remain until he comply or be discharged by due course of law.

SEC. 161. The provisions of the foregoing sections of this act, shall not be so construed as to entitle the surviving partner of a deceased member of a co-partnership, to retain possession of partnership property, after the executor or administrator of such deceased partner, or any person having an interest in a just administration of his estate, shall make and file with the probate judge an affidavit that there is good grounds for believing that the estate of such deceased partner, or the creditors of such partnership, will be damaged thereby, unless such surviving partner, shall make, execute, and file a bond to the territory of Washington in the said probate court, with securities to be by said court approved, embodying in substance the provisions of the bond; the form of which is given in section one hundred and fifty-five of this act.

SEC. 162. If the affidavit defined in the preceding section be made and filed as therein specified, it shall thereupon be the duty of said executor, or administrator, to give and file with said judge a sufficient bond, that he will forthwith take possession of such partnership property, and apply the same, or its proceeds, in payment of the debts due from the late firm, and that he will render to the survivor or survivors, his or their proportion of what remains after the payment of said liabilities, unless said surviving partner or partners shall forthwith comply with the provisions of the preceding section by giving his bonds as therein provided.

SEC. 163. After the filing of the affidavit and bond mentioned in the preceding section by the executor or administrator, it shall be his duty forthwith to take possession of said partnership effects, and if possession thereof be withheld from him, he may, upon application to the probate court, have process directed to the sheriff, commanding him forthwith to seize such property and deliver its possession over to said executor or administrator.

SEC. 164. Letters testamentary, or of administration, shall not be granted to a non-resident of this territory; and when an executor or administrator shall become non-resident, the probate court having jurisdiction of the estate of the testator, or intestate of such executor or administrator, shall revoke his letters.

CHAPTER IX.

OF THE INVENTORY AND EFFECTS OF DECEASED PERSONS.

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SEC. 165. Every executor or administrator shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the probate court, to the heirs or devisees, and shall keep in tenantable repair all houses, buildings and fixtures thereon, which are under his control.

SEC. 166. If such executor or administrator shall make and file with the probate court, or in vacation, an affidavit that any person or persons hold and refuse to deliver the possession of any property that is believed by such executor or administrator, or other person, to belong to such estate, it shall be the duty of the said probate judge forthwith to

make, issue and deliver, attested by the clerk and under the seal of his court, an order to the sheriff of the county in which such property may be situated, forthwith to seize and take possession of the said property, and deliver the same to the said executor or administrator; unless the person or persons from whom such possession has been wrested, shall make and file with said court an affidavit, setting forth facts, showing that he or they are the owners of said property, or are entitled to possession thereof, and shall also execute and file a bond with sufficient security, conditioned that if upon a trial, as hereinafter provided, it shall be adjudged that the said property so taken was and does belong to said estate, the same shall be forthwith delivered, and the expenses of such adjudication, together with the damages sustained by such detention, be paid and satisfied.

SEC. 167. If any person or persons, from whom property has been taken under the provisions of the preceding section, shall make, execute and file, the affidavit and bond therein prescribed, he or they shall be entitled to the immediate delivery and possession of the same, and it shall be the duty of the said court to issue a process, properly authenticated, to the sheriff, commanding him to summon a jury not exceeding six in number, and possessing the qualifications hereinbefore defined, to appear at the next regular term of said court, and try and determine the ownership thereof; and after the trial of such issue by said jury, the probate court shall render judgment according to their finding thereon.

SEC. 168. Any judgment rendered by any probate court upon the finding of a jury, as prescribed in the preceding section, may be reviewed by the party feeling himself aggrieved, on appeal, writ of error, or certiorari, in the same manner as judgment rendered by a justice of the peace.

SEC. 169. Every executor and administrator shall make and return, upon oath, into the probate court, within two months after his appointment, a true inventory of the real and personal estate of the deceased, which is by law to be administered, and which shall have come to his possession or knowledge.

SEC. 170. The estate and effects comprised in the inventory, shall be appraised by three suitable disinterested persons, who shall be appointed by the probate court. If any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed either by the probate court having jurisdiction of the case, or by the probate court of such county, and such appraisers shall receive as compensation for their services three dollars per day, to be paid out of the estate.

SEC. 171. Before proceeding to the discharge of their duties, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability; then they shall proceed to estimate and appraise the property, and set down each article separately, with the value thereof in dollars and cents, in figures, opposite the respective articles. The inventory shall contain all the estate of the deceased, real and personal, which is by law to be administered, a statement of all debts, partnership and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, and their dates, and the sum which, in the judgment of the appraisers, may be collectable on each debt, interest or security.

SEC. 172. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the possession or knowledge of the executor or administrator; and if none shall come to his possession or knowledge, the fact shall be so stated in the inventory.

SEC. 173. The naming of any person as executor in a will, or the appointment of any person as administrator, shall not operate as a discharge from any just claim which the testator or intestate had against the executor or administrator, but the claim shall be included in the inventory, and the executor and administrator shall be liable to the same extent as he would have been had he not been appointed executor or administrator.

SEC. 174. The discharge or bequest in a will of any debt or demand of the testator, against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

SEC. 175. The inventory shall be signed by the appraisers, and the executor or administrator shall take or subscribe an oath, that the inventory contains a true statement of all the estate of the deceased, which has come to his possession or knowledge, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased

against the executor or administrator, and the oath shall be endorsed upon or annexed to the inventory.

SEC. 176. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time, not exceeding three months, as the court shall allow, the court shall revoke the letters testamentary or of administration; and the executor or administrator shall be liable on his bond for an injury sustained by the estate through his neglect.

SEC. 177. Whenever property, not mentioned in any inventory that shall have been made, shall come to the knowledge or possession of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned, subscribed and sworn to, as is provided in this chapter, within two months after the discovery thereof; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

SEC. 178. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, the expenses of administration, and the allowance to the family of the deceased, the whole, or so much as may be necessary of the real estate, may be sold for that purpose by the executor or administrator, in the manner prescribed in this act.

SEC. 179. If any person, before the granting of letters testamentary or administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, in double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

SEC. 180. If any executor, administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate court, on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the deceased, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of, or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim, demand, or last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him

on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the probate court for the county where he may be found, or before the court issuing the order or citation; but in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

SEC. 181. If the person, so cited, refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he shall submit to the order of the court, and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

SEC. 182. The probate court, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been entrusted with any part of the estate of the deceased person, to appear before the said court, and may require such person to give a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for such executor or administrator, and of his proceeding thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

CHAPTER X.

PROVISION FOR THE SUPPORT OF THE FAMILY.

- SECTION 183. Provision for widow and minor children until letters granted.
- “ 184. On return of inventory, exempt property to be set apart for their use.
- “ 185. Further allowance, if property set apart be insufficient.
- “ 186. Executor to pay such allowance in preference to other charges.
- “ 187. How property set apart to be distributed.
- “ 188. If estate does not exceed three hundred dollars in value, all to be assigned to widow and minor children.
- “ 189. If no widow or minor children, how estate to be disposed of.

SEC. 183. When a person shall die, leaving a widow and minor child or children, the widow, child or children shall, until letters have been granted and the inventory returned, be entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be en-

titled to a reasonable provision for their support, to be allowed by the probate court.

SEC. 184. Upon the return of the inventory, the court shall set apart for the use of the widow, minor child or children all the property of the estate by law exempt from execution.

SEC. 185. If the amount thus exempt be insufficient for the support of the widow and minor child or children, the probate court shall make such further reasonable allowance out of the estate as may be necessary for the maintenance of the family, according to their circumstances, during the progress in the settlement of the estate, but no such allowance shall be made after one year from the granting letters testamentary or of administration.

SEC. 186. Any allowance made by the court, in accordance with the provisions of the preceding section, shall be paid by the executor or administrator in preference to all other charges, except funeral charges and expenses of administration.

SEC. 187. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow, and no minor children, such property shall be the property of the widow; if he shall have left also a minor child or children, one half to the widow, and the remainder to such child, or in equal shares to such children, if there are more than one; if there be no widow, then the whole shall belong to the minor child or children.

SEC. 188. If, on the return of the inventory of any intestate's estate, who died leaving a widow or minor children, it shall appear that the value of the estate does not exceed three hundred dollars, the probate court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole estate, after the payment of the funeral expenses and expenses of administration, and there shall be no further proceedings in the administration, unless further estate be discovered.

SEC. 189. If intestate leave no widow or minor children, all his estate shall be assets in the hands of the administrator, after payment of funeral expenses and expenses of administration, for the payment of the debts of the deceased, or be distributed according to law.

CHAPTER XI.

OF CLAIMS AGAINST THE ESTATE.

- SECTION 190. Notice to be given to creditors of deceased.
- “ 191. Copy of notice with affidavit of printer to be filed in probate court.
- “ 192. Claims barred if not presented within one year after notice.
- “ 193. Claim to be supported by affidavit.
Vouchers may be required.
- “ 194. Allowance or rejection to be indorsed on claim by executor, &c.
- “ 195. Claims allowed to be filed in court.
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- “ 196. When a claim is presented by a judge of the probate court.
Proceedings thereupon.
- “ 197. Rejected claims, within what time holder to bring suit upon.
- “ 198. Claim barred by statute of limitation, not to be allowed.
- “ 199. Claim must be presented to executor, &c., before action brought.
- “ 200. Time of vacancy in administration not to be included in limitation.
- “ 201. Plaintiff in action pending, to present claim as in other cases.
- “ 202. When part of a claim allowed, to be stated in indorsement.
If creditor refuse the allowance, when not to recover costs.
- “ 203. Effect of judgment against executor or administrator.
- “ 204. Judgment rendered against testator, &c., no execution to issue after death.
Proviso as to liens on property.
- “ 205. Doubtful claim may be referred.
- “ 206. Proceedings upon such reference.
Return of award, and exceptions thereto.
Compensation of referees.
- “ 207. Claim by executor, &c., against deceased, to be presented.
- “ 208. Letters to be revoked on neglect to notify creditors.
- “ 209. Statement of claims against estate.

SEC. 190. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper printed in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to present them, with the necessary vouchers, within one year after the date of such notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the probate court shall deem necessary, but not less than once in a week, for four successive weeks.

SEC. 191. After the notice shall have been published, a copy thereof, together with the affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator in the probate court.

SEC. 192. If a claim be not presented within one year after the first publication of the notice, it shall be barred.

SEC. 193. Every claim presented to the administrator, shall be supported by the affidavit of the claimant, that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same, to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

SEC. 194. When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the judge of the probate court, who shall, in the same manner, indorse on it his allowance or rejection.

SEC. 195. Every claim which has been allowed by the executor or administrator and the said judge, shall be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in the course of the administration.

SEC. 196. Any judge of a probate court may present a claim against the estate of any decedent for allowance, to the executor or administrator; and if the executor or administrator allows such claim, he shall, in writing, designate some judge of the probate court of an adjoining county, and the said judge shall have the same power to allow or reject it as he would have, had letters issued in his court; and the claimant shall have, in the event of his claim being rejected, all the rights incident to any other creditor against the estate.

SEC. 197. When a claim is rejected by either the executor, administrator or the judge of probate court, the holder must bring suit in the proper court against the executor or administrator within three months after it becomes due, otherwise the claim shall be forever barred.

SEC. 198. No claim shall be allowed by the executor, administrator or probate court which is barred by the statute of limitations.

SEC. 199. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

SEC. 200. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

SEC. 201. If any action be pending against the testator or intestate.

tate, at the time of his death, the plaintiff shall, in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as in other cases; and no recovery shall be had in the action, unless proof be made of the presentment.

SEC. 202. Whenever any claim shall have been presented to an executor or administrator and the judge of the probate court, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs.

SEC. 203. The effect of any judgment rendered against any executor or administrator, shall be only to establish the claim, in the same manner as if it had been allowed by the executor or administrator and the probate court; and the judgment shall be, that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court, and no execution shall issue upon such judgment, nor shall it create a lien upon the property of the estate, or give the judgment creditor any priority of payment.

SEC. 204. When any judgment has been rendered against the testator or intestate, in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: *Provided, however,* That if it be a lien upon any property of the deceased, the same may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

SEC. 205. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing with the claimant, to refer the matter in controversy, to some disinterested person or persons, to be approved by the judge of the probate court. Upon filing the agreement in the probate court, the court shall enter a rule, referring the matter in controversy to the persons so selected.

SEC. 206. The referee or referees having been sworn, shall proceed to hear and determine the case, and make return thereof; and their award, if not excepted to, shall be entered as the decision of the

probate court. If exceptions in writing are filed, the court shall proceed to determine the case, in like manner as other claims are determined. The compensation of referees shall be the same as allowed by referees in the district court.

SEC. 207. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be presented for allowance or rejection to the probate court, and its allowance by the judge shall be sufficient evidence of its correctness.

SEC. 208. If the executor or administrator shall neglect, for two months after his appointment, to give notice to creditors, as prescribed by this article, it shall be the duty of the court to revoke his letters.

SEC. 209. At the same time at which the executor or administrator is required to return his inventory, he shall also return a statement of all claims against the estate which shall have been presented to him, when required by the court, and from time to time thereafter, shall present a statement of claims subsequently presented to him; and in all such statements, he shall designate the names of creditor, the nature of each claim, when it did or will become due, and whether it was allowed or rejected by him.

CHAPTER XII.

SALES OF PROPERTY BY EXECUTORS AND ADMINISTRATORS.

- SECTION 210. No sale valid, unless under order of court.
- “ 211. Applications for order of sale; how made.
Objections thereto.
- “ 212. On return of inventory, perishable property, &c., to be sold.
- “ 213. Sale of property to pay expenses of administration.
- “ 214. Discretion of court as to what property to be sold.
- “ 215. Sales of personal property; how conducted.
- “ 216. When court may order private sale.
- “ 217. When real estate may be sold.
Petition for such order what to set forth.
- “ 218. Persons interested to be notified of petition for sale of real estate.
- “ 219. Of manner of giving said notice.
- “ 220. Of the hearing of said petition.
- “ 221. Rights of minors protected by guardian.
- “ 222. Executor &c., may be examined under oath.
- “ 223. Court may order sale of whole, or any part of estate.
- “ 224. Proof &c., necessary, before granting order.
- “ 225. Order shall specify lands to be sold, and terms of sale.
- “ 226. Others than executors, &c., may apply for order of sale.

- SECTION 227.** Such order to be delivered to executor or administrator.
- “ 228. Notice of sale ; how made.
- “ 229. Sale how, when and where to be made.
May be postponed.
- “ 230. Notice of adjournment of sale to be given.
- “ 231. When sale is on credit, executor, &c., to take security.
- “ 232. Proceedings on order of sale to be returned.
Sale may be vacated.
- “ 233. Objection to confirmation of sale ; how made.
- “ 234. Order confirming sale and directing conveyances.
- “ 235. Conveyances, by whom executed ; what to contain ; effect thereof.
- “ 236. Before confirmation, proof of notice of sale necessary.
- “ 237. Real estate may be sold to pay a legacy.
- “ 238. When the will designates estate appropriated to pay debts.
- “ 239. When executor may sell without order of the court.
- “ 240. Further sale to be made if appropriation insufficient.
- “ 241. Estate of legatees, &c., liable for debts, &c. ; when.
- “ 242. Devisees, &c., to contribute according to their respective interests
- “ 243. Interest of deceased in contract for purchase of lands may be sold.
- “ 244. Sale subject to payments to become due on contract.
Purchaser to execute bond.
- “ 245. Condition of bond.
- “ 246. Assignment of contract by executors, &c.
- “ 247. Of redemption of property mortgaged by deceased.
- “ 248. Of sale of such mortgaged property.
- “ 249. Liability of executor, &c., for neglect, &c., in sale.
- “ 250. Fraudulent sales by executors, &c.
- “ 251. Limitation of action for recovery of estate sold.
- “ 252. Limitation not to apply to minors, &c.
- “ 253. Verified account of sale to be returned by executor, &c.
- “ 254. Executor, &c., prohibited from purchasing property of estate.

SEC. 210. No sale of any property shall be valid unless made under order of the probate court.

SEC. 211. All applications for orders of sale shall be by petition, in writing, in which shall be set forth the facts, showing the sale to be necessary, and upon the hearing, any person interested in the estate, may file his written objections, which shall be heard and determined.

SEC. 212. At the term of the court at which the inventory is returned, the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased.

SEC. 213. If claims against the estate have been allowed, and a sale of property shall be necessary for the payment of the expenses of the administration, he may also apply for an order to sell so much of the personal estate as shall be necessary.

SEC. 214. If it appear to the court that a sale is necessary, it shall so order. In making such sale, the court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or not specially bequeathed, to be first sold.

SEC. 215. Sales of personal property shall be made at public auction, and after notice given, for at least two weeks; which notice shall be given by notices posted in the public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be stated the time and place of sale.

SEC. 216. If it be made to appear to the satisfaction of the probate court, that it will be for the interest of the estate to allow the executor or administrator to sell some, or the whole of the personal estate, at private sale, the court may so order.

SEC. 217. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family, and all the debts and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon the order of the probate court. To obtain such order, he shall present a petition to the court, setting forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of, a list and the amounts of the debts outstanding against the deceased, as far as the same can be ascertained, a description of all the real estate of which the testator or intestate died seized, the condition and value of the respective lots and portions, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same.

SEC. 218. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator, to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole, or some portion of the real estate, for the payment of such debts, the probate court shall thereupon make an order, directing all persons interested to appear at a time and place specified, not less than four, nor more than eight weeks, from the time of making such order, to show cause why an order should not be granted to the executor or administrator, to sell so much of the real estate of the deceased as shall be requisite to pay such allowances, charges and debts.

SEC. 219. A copy of such order to show cause, shall be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least

four successive weeks in such newspaper as the court shall order: *Provided, however*, if all persons interested in the estate shall signify, in writing, their assent to such sale, the notice may be dispensed with.

SEC. 220. The probate court, at the time and place appointed in such order, or at such other time to which the hearing may be adjourned, upon proof of the due service or publication of a copy of the order, or upon filing the consent, in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent be not filed, shall hear and examine the allegation and proofs of the petitioners and of all persons interested in the estate, who may oppose the application.

SEC. 221. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, the copy of the order shall be served on the guardian. If they have no such guardian, the court shall, before proceeding to act on the petition, appoint some disinterested person their guardian, for the sole purpose of appearing for them, and taking care of their interests in the proceedings.

SEC. 222. The executor or administrator may be examined under oath, and witnesses may be examined by either party, and process may be issued to compel their attendance and testimony, by the probate court, in the same manner, and with like effect, as in other causes,

SEC. 223. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be adjudged necessary, and most for the interest of all concerned,

SEC. 224. If the probate court shall be satisfied, after a full hearing upon the petition, and on examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate, is necessary for the payment of the allowance to the family, and all valid claims against the estate and charges of administration, or if such sale be assented to by all the persons interested, he shall make an order of sale, authorizing the executor or administrator to sell the whole, or so much and such parts of the real estate described in the petition as he shall judge necessary or beneficial.

SEC. 225. The order shall specify the lands to be sold, and the terms of sale, which may be either for cash, or on credit, and not exceeding six months as the court may direct. If it appear that any part of such real estate has been devised, and not charged in such devise with

the payment of debts, the court shall order that part descended to heirs to be sold, before that so devised.

SEC. 226. If the executor or administrator shall neglect to apply for an order of sale whenever it may be necessary, any person interested in the estate may make application therefor, in the same manner as an executor or administrator, and notice thereof shall be given to the executor or administrator before hearing.

SEC. 227. Upon making such order, the clerk of the probate court shall deliver it to the executor or administrator, who shall thereupon be authorized to sell the real estate as directed.

SEC. 228. When a sale is ordered notice of the time and place of sale shall be posted in ten of the most public places in the county where the land is situated, at least twenty days before the day of sale, and shall be published in some newspaper in this territory, in general circulation in said county, for three successive weeks next before such sale, in which notice the lands and tenements shall be described with common certainty.

SEC. 229. Such sale shall be in the county where the lands are situated, at public auction, between the hours of ten o'clock in the morning and the setting of the sun the same day; but if the executor or administrator shall deem it for the interest of all concerned that the sale should be postponed, he may adjourn it for any time not exceeding fourteen days.

SEC. 230. In case of such adjournment, notice thereof shall be given by a public proclamation at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing, as the time and circumstances may admit.

SEC. 231. The executor or administrator shall, when the sale is on credit, take the note or notes of the purchaser for the purchase money with surety, and mortgage on the property to secure their payment.

SEC. 232. The executor or administrator making any sale of real estate, shall, at the next term of the court thereafter, make a return of his proceedings to the probate court, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of expenses of a new sale may be obtained, he shall vacate such sale, and order another to be had of which notice shall be given, and the sale shall be conducted in all respects, as if no previous sale had taken place.

SEC. 233. When the return of the sale is made, any person interested in the estate may file written objections to the confirmation of the sale, and may be heard, and produce witnesses in support of his objections.

SEC. 234. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bidden was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum, as above specified, cannot be obtained, the court shall make an order confirming the sale, and directing conveyances to be executed; and such sale, from that time, shall be confirmed and valid.

SEC. 235. Such conveyances shall thereupon be executed to the purchaser, by the executor or administrator. They shall contain and set forth at large, the original order authorizing a sale, and the order confirming the sale, and directing the conveyances; and they shall be deemed to convey all the estate, rights and interest of the testator or intestate, at the time of his death.

SEC. 236. Before any order is entered confirming the sale, it shall be proven to the satisfaction of the probate court that notice of the sale was given, as herein prescribed, and the order of confirmation shall state that such proof was made.

SEC. 237. When a testator shall have given any legacy, by will, that is effectual to charge real estate, and his goods, chattels, rights, and credits, shall be insufficient to pay such legacy, together with his debts and charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate for that purpose in the same manner, and upon the same terms and conditions, as are prescribed in this act, in case of a sale for the payment of debts.

SEC. 238. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provision of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

SEC. 239. When any division has been made, or any property directed to be sold, the executor or administrator with the will annexed, may proceed to sell without the order of the probate court; but he shall be bound as an administrator, to give notice of the sale, and to proceed in making the sale, in all respects, as if he were under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions; but in all cases he shall make return of the sale to the probate court, who shall vacate such sale, unless

the same shall appear, in all respects, to be made according to law, in like manner as upon sales made by administrators.

SEC. 240. If the provisions made by the will, or the estate appropriated be not sufficient to pay the debts and expenses of administration, and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this act.

SEC. 241. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration, and of the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it appear to the court necessary, to carry into effect the intention of the testator, if there shall be other sufficient estate.

SEC. 242. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee, from whom the estate devised to him may be taken for the payment of the debts or expenses; and the probate court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

SEC. 243. If a deceased person, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land under such contract, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this act, in respect to lands of which he died seized, except as hereinafter provided.

SEC. 244. Such sale shall be made subject to all payments that may thereafter become due, on such contract; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate court, until the purchaser shall have executed a bond to the executor or administrator, for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased, in the lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such securities as the probate court shall approve.

SEC. 245. Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due, after the date of

such sale, and will fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs and charges, and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

SEC. 246. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title, and interest, of the persons entitled to the interest of the deceased, in the lands sold at the time of the sale; and such purchaser shall have the same rights and remedies against the vendor of such lands, as the deceased would have had if living.

SEC. 247. If any person die, having mortgaged any real or personal estate, and shall not have devised the same, or provided for the redemption thereof by will, the probate court, upon the application of any person interested, may order the executor or administrator to redeem the estate, out of the personal assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate, and not injurious to creditors.

SEC. 248. If such redemption be not deemed expedient, the court shall order such property to be sold at public sale, which sale shall be with the same notice, and conducted in the same manner, as is required in other cases of real estate, provided for in this act, and the executor or administrator shall execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased would have had in the property, had not the same been mortgaged by him, and the purchase money, after paying the expenses of the sale, shall first be applied to the payment and discharge of such mortgage, and the residue in due course of administration.

SEC. 249. If there shall be any neglect or misconduct in the proceedings of the executor or administrator, in relation to any sale, by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

SEC. 250. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this act, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person or persons having an estate of inheritance therein.

SEC. 251. No action for the recovery of any estate, sold by any executor under the provisions of this act, shall be maintained by any person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

SEC. 252. The preceding section shall not apply to minors, or others under any legal disability to sue at the time when the right of action shall first accrue, but all such persons may commence such action at any time within three years after the removal of the disability.

SEC. 253. Whenever a sale shall have been made by an executor or administrator, of any property of the estate, real or personal, it shall be his duty to return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit.

SEC. 254. No executor or administrator shall, directly or indirectly, purchase any property of the estate.

CHAPTER XIII.

OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

- SECTION 255. Executor, &c., to take possession of decedent's estate.
 To collect debts due deceased.
- " 256. Rights of action of deceased, possessed by executors, &c.
 - " 257. May maintain action of waste, trespass, &c.
 - " 258. Action against executors, in tort by deceased.
 - " 259. Action on the bond of former executor or administrator.
 - " 260. Executors may compound with debtors of estate.
 - " 261. Fraudulent conveyance by deceased, may be avoided.
 - " 262. When executor shall sue for benefit of creditors.
 - " 263. Real estate recovered in said action, to be sold.

SEC. 255. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and collect all debts due to the deceased.

SEC. 256. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

SEC. 257. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, carried away or converted to his own use, the goods of their testator or intes-

tate in his lifetime, also may maintain actions for trespass committed on the estate of the deceased during his lifetime.

SEC. 258. Any person, or his personal representatives, shall have an action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods and chattels of any such person, or committed any trespass on the real estate of such person.

SEC. 259. Any administrator may in his own name for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor or of any former administrator of the same estate.

SEC. 260. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator may, with the approbation of the probate court, compound with him and give him a discharge upon receiving a fair and just dividend of his effects.

SEC. 261. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate, or any right or interest therein, with intent to defraud his creditors or to avoid any right, duty or debt of any person, or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also for the benefit of the creditors, sue and recover all goods, chattels, right and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 262. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of the creditors of the deceased, nor unless the creditors making such application, shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the probate court shall direct.

SEC. 263. The real estate so recovered shall be sold for the payment of debts in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the probate court, and the proceeds of all goods, chattels, rights and credits so recovered, shall be appropriated in payment of debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

CHAPTER XIV.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

- SECTION 264. Contract in writing by deceased, to be performed by executor, &c.
- “ 265. Petition for specific performance, and proceedings thereon.
- “ 266. Hearing of petition.
- “ 267. Decree for conveyance.
- “ 268. Appeal from decree to district court.
If decree confirmed, duty of executor, &c.
- “ 269. When petition to be dismissed, without prejudice.
Petitioner may proceed in district court.
- “ 270. Effect of conveyance decreed by probate court.
- “ 271. Effect of recorded and certified decree.
- “ 272. Recording of decree not to prevent its being enforced by additional process.
- “ 273. Heirs, &c., of person entitled to conveyance, may prosecute.

SEC. 264. When any person who is bound by contract in writing to convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to make such conveyance.

SEC. 265. On presentation of a petition of any person claiming to be entitled to such conveyance, from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate court shall appoint a time and place for hearing such petition, which shall be at a regular term of the court, and shall order notice of the pending thereof, and the time and place of hearing, to be published at least four successive weeks next before such hearing, in such newspaper in this territory as the court shall designate.

SEC. 266. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the publication of the notice, the court shall proceed to a hearing; and all persons interested in the estate may appear and defend such petition, by filing their objections in writing, and the court may examine on oath the petitioner, and all who may be produced before him for that purpose.

SEC. 267. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the pro-

bate court is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, he shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

SEC. 268. Any person interested may appeal from such decree to the district court of the district embracing the county in which jurisdiction is exercised; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be confirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree; and a certified copy thereof shall be recorded with the deed, in the office of the recorder of the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make such conveyance.

SEC. 269. If, upon a hearing in the probate court as hereinbefore provided, the said court shall doubt the right of the petitioner to have a specific performance of the contract, the petition shall be dismissed without prejudice to the rights of the petitioner, who may at any time within six months thereafter, proceed in the district court to enforce a specific performance.

SEC. 270. Every conveyance made in pursuance of a decree of the probate court, as provided in this act, shall be effectual to pass the estate contracted for as fully as if the contracting party himself were still living, and then executed the conveyance.

SEC. 271. A copy of the decree for the conveyance made by the probate court, and duly certified and recorded in the office of the recorder where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and of holding the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

SEC. 272. The recording of any decree, as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by other process.

SEC. 273. If the person to whom the conveyance was to be made, shall die before the commencement of the proceedings according to the provisions of this act, or before the completion of the conveyance, any person who would have been entitled to the conveyance under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person entitled, may com-

mence such proceedings or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the same persons who would have been entitled to it, or in the executor or administrator for their benefit.

CHAPTER XV.

OF ACCOUNTS TO BE RENDERED BY EXECUTORS OR ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

- SECTION 274. Executors, &c., not liable on certain promises, unless in writing.
- “ 275. Chargeable with estate coming into their possession.
- “ 276. Not to profit by increase, or lose by decrease or destruction.
To account for excess of sale over appraisement.
Not liable for loss, if sale just.
- “ 277. Not responsible for worthless debts.
- “ 278. Expenses and compensation of executor.
- “ 279. Not to purchase nor profit by claim against estate.
- “ 280. Commissions allowed.
- “ 281. Of exhibits by executor, &c.
- “ 282. Citation may issue to compel exhibit.
- “ 283. Petition to compel executor, &c., to render exhibit.
- “ 284. Citation, in such case.
- “ 285. Objections to exhibit, how made, and trial thereof.
- “ 286. Proceedings in case of refusal, &c., to render exhibit.
- “ 287. Executor to render account one year from appointment.
- “ 288. Citation to account at instance of successor.
- “ 289. Letters to be revoked, when.
- “ 290. Vouchers to accompany account.
- “ 291. When and what allowance may be made without vouchers.
- “ 292. Notice of presentation of account for settlement.
- “ 293. Exceptions to account may be filed.
- “ 294. Appointment of guardian to contest account.
- “ 295. Hearing may be adjourned.
- “ 296. Allowance of account conclusive, saving the rights of certain persons.
- “ 297. Proof of notice required, before allowance.
- “ 298. Order of payment of debts.
- “ 299. Preference given to a debt secured by mortgage.
- “ 300. A dividend to be paid, when.
- “ 301. Funeral expenses, &c., when to be paid.
- “ 302. Order for payment of accounts.
- “ 303. Of claims not due or disputed.
- “ 304. Liability of executor, &c., to creditor, after decree for payment.
- “ 305. Liability of executor to creditor not included in order for payment.
- “ 306. Legacies when to be paid, and estate distributed.
- “ 307. Executor, &c., to render final account.
- “ 308. Proceedings if he neglect to render same.

SEC. 274. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate, out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

SEC. 275. Every executor or administrator shall be chargeable in his accounts, with the whole estate of the deceased which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with the interest, profit and income of the estate.

SEC. 276. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall have sold any part of the estate for more than the appraisement, and if any has been sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

SEC. 277. No executor or administrator shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his fault.

SEC. 278. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the law provides, but when the deceased, by will, shall have made some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall by a written instrument, filed in the probate court, renounce all claim for compensation provided by the will.

SEC. 279. No administrator or executor shall purchase any claim against the estate he represents, and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid.

SEC. 280. When no compensation shall have been provided by will, or the executor shall renounce his claim thereto, he shall be allowed commission on the whole estate, accounted for by him as follows :

For the first one thousand dollars, at the rate of seven per cent ; for all above that sum and not exceeding two thousand dollars, at the rate of five per cent ; for all above that sum at the rate of four per cent., and the same commission shall be allowed to administrators. In all cases such further allowance may be made as the probate court shall deem

just and reasonable, for any extraordinary services not required of an executor or administrator in the common course of his duty: *Provided*, That the total amount of such allowance shall not exceed the amount of commission allowed in this section.

SEC. 281. Within six months after his appointment, and thereafter at any time when required by the court, either upon its own motion or the application of any person interested in the estate, the executor or administrator shall render for the information of the court an exhibit, under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

SEC. 282. If the executor or administrator fail to render an exhibit within six months, as required in the last preceding section, it shall be the duty of the probate court to issue a citation, requiring him to appear and render it.

SEC. 283. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate court, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts, showing that it is necessary and proper that such an exhibit shall be made.

SEC. 284. If the probate court be satisfied, either from the oath of the applicant or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, a citation shall be issued to the executor or administrator requiring him to appear on some day named in the citation, which shall be during the term of a court, and render an exhibit as prayed for.

SEC. 285. When an exhibit is rendered by an executor or administrator, any person interested may appear, and by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he have been guilty of negligence, or wasted, embezzled or mismanaged the estate, his letters shall be revoked.

SEC. 286. If any executor or administrator neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be issued against him, or his letters may be revoked in the discretion of the court.

SEC. 287. Every executor or administrator shall render a full account of his administration at the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the

duty of the court to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation shall have been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

SEC. 288. Whenever the authority of an executor or administrator shall cease, or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the estate, in like manner as he might have been cited by any person interested in the estate, during the time he was administrator or executor.

SEC. 289. If the executor or administrator resides without the county, absconds or conceals himself, so that citation cannot be personally served, and shall neglect to render an account within thirty days after having been committed, when the attachment has been executed, his letters shall be revoked.

SEC. 290. In rendering his account, the executor or administrator shall produce vouchers for expenses and charges which he shall have paid, which vouchers shall be filed and remain in court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased, and the disposition thereof.

SEC. 291. On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath, positive to the fact of payment, specifying when, where, and to whom payment was made, if such oath be uncontradicted; but such allowances, in the whole, shall not exceed five hundred dollars for payment in behalf of any one estate.

SEC. 292. When the account is rendered for settlement, notice thereof shall be given by the probate court, by causing notices to be posted in three of the most public places in the county. The notice shall set forth the name of the estate, of the executor or administrator, and the day appointed for the settlement of account, which shall be on some day of a regular term of court.

SEC. 293. On the day appointed, or on any subsequent day to which the hearing may have been adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

SEC. 294. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested

person to represent him, who, on behalf of the minor, may contest the account, as any other person interested might contest it, and who shall be allowed by the court a reasonable compensation for his services.

SEC. 295. The hearing and allegations of the respective parties may be adjourned from time to time as shall be necessary.

SEC. 296. The settlement of the account and the allowance thereof, by the court or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, the right to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall have ceased, and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

SEC. 297. The account shall not be allowed by the court until it be first proven that notice has been given as required by this act, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

SEC. 298. The debts of the estate shall be paid in the following order :

1st—Funeral expenses.

2d—Expenses of the last sickness.

3d—Debts having preference by the laws of the United States.

4th—Taxes or any dues to the territory.

5th—Judgments rendered against the deceased in his lifetime on which execution might have issued, at the time of his death, and mortgages in the order of their date.

6th—All other demands against the estate.

SEC. 299. The preference given in preceding section to a mortgage, shall only extend to the proceeds of the property mortgaged, if the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

SEC. 300. If the estate be insufficient to pay the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall have been fully paid.

SEC. 301. It shall be the duty of the executor or administrator, as soon as he may have sufficient funds in his hands to pay the funeral expenses, and expenses of the last sickness, and the allowance made to the family of the deceased, and he may retain in his hands the necessary

expenses of administration, but he shall not be obliged to pay any other debt or any legacy until, as prescribed by this act, the payment has been ordered by the court.

SEC. 302. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this act, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid each creditor.

SEC. 303. If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed, as the circumstances of the case may require: *Provided*, That if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

SEC. 304. Whenever a decree shall have been made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon; and execution may be issued on such decree, as upon a judgment in the district court in favor of each creditor; and the same proceedings may be had under such execution, as if it had been issued from the district court. The executor or administrator shall be liable on his bond to each creditor.

SEC. 305. When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose name was not included in the order for payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, legatees or devisees to contribute for the payment of his claim; but if the executor or administrator shall have failed to give the notice to creditors as prescribed in this act, such creditor may recover on the bond of the executor or administrator, the amount of his claim, or such part thereof as he would have been entitled to, had it been allowed: *Provided*, That this section shall not apply to any creditor whose claim was not due one year before the day of settlement, or whose claim was contingent and did not become absolute, one year before such day.

SEC. 306. If all the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies, and the distribution of the estate among the heirs, legatees, or other persons entitled; but if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable, for the final settlement of the estate.

SEC. 307. At the time designated, or sooner, if within that time all property of the estate shall have been sold, or there shall be sufficient funds in his hands to pay all the debts due by the estate, the executor or administrator shall render a final account and pray a settlement of the estate.

SEC. 308. If he neglect to render his account the same proceedings may be had as are prescribed in this act, in regard to the first account to be rendered by him, and all the provisions of this act relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

CHAPTER XVI.

OF THE PARTITION AND DISTRIBUTION OF THE ESTATE.

- SECTION 309. Heir, legatee, &c., may petition for legacy; when.
- “ 310. Notice of application to be given.
- “ 311. As to those who may oppose application.
Other heirs, &c., may make a similar application.
- “ 312. Application when allowed, and upon what terms.
- “ 313. Decree may order delivery of whole or part of legacy.
- “ 314. Proceedings, if petition necessary.
- “ 315. Cost in such proceedings.
- “ 316. Petition by executor, &c., for order for refunding legacy.
- “ 317. Residue of estate, when to be distributed.
- “ 318. Decree of distribution, what to contain.
- “ 319. Decree, upon whose application, and when may be made.
- “ 320. Partition of undivided shares.
- “ 321. Proceedings when real estate lies in different counties.
- “ 322. Notice of application for partition and distribution.
- “ 323. Partition when shares have been conveyed.
- “ 324. Shares, how to be set out.
- “ 325. When estate cannot be divided, court how to act.
- “ 326. When tract of greater value than either party's share.
Commissioners appointed to partition, how to act.
- “ 327. If partition impracticable, estate may be sold.
- “ 328. Testator's estate in common to be first severed.
- “ 329. Guardians to be appointed for minors, &c., and agents for non-residents.
Notice of partition.
- “ 330. Commissioners to report.

- SECTION 330. Proceedings thereon.
- “ 331. When partition may be dispensed with.
- “ 332. Questions relating to advancements, how determined.
- “ 333. When court may appoint agent to take charge of estate for non-resident.
- “ 334. Agent to give bond—his compensation.
- “ 335. Unclaimed estate to be sold, and proceeds paid into county treasury.
- “ 336. Liability of agent.
- “ 337. Claim of proceeds by absentee.
Court when to grant certificate.
- “ 338. When court to discharge executor, &c., from future liability.
- “ 339. When letters of administration may be granted after final settlement.

SEC. 309. At any time, subsequent to the second term of the probate court, after the issuing letters testamentary or of administration, any heir, legatee, or devisee, may present his petition to the court, that the legacy, or share of the estate, to which he is entitled, may be given to him upon his giving bonds with security for the payment of his proportion of the debts of the estate.

SEC. 310. Notice of the application shall be given to the executor or administrator, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of the executor or administrator.

SEC. 311. The executor, administrator, or any person interested in the estate, may appear and resist the application; or any other heir, legatee, or devisee, may make a similar application for himself.

SEC. 312. If, on the hearing, it appear to the court that the estate is but little in debt, and that the share of the party or parties applying, may be allowed without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants: *Provided*, Each one of them shall first execute and deliver to the executor or administrator, a bond in such sum as shall be designated by the probate court, and with sureties to be approved by the judge thereof, to the executor or administrator, conditioned for the payment by the devisee or legatee, whenever required, of his proportion of the debts due from the estate.

SEC. 313. Such decree may order the executor or administrator to deliver to the heir, devisee or legatee, the whole portion of the estate to which he may be entitled, or only a part thereof.

SEC. 314. If, in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

SEC. 315. The costs of the proceedings authorized by the preceding section, shall be paid by the applicant, or if there be more than one, shall be apportioned equally among them.

SEC. 316. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate, to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of the payment, shall make an order accordingly, designating the amount and giving the time within which it shall be paid; and if the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

SEC. 317. Upon the settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or any heir, devisee or legatee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled.

SEC. 318. In the decree the court shall name the person and the portion, or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

SEC. 319. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given in the manner required in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given as it may deem proper.

SEC. 320. When the estate, real and personal, assigned to two or more heirs, devisees or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate court, who shall be duly sworn to the faithful discharge of their duties, and the court shall issue a warrant to them for that purpose.

SEC. 321. If the real estate be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county; and in such cases the estate in each county shall be divid-

ed separately, as if there were no other estate to be divided, but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate wherever situated within the territory.

SEC. 322. Such partition and distribution may be ordered on the petition of any of the persons interested in the estate; but before any partition shall be ordered, as directed in this act, notice shall be given to all persons interested who shall reside in this territory, or to their guardians and to agents, attorneys or guardians, if there be any in this territory, of such as reside out of the territory, either personally or by public notice, as the probate court may direct.

SEC. 323. Partition of the real estate may be made as provided in this act, although some of the original heirs or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs or devisees.

SEC. 324. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes, bounds and descriptions, that the same may be easily distinguished, unless two or more of the parties shall consent to have their shares set out so as to be held by them in common and undivided.

SEC. 325. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and among children, preferring the elder to the younger, providing the party so accepting the whole shall pay to the other parties interested, their just proportion of the true value thereof, or secure the same to their satisfaction, and the true value of the estate shall be ascertained by commissioners appointed by the probate court, and sworn for that purpose.

SEC. 326. When any tract of land or tenement, shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off, by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding sections; providing the party so accepting shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 327. When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, and distribute the proceeds.

SEC. 328. When partition of real estate among heirs or devisees shall be required, and such real estate shall be undivided and in common with the real estate of any other person, the commissioners shall first divide and sever the estates of the deceased from the estate with which it lies in common; and such division so made and established by the probate court, shall be binding upon all the persons interested.

SEC. 329. Before any partition shall be made, or any estate divided, as provided in this act, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the territory, and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

SEC. 330. The commissioners shall make a report of their proceedings in writing, and the court may, for sufficient reasons, set aside such report, and remit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the probate court, and a copy thereof attested by the judge, under the seal of the court, shall be recorded in the office of the county auditor in the county where the land lies.

SEC. 331. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall have been decreed, or some of them, shall request that such partition be made.

SEC. 332. All questions as to advancements made, or alleged to have been made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners, and the final decree of the probate court, or in case of appeal, of the district or supreme courts, shall be binding on all parties interested in the estate.

SEC. 333. When any estate shall have been assigned by decree

of the court, or distributed by commissioners, as provided in this act, to any person residing out of this territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same, for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absentee in the partition and distribution.

SEC. 334. Such agent shall give a bond to the county in which such estate shall be situated, to be approved by the court, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

SEC. 335. When the estate shall have remained in the hands of the agent unclaimed for one year, it shall be sold under order of the court, and the proceeds, deducting the expenses of the sale, to be allowed by the court, shall be paid into the county treasury. When the payment is made the agent shall take triplicate receipts, one of which he shall file with the county auditor, and another with the probate court.

SEC. 336. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of sale as required by the preceding section, and may be sued thereon by any person interested.

SEC. 337. When any person shall appear and claim the money paid into the treasury, the probate court making the distribution, being first satisfied of his right, shall grant him a certificate under its seal, and upon the presentation of the certificate to the county auditor, he shall draw his warrant on the county treasurer for the amount.

SEC. 338. When the estate has been fully administered, and it shall have been shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under order of the court, all property of the estate to the persons entitled, the court shall make a decree, discharging him from all liability to be incurred thereafter.

SEC. 339. The final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or it should become necessary and proper from any cause that letters should be again issued.

CHAPTER XVII.

DESCENT OF REAL ESTATE.

- SECTION 340. Lands, &c., how to descend.
- “ 341. Illegitimate child, when to inherit.
Bastards legitimized by marriage of parents, or adopted, &c.
Issue of marriage dissolved by divorce, legitimate.
- “ 342. Estate of illegitimate child to whom to descend.
- “ 343. Degrees of kindred computed by civil law.
Half-bloods to inherit equally.
- “ 344. Advancements, how to be regarded.
- “ 345. When advancement to exclude heir from further portion.
- “ 346. Advancement, when made in real estate.
- “ 347. Gifts and grants, when deemed advancements.
- “ 348. Value of advancement, how established.
- “ 349. Where deceased, survived one to whom advancement made.
- “ 350. The words “issue” and “real estate,” defined.
- “ 351. “Inheritance or succession by right of representation” defined.
Posthumous children considered as living at death of parent.
- “ 352. Dower and courtesy not affected by this chapter.

SEC. 340. When any person shall die seized of any lands, tenements, or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, as follows :

1st. In equal shares to his children, and to the issue of any deceased child, by right of representation, and if there be no child of the intestate living at the time of his death, his estate shall descend to all his other lineal descendants ; and if all the same descendants are in the same degree of kindred to the intestate, they shall have the estate equally, otherwise they shall take according to representation.

2d. If he shall leave no issue, his estate shall descend to his father.

3d. If he shall leave no issue nor father, his estate shall descend, in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation: *Provided*, That if he shall leave a mother also, she shall take an equal share with the brothers and sisters.

4th. If the intestate shall leave no issue nor father, and no brother nor sister living at his death, his estate shall descend to his mother, to the exclusion of the issue of his deceased brothers or sisters.

5th. If the intestate shall leave no issue, father, mother, brother or sister, his estate shall descend to his next of kin, in equal degree,

excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote.

6th. If any person shall die leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation.

7th. If, at the death of such child who shall die under age, not having been married, all the other children of said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent, shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the estate equally, otherwise they shall take according to the right of representation.

8th. If the intestate shall leave no kindred, his estate shall escheat to the county in which such estate may be situate.

SEC. 341. Every illegitimate child shall be considered as an heir of the person who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father after such marriage, shall have acknowledged him as aforesaid and adopted him into his family, in which case such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate and without issue, the others shall inherit his estate and he theirs as hereinbefore provided, in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estate of all the said children as provided hereinbefore, in like manner as if all had been legitimate. The issue of all marriages deemed null in law or dissolved by divorce shall be legitimate.

SEC. 342. If any illegitimate child shall die intestate, without

lawful issue, his estate shall descend to his mother, or in case of her decease to her heirs at law.

SEC. 343. The degrees of kindred shall be computed according to the rules of the civil law, and the kindred of the half blood shall inherit equally with those of the whole blood, in the same degree.

SEC. 344. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child, or other lineal descendant, shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child, or other descendant, toward his share of the intestate's estate.

SEC. 345. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to so much more as will give him his full share of the estate of the deceased.

SEC. 346. If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if it be in personal estate, and if in either case it shall exceed the share of real or personal estate, respectively, that would have come to the heir, so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make the whole share equal to those of the other heirs, who are in the same degree with him.

SEC. 347. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child, or other descendant.

SEC. 348. If the value of the estate so advanced, shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered of that value in the division and distribution of the estate, otherwise it shall be estimated at its value when given.

SEC. 349. If any child or lineal descendant, so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

SEC. 350. The word "issue," as used in this act, includes all the lawful lincal descendants of the ancestor; and the words "real estate" include all lands, tenements and hereditaments, and all rights thereto, and all interests therein possessed, and claimed in fee simple, or for the life of a third person.

SEC. 351. "Inheritance, or succession by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person, that their parent would have taken if living. Posthumous children are considered as living at the death of their parent.

SEC. 352. The provisions of this chapter shall in no way affect the title of a husband as tenant by the courtesy, nor that of a widow as tenant in dower.

CHAPTER XVIII.

DISTRIBUTION OF PERSONAL ESTATE.

SECTION 353. Order of distribution of personal estate.

" 354. How advancements regarded, in assigning widow's portion.

SEC. 353. When any person shall die possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1st—The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessities for the use of herself and family under her care, as shall be allowed and ordered in pursuance of the provisions of this act, and this allowance shall be made as well when the widow waives the provision made for her in the will of the husband, as when he dies intestate.

2d—The personal estate remaining after such allowance, shall be applied to the payment of the debts of the deceased, with the charges for his funeral, and the settling of the estate.

3d—The residue, if any, of the personal estate shall be distributed among the same persons as would be entitled to the real estate by this act, and in the same proportion as provided, excepting as herein further provided.

4th—If the intestate were a married woman, her husband shall be entitled to the whole of the said residue of the personal estate.

5th—If the intestate leave a widow and issue, the widow shall be entitled to one-half of said residue.

6th—If there be no issue, the widow shall be entitled to the whole of said residuc.

7th—If there be no husband, widow, or kindred of the intestate, the said personal estate shall escheat to the county in which the administration is had, and a receipt by the county treasurer of the county to whom the said personal property shall be conveyed by the administrator, shall be a full discharge of all responsibility to the said administrator.

SEC. 354. If the intestate leave a widow and issue, and any of the issue have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the one-half part to be assigned to the widow, but she shall be entitled to the one-half only of the said residue, after deducting the value of the advancement.

CHAPTER XIX.

THE APPOINTMENT AND DUTIES OF GUARDIANS.

- SECTION 355. Appointment of guardians.
- “ 356. When judge to nominate and appoint guardian.
Minor may nominate, when.
- “ 357. When judge may appoint, as if minor were under the age of fourteen years.
- “ 358. Guardian, not to be removed when minor arrives at the age of fourteen, except for cause.
- “ 359. Parent entitled to guardianship of minor.
- “ 360. Guardian to have custody and tuition of ward, when.
- “ 361. Custody, &c., to continue until majority. .
Males and females, when to be deemed of age.
- “ 362. Guardians may prosecute and defend for their wards.
- “ 363. Bond to be given by guardian.
Condition thereof, action upon, continues.
- “ 364. Guardians to render accounts.
Additional security may be required.
- “ 365. Duty of guardians generally.
- “ 366. Court may order guardian to change investment of minors estate.
- “ 367. Removal of guardians.
- “ 368. Provisions relative to bonds by executors, to apply to those of guardians.
- “ 369. The father, by his will may appoint guardians.
Their powers and duties.
- “ 370. The appointment of guardians *pendente lite*, not affected.
- “ 371. Sale of real estate of minor may be ordered by court.
- “ 372. Application therefor, how made.
- “ 373. Court, when to authorize sale.
- “ 374. Guardian's sale governed by same rules as executors, &c.
- “ 375. Guardians to make report of sale. .
- “ 376. Value at which real estate to be sold.

- SECTION 377. Confirmation of sale.
 " 378. Guardian may assent to partition of real estate of minor.
 " 379. Expenses and compensation of guardians.
 " 380. Sureties in bonds of guardians, how discharged.
 " 381. Appeals to district court allowed.

SEC. 355. The probate court of each county, when it shall appear necessary or convenient, may appoint guardians to minors resident in said county, who have no guardian appointed by will; or who may reside out of the territory, having estate within the county.

SEC. 356. If the minor is under fourteen years of age, the judge may nominate and appoint his guardian; if said minor be over fourteen years of age, he or she may nominate the guardian, who, if approved by the probate court, shall be appointed accordingly.

SEC. 357. If the guardian nominated by the minor be not approved by the judge, or if the minor shall reside out of the territory, or if, after being duly cited by the court, he shall neglect for ten days to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

SEC. 358. When a guardian has been appointed for any minor under the age of fourteen, such guardian shall not be removed when such minor arrives at the age of fourteen, except for good cause shown.

SEC. 359. The father of the minor if living, and, in case of his decease, the mother, while she remains unmarried, being themselves, respectively, competent to transact their own business, shall be entitled to the guardianship of a minor.

SEC. 360. If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

SEC. 361. Every guardian appointed as aforesaid shall have the custody and tuition of the minor, and the care and management of the estate of such minor, until he or she shall have attained the age of majority; and males shall be deemed of full and legal age when they shall be twenty-one years old, and females shall be deemed of full and legal age when they shall be eighteen years old, or at any age under eighteen, when, with the consent of the parent, guardian, or other person under whose care or government they may be, they shall have been lawfully married.

SEC. 362. Guardians, by virtue of their office as such, shall be allowed, in all cases, to prosecute and defend for their wards.

SEC. 363. The probate court shall take, of each guardian appointed under this act, bond with approved security, payable to the ter-

ritory of Washington, in a sum double the amount of the minor's estate, real and personal, conditioned as follows :

“The condition of this obligation is such, that if the above bound A. B, who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian according to law, and shall render a fair and just account of his said guardianship to the probate court for the county of ——, from time to time, as he shall thereto be required by said court, and comply with all orders of said court, lawfully made relative to the goods, chattels, and moneys of such minor, and render and pay to such minor all moneys, goods and chattels, title papers and effects which may come into the hands or possession of such guardian, belonging to such minor, when such minor shall thereto be entitled, or to any subsequent guardian, should such court so direct, this obligation shall be void, or otherwise to remain in full force and virtue;” which bond shall be for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time against all, or any one or more of the obligors, in the name, and to the use and benefit of any person entitled by a breach thereof, until the whole penalty shall be recovered thereon.

SEC. 364. Probate courts shall have power in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts, upon oath, touching their guardianship, to said courts for adjustment; and shall have power to compel such guardian to give supplementary security, whenever it shall judge proper, and in default thereof to remove such guardian.

SEC. 365. It shall be the duty of every guardian of any minor—

1st—To make out and file, within three months after his appointment, a full inventory, verified by oath, of the real and personal estate of his ward, with the value of the same; and failing so to do, it shall be the duty of the court to remove him and appoint a successor.

2d—To manage the estate for the best interest of his ward.

3d—To render, on oath, to the proper court, an account of his receipts and expenditures as such guardian, verified by such vouchers or proof, at least once in every two years, or whenever cited so to do; and failing so to do, he shall receive no allowance for services, and be liable to his said ward on his bond, for ten per cent. in damages, on the whole amount of estate, both real and personal, in his hands, belonging to such ward.

4th—At the expiration of his trust, fully to account for and pay

over to the proper person, all the estate of said ward remaining in his hands.

5th—To pay all just debts due from such ward out of the estate in his hands, and collect all debts due such ward; and in case of doubtful debts, to compound the same, and appear for and defend, or cause to be defended, all suits against such ward.

6th—When any ward has no father or mother, or such father or mother is unable, or fails to educate such ward, it shall be the duty of his guardian to provide for him such education as the amount of his estate may justify.

SEC. 366. The probate court may, on the application of a guardian or any other person, said guardian having due written notice thereof, order and decree any change to be made in the investment of the estate of any ward, that may to such court seem advantageous to such estate.

SEC. 367. The probate court, in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered on record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties, as heretofore prescribed in this act; and when any guardian shall be removed, or die, and a successor be appointed, the court shall have power to compel such guardian to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such minor which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who may have the same, and upon failure, to commit the party offending to prison, until he, she or they comply with the order of the court.

SEC. 368. All the provisions of this act relative to bonds given by executors and administrators, shall apply to bonds taken of guardians.

SEC. 369. The father of every legitimate child who is a minor, may, by his last will in writing, appoint a guardian or guardians for his minor children, whether born at the time of making such will or afterwards, to continue during the minority of such child, or for any less time; and every such testamentary guardian shall give bond in like manner and with like condition as hereinbefore required; and he shall have the same powers, and perform the same duties with regard to the person and estate of the ward, as a guardian appointed as aforesaid.

SEC. 370. Nothing contained in this act shall affect or impair the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein, or to appoint or allow any person as the next friend of a minor to commence and prosecute any suit in his behalf.

SEC. 371. Whenever necessary for the education, support or payment of the just debts of any minor, or for the discharge of any liens on the real estate of such minor, or whenever the real estate of such minor is suffering unavoidable waste, or a better investment of the value thereof can be made, the probate court may, on the application of such guardian, order the same, or a part thereof, to be sold.

SEC. 372. Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth:

1st—The value and character of all personal estate belonging to such ward that has come to the knowledge or possession of such guardian.

2d—The disposition made of such personal estate.

3d—The amount and condition of the ward's personal estate, if any, dependant upon the settlement of any estate, or the execution of any trust.

4th—The annual value of the real estate of the ward.

5th—The amount of rent received and the application thereof.

6th—The proposed manner of re-investing the proceeds of the sale, if asked for that purpose.

7th—Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.

8th—The age of the ward, where and with whom residing.

9th—All other facts connected with the estate and condition of the ward necessary to enable the court fully to understand the same. If there is no personal estate belonging to such ward, in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the application.

SEC. 373. If it shall appear to the court from such petition and from the hearing thereon, that it is necessary, or would be beneficial to the ward that such real estate or some part of it should be sold, the court may authorize the said guardian to sell the same at public sale, on the same terms and notice required for sales of real estate by executors and administrators; or if the court be satisfied that a sale at private sale will conduce to the advantage of said minor's estate, it may so order.

SEC. 374. All the provisions of the act regulating sales by executors and administrators shall be applicable to sales made by guardians.

SEC. 375. At the term of the court next after such sale, such guardian shall make report thereof to such court, and produce the proceeds of such sale, and the notes or obligations or other securities taken to secure the payment of the purchase money.

SEC. 376. Whenever such real estate is ordered by the court to be sold at private sale, the same shall not be sold for less than its appraised value; and when ordered to be sold at public auction, at not less than two-thirds of its appraised value.

SEC. 377. The court in confirming such sale and directing a conveyance, shall be governed by the law regulating the confirming of sales of real estate made by executors or administrators, and the making of conveyances on such sales.

SEC. 378. The guardian of any minor may join in and assent to the partition of the real estate of such minor, under the direction of the court, upon a petition for partition.

SEC. 379. Every guardian shall be allowed by the court, on settling his accounts, the amount of all reasonable expenses incurred in the execution of his trust; and also, such compensation for his services as the court shall deem reasonable.

SEC. 380. Sureties in the bond of any guardian may be discharged from liability therein, under the same rule and regulation prescribed for the discharge of the sureties in the bond of executors and administrators, and the provisions of this act regulating the same shall apply to guardians and guardians' bonds and sureties:

SEC. 381. Appeals shall be allowed, in all cases, from any order or judgment of the probate court to the district court, embracing the county exercising jurisdiction, in the same manner as provided in this act regarding executors and administrators and the settlement of estates.

CHAPTER XX.

RELATING TO IDIOTS AND INSANE.

- SECTION 382. Governor and auditor to contract for keeping.
 " 383. Probate courts may appoint guardians, &c.
 " 384. Inquiry as to insanity of persons, and ability to bear expense of keeping.
 " 385. In indigent cases territory liable.
 " 386. Paying patients shall comply with contract of governor, &c.
 " 387. Governor may draw warrant on territorial treasury.
 " 388. Probate court to appoint guardian of estate.
 " 389. Ward's estate first liable, if insufficient, then territory.

- SECTION 390. When complainant shall be liable for costs.
- “ 391. Bond and qualification of guardian.
- “ 392. Notice of appointment shall be published.
- “ 393. Guardian shall take possession of ward's estate.
- “ 394. Exhibits of estate by guardian.
- “ 395. Additional exhibit or inventory.
- “ 396. Exhibit, how attested and verified.
- “ 397. Guardians shall prosecute and defend actions for ward.
- “ 398. Guardians to collect dues and pay debts of ward.
- “ 399. Powers of court over estate of ward.
- “ 400. Real estate of ward may be sold, leased, mortgaged, &c.
- “ 401. Orders of court touching such real estate.
Duties of guardians under such order.
- “ 402. Guardian's act binds the ward.
- “ 403. Court may set aside guardian's proceedings.
- “ 404. Guardian to render account when required.
- “ 405. Ward exempted from arrest, served on guardians.
Executions to be on his estate.
- “ 406. Recovery of reason by ward, discharges guardian.

SEC. 382. The governor and territorial auditor, his associate, are hereby authorized and appointed to make contracts with any private or public insane institution, for the safe keeping, care and medical treatment in their insane asylums of all insane persons in this territory: *Provided*, Such contract can be made on such terms as to them may seem reasonable and just.

SEC. 383. The several probate courts in their respective counties in this territory, shall have power to appoint guardians to take the care, custody and management of all idiots, insane persons, and all who are incapable of conducting their own affairs; and of their estates real and personal; the maintenance of themselves and families, and the education of their children.

SEC. 384. The probate court of any county in this territory, upon application of any person under oath, setting forth that any person by reason of insanity, is unsafe to be at large, or is suffering under mental derangement, shall cause such person to be brought before said court at such time and place as the judge may direct; and the judge shall cause to appear before him at said time and place, one or more respectable physicians, who shall state under oath in writing, their opinion of the case, which opinion shall be carefully preserved by the said judge with the other papers of the case; and if the said physician shall certify to the insanity or idiocy, (as the case may be) of said person, he shall cause them to be taken and placed in charge of such asylum as directed by said governor and his associate. The said judge shall also cause inquiry to be made into the ability or inability of such insane or idiotic

person to bear the charge or expense for the time he may remain under treatment, and he shall certify the result to the governor and his associate; and in those cases where the person possesses the ability to pay the expense, the said judge shall cause to be placed in the hands of the governor the amount of two months' expenses in said asylum in advance, and regularly every two months thereafter, so long as said person shall continue in said asylum; but the indigent insane shall, in all cases, be maintained at the expense of the territory.

SEC. 385. The territory shall, in all cases where the person is indigent, be at the expense of such conveyance and keeping, and in the event of the death of such person, be chargeable with the funeral expenses.

SEC. 386. Paying patients, whose friends or whose property can pay their expenses shall do so in accordance with the contract made by the governor and his associate with the proprietors of the institution, the charge in all cases shall be reasonable and in proportion to the amount of care and accommodation required by their friends or guardians.

SEC. 387. The territorial treasurer is hereby authorized and required to pay all properly audited orders drawn by the governor for the support of indigent, insane or idiotic persons, for whose support and safe keeping, he and his associate may have contracted; *Provided always*, that before such orders are paid, a copy of such contract shall be furnished said treasurer.

SEC. 388. If it be found by the court that the person so brought before the court, is of unsound mind, and incapable of managing his own affairs, the court shall appoint a guardian for the estate of such insane person.

SEC. 389. When any person shall be found to be insane, or coming within the provisions of this act, the cost of the proceeding shall be paid out of his estate, or if that be insufficient, by the territory.

SEC. 390. If the person alleged to be insane shall be discharged, and it shall be thought by the court that there were no grounds for such impression of insanity, then the cost shall be paid by the person at whose instance the proceeding was had, and an execution may issue for the same.

SEC. 391. Every such guardian so appointed, shall, before entering upon the duties assigned him, enter into bond to the board of county commissioners, in such sum, and with such security as the court shall approve, conditioned that he will take proper care of such insane person, and manage and minister his effects to the best advantage, according to

law; and that he will faithfully discharge all duties as such guardian which may by law, or by the order, sentence or decree of any court of competent jurisdiction, devolve upon him; which bond shall be filed in the office of the probate court, a copy thereof, duly certified, shall be evidence in all respects as the original.

SEC. 392. It shall be the duty of every such guardian, within twenty days after his appointment, to cause notice thereof to be published in some newspaper printed in this territory, or otherwise publish such notice at such time and place, and in such manner as the court shall direct.

SEC. 393. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys, effects and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship.

SEC. 394. Within forty days after his appointment, such guardian shall make out and file in the office of the probate court by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, as the same shall have come to his view.

SEC. 395. And if, after having filed such inventory, it shall be found that there is other property belonging to said estate, it shall be the duty of such guardian to make out and file an additional inventory, containing a just and full amount of the same, from time to time, as the same may be discovered.

SEC. 396. All such inventories shall be made in the presence of, and attested by two credible witnesses in the neighborhood, and shall be verified by the oath of the guardian.

SEC. 397. It shall be the duty of every such guardian to prosecute all actions commenced at the time of his appointment, or thereafter, to be commenced by, or on account of his ward, and to defend all actions or which may be brought against such ward.

SEC. 398. Every such guardian is authorized and required to collect all debts due to his ward, and give acquittances and discharges thereof, and adjust, settle and pay all demands due and becoming due from his ward, so far as his estate and effects will extend.

SEC. 399. Every probate court shall have power to make order for the restraint, support and safe keeping of such person, for the management of his estate, and the support and maintenance of his family and education of his children, out of the proceeds of his estate; to set apart and reserve, for the use of such family, and property, real or per-

sonal, not necessary to be sold for the payment of debts; and to let, sell or mortgage any part of such estate, real or personal, when necessary for the payment of debts, the maintenance of such insane person or his family, or the education of his children.

SEC. 400. Whenever the personal estate of such person shall be found to be insufficient to meet the foregoing requisitions, it shall be the duty of such guardian to lay the same before the probate court by whom he was appointed, setting forth the particulars relative to the estate, real and personal, of such person, and the debts by him owing, accompanied by a correct and true account of his doings therewith; whereupon it shall be the duty of such court to make an order directing the mortgage, lease, or sale at his discretion, of the whole or such part of the real estate as may be necessary.

SEC. 401. The court making such order shall direct the time and terms of such sale, mortgage, or lease of such estate, and the manner in which the proceeds shall be applied; and shall give due notice thereof together with a full description of the property to be thus disposed of, at which time and place it shall be the duty of the guardian to execute the order of said court, and to make a full report of his doings therein, which report shall be accompanied by the affidavit of the guardian verifying the report, and stating that such guardian did not directly or indirectly become the purchaser thereof; or if otherwise disposed of, that he is not directly or indirectly interested personally in the agreement.

SEC. 402. When any such sale, mortgage or lease, is approved of by the court ordering the same, as having been performed according to law, and not under such circumstances as to operate prejudicial to the interest of such ward, it shall be the duty of the guardian to execute a deed, mortgage, or other instrument of writing, which shall be as valid and effective in law as if executed by such ward when of sound mind and discretion.

SEC. 403. If such report be disapproved of by said court, as not doing justice to said ward, the court may set aside the proceedings, and proceed in like manner as if no sale had been made.

SEC. 404. Every such guardian, as often as required by the court appointing him, shall render a true and perfect account of his guardianship.

SEC. 405. No such ward shall be held to bail, or his body be taken in execution, in any civil action; and in all actions commenced against him the process shall be served upon his guardian; and in all judgments against such ward (or his guardian as such) the execution

shall be against the property of the ward only, and in no case against his body, nor against that of his guardian, nor the property of said guardian, unless he shall have rendered himself liable thereunto, by false pleading or otherwise.

SEC. 406. Whenever the court shall receive information that such ward has recovered his reason, he shall immediately inquire into the facts; and if he finds that such ward is of sound mind, he shall forthwith discharge such person from care and custody; and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands belonging or appertaining to such ward.

SEC. 407. All the expenses of taking care of such insane person and the management of his estate, shall be paid out of his estate, if it be sufficient, if not, out of the territorial treasury.

SEC. 408. In all cases of appropriation out of the territorial treasury for the support and maintenance, treatment, or confinement of any insane person, the amount thereof may be recovered by the territory from any person, who by law, is bound to provide for the support and maintenance of such insane person, if there be any such ability to pay the same.

SEC. 409. The father or mother of such insane person shall maintain them at their own charge, if of sufficient ability, and if not, then the children, grand children, or grand parents, shall, if of sufficient ability, maintain them at their own charge.

SEC. 410. In case of the death of any such ward, while under guardianship, the power of the guardian shall cease, and the estate descend and be disposed of in the same manner as if said ward had been of sound mind; and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his legal representatives.

SEC. 411. The several probate courts shall have the power to remove any such guardian at any time, for neglect of duty, mismanagement, or of disobedience to any lawful order, and appoint another in his place; whereupon such guardian shall immediately settle his account, and render to his successor the estate and effects of his ward.

CHAPTER XXI.

MISCELLANEOUS PROVISIONS.

- SECTION 412. Issues of fact to be certified.
 " 413. When appeal to supreme court to be allowed.
 " 414. Clerk of probate court to send up papers.
 " 415. When appeal allowed to district court.

- SECTION 416. When taken.
 " 417. Bond to be filed.
 " 418. When writ of certiorari may issue.
 " 419. When appeal shall not be dismissed.

SEC. 412. Issues of fact joined in the probate court shall be certified by the probate court to the district court of the district embracing his county, for trial on the application of any person interested in or to be affected by the decision thereof, in the cases following :

- 1st—On granting or revoking letters testamentary or of administration.
 2d—On admitting wills to probate.
 3d—On revoking the probate or determining the validity of a will.
 4th—On setting apart property, or making allowance for a widow or child.
 5th—On application for the sale or conveyance of real property.
 6th—On the settlement of an executor or administrator.
 7th—On declaring, allowing or directing the payment of a debt, legacy, claim or distributive share of the estate.
 8th—Orders and decrees in the matter of sales of property by guardians, and in the settlement of guardian's accounts—and in the removal of guardians.

SEC. 413. An appeal to the supreme court must be taken within sixty days after the rendition of the decision in the district court. In all other matters the law regulating appeals in civil actions in the district court shall, so far as the same may be applicable, govern appeals allowed by this act.

SEC. 414. When an issue is certified for trial, the clerk of the probate court shall transmit all papers and records necessary for the trial of the issue to the district court. After such trial, the clerk of the district court shall return the same with the proceedings of the court, to the probate court.

SEC. 415. An appeal shall be allowed from the decision of the probate court to the district court in the cases following :

- 1st—On granting or revoking letters testamentary, or of administration or guardianship.
 2d—On admitting a will to probate.
 3d—On revoking the probate, or determining the validity of a will.
 4th—On setting apart property, or making an allowance for a widow or child.
 5th—On determination of the application for the sale or conveyance of real property.

6th—On the settlement of an executor, administrator or guardian.

7th—On declaring, allowing, or rejecting the payment of a debt, legacy or distributive share of the estate.

8th—On all other final orders and decrees.

SEC. 416. All appeals shall be taken within three months after the order or decree is rendered.

SEC. 417. The party desiring to take an appeal shall, within sixty days, file with the probate court, a bond in such an amount, and with such security, as the probate court, or the judge of the district court shall determine, which bond shall be approved by the judge of the probate court, or the judge of the district court, and when so approved and filed, it shall operate as a stay of all further proceedings in the case before the probate court, and in case any order has issued upon the matter appealed from, it shall be recalled, and the case, with the original papers, shall be sent by the probate clerk up to the next term of the district court to be filed and disposed of in the same manner, so far as is practicable, as appeals from justices of the peace: *Provided*, That all things lawfully done under any such order before the appeal bond shall be filed, shall be as valid and binding as if no appeal had been taken.

SEC. 418. Writs of certiorari may, at any time within one year after the rendition of the decision in the probate court, issue out of the district court to examine and determine upon any alleged errors occurring in the final decision or order of the probate court, which shall be heard and determined in the same manner as are like writs to justices of the peace; *Provided*, That, upon the hearing, the court shall proceed to render such a judgment as the nature of the case may require.

SEC. 419. No case shall be dismissed for want of a proper bond, or for any irregularity in the bond, or in taking the appeal, writ of error, or filing the papers; *Provided*, the party will, under the order of the court, file a proper bond, and will correct such irregularities as may exist; *And provided further*, The court shall be satisfied that the party making the application to correct, is not in fault, and that no injustice is done to the opposite party.

CHAPTER XXII.

APPEALS IN CERTAIN CASES.

SECTION 420. Appeals in civil and criminal cases; when allowed.

“ 421. How taken.

“ 422. Clerk to send up transcript.

- SECTION 422. Trial in district court.
 " 423. Repealing section.
 " 424. Pierce and Lewis counties excepted as to civil and criminal jurisdiction.
 " 425. Time of going into effect.

SEC. 420. Any person considering himself aggrieved by any final order or judgment of a probate court, in a civil action or criminal case, may appeal therefrom to the district court at its next term, holden twenty days or more after the term of the probate court, at which the order or judgment complained of was made or rendered, but such appeal shall only be allowed upon questions of law.

SEC. 421. The party desirous of taking an appeal, shall give notice in open court, to the opposite party or his attorney at the time judgment is rendered, that he will appeal to the district court, and of the term to which he will appeal, which notice shall be entered on the minutes of the court, and he shall within ten days after the close of the term at which the order was made, or judgment rendered, file with the clerk of the district court, his bond with sureties to the satisfaction of said clerk, if the judgment is for a sum of money, that he will pay the judgment, costs, and costs that may accrue if the judgment is rendered against him in the district court, if for the restraining or performing of any act, or the determination of any right, that he will pay all costs and perform the judgment of the district court, and abide its order therein. Upon giving the notice and filing the bond aforesaid, and depositing with the clerk of the district court the fees for making out the transcript in the probate court, the clerk of the district court shall issue a writ directed to the clerk of the probate court, commanding him to send up a complete transcript of the proceedings in the case in the probate court, which writ shall be served on said clerk by the sheriff of the county.

SEC. 422. Upon the service of said writ upon him, the clerk of the probate court shall immediately make out and transmit to the clerk of the district court, a complete transcript of the proceedings in the probate court, which transcript shall be filed in the district court, and the cause proceed to judgment in like manner as writs of error are heard and determined in the supreme court.

SEC. 423. All laws and parts of laws heretofore enacted upon any subject matter provided for by this act, are hereby repealed.

SEC. 424. *And be it further enacted,* That so much of this act as confers civil and criminal jurisdiction on the probate courts concur-

rent with the district courts, shall not be in force nor have any effect whatever in the counties of Pierce and Lewis.

SEC. 425. This act shall take effect and be in force from and after its passage.

PASSED, January 16th, 1863.

AN ACT

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

- CHAPTER I.—Of the rights of persons who are accused of crimes and offenses.
- “ II.—Of offenses against the lives and persons of individuals.
 - “ III.—Of offenses against property.
 - “ IV.—Of offenses against public peace.
 - “ V.—Of offenses against public justice, and by and against public officers.
 - “ VI.—Of offenses against public policy.
 - “ VII.—Of offenses against morality and decency.
 - “ VIII.—Of offenses against public health.
 - “ IX.—Of principals and accessories.
 - “ X.—Of fines.
 - “ XI.—General provisions relative to crimes and punishments.
 - “ XII.—Of search warrants and proceedings thereon.
 - “ XIII.—Demanding fugitives from justice.
 - “ XIV.—Of the grand jury.
 - “ XV.—Of indictments.
 - “ XVI.—Of proceedings before trial.
 - “ XVII.—Of the docket.
 - “ XVIII.—Of the arraignment of the defendant.
 - “ XIX.—Of witnesses and evidence.
 - “ XX.—Of venue.
 - “ XXI.—Of trials.
 - “ XXII.—Of new trials and arrest of judgment.
 - “ XXIII.—Of judgments and executions.
 - “ XXIV.—Of suits of error and appeals.
 - “ XXV.—Miscellaneous provisions.

CHAPTER I.

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

SECTION 1. What persons shall be held to answer for crime or offenses.

- SECTION 2. Rights of the accused party on trial.
- “ 3. Mode of conviction.
- “ 4. No person held to answer second indictment for same offense.
- “ 5. Technical acquittal not a bar to a new indictment, except in capital offense.
- “ 6. A legal conviction to precede punishment.
- “ 7. Term at which person imprisoned on indictment may be tried. Shall be bailed or discharged; how and when.
- “ 8. Cases in which accused may be bailed—justification and rights of bail.
- “ 9. Offenses at common law, indictable, if not superseded by statutory.
- “ 10. Time in which prosecution may be commenced.

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

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

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

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

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

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

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

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

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

SEC. 10. Prosecutions for the offenses of murder and arson, where death ensues, may be commenced at any period after the commission of the offense; for offenses, the punishment of which may be imprisonment in the penitentiary, within three years after their commission, and for all other offenses within one year after their commission: *Provided*, That any length of time during which the party charged, was not usually and publicly resident within the territory, shall not be reckoned within the one and three years respectively; and further provided, that where a person has been indicted within the period during which the indictment might be found, if the indictment be quashed the time of limitation shall be computed from the quashing of such indictment.

CHAPTER II.

OF OFFENSES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

SECTION 11. Felony and misdemeanor defined.

“ 12. Murder in first degree defined—punishment.
Pardoning power not prevented.

“ 13. Murder in second degree defined—punishment.

“ 14. Killing in duel, murder in second degree.

“ 15. Killing in duel out of territory, when appointment made within.

“ 16. Manslaughter defined.

“ 17. Assisting self-murderer, manslaughter.

“ 18. Loss of life on vessels, when manslaughter.

“ 19. Loss of life on steamboats, when manslaughter.

“ 20. Second in duel where death ensues, guilty of manslaughter.

“ 21. Manslaughter, how published.

- SECTION 22. Engaging in duel, challenging, &c.
- “ 23. Accepting or carrying challenge.
- “ 24. Attempt to murder, by poisoning, how punished.
- “ 25. Attempt to murder by poisoning food, water, &c.
- “ 26. Malicious mayhem defined, how punished.
- “ 27. Assault, or assault and battery with intent, how punished.
- “ 28. Assault, &c., when the offender has a pistol.
- “ 29. Assault and battery defined, how punished.
- “ 30. Exhibiting dangerous weapon, punishment.
- “ 31. Attempt to murder not by assault, how punished.
- “ 32. Simple mayhem defined, how punished.
- “ 33. Rape defined, what sufficient evidence; punishment.
- “ 34. Robbery defined; punishment.
- “ 35. Kidnapping defined; punishment.
- “ 36. County in which kidnapping may be tried.
Consent of persons taken, no defense, when.
- “ 37. Administering drugs, &c., to pregnant woman, with intent to destroy child.
- “ 38. Administering drugs to procure miscarriage of woman.
- “ 39. Extortion, &c., how punished.

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

SEC. 12. Every person who shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate any rape, arson, robbery or burglary, or by administering poison, or causing the same to be done, kill another, every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof shall suffer death. But this shall in no case prevent the exercise of the pardoning power of the governor, or the authority to commute the punishment from that of death to imprisonment for life.

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

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

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

SEC. 16. Every person who shall unlawfully kill any human being

without malice express or implied, either voluntarily upon a sudden heat or involuntarily, but in the commission of some unlawful act, such person shall be deemed guilty of manslaughter.

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

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

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

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

SEC. 21. Any person convicted of manslaughter shall be punished by imprisonment in the penitentiary, not less than one year nor more than twenty years, and shall be fined in any sum not exceeding five thousand dollars.

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

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

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

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

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

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

SEC. 28. Every person who shall assault and beat another with a cowhide or whip, having with him at the time a pistol or other deadly weapon, shall, on conviction thereof, be imprisoned in the county jail not more than one year nor less than three months, and be fined in any sum not exceeding one thousand dollars.

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

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

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

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

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

SEC. 34. Every person who shall forcibly and feloniously take from the person of another any article of value, by violence or putting in fear, shall be deemed guilty of robbery, and upon conviction thereof, shall be punished with death or imprisoned for life at the discretion of the jury.

SEC. 35. Every person who shall steal and take, or forcibly and unlawfully arrest any person, and convey such person to parts without the territory of Washington, or aid or abet therein, or who shall forcibly and unlawfully take or assist, or aid or abet, in forcibly and unlawfully taking or arresting any person, with intent to take such person to parts, without said territory, without having first established a claim upon the services of such person, according to the laws of this territory or of the United States, shall be deemed guilty of kidnapping, and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen nor less than one year, and be fined not more than five thousand dollars nor less than one hundred dollars.

SEC. 36. Every offense mentioned in the preceding section may be tried either in the county in which the same may have been committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be sold or transferred shall have been taken, confined, held, carried or brought; and upon the trial of any such offense, the consent thereto of the person so taken, in-

veigled, kidnapped or confined, shall not be a defense, unless it shall be made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or by threats.

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

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

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

CHAPTER III.

OF OFFENSES AGAINST PROPERTY.

- SECTION 40. Arson defined.
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- “ 41. Malicious burning of property.
How punished.
- “ 42. Malicious burning of one's own dwelling house, &c.
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When murder in second degree.
- “ 43. Preceding sections embrace married women.
- “ 44. Entering dwelling house &c., in night time, or breaking or entering in day time, with felonious intent.
- “ 45. Grand larceny defined.

- SECTION 45. Punishment.
- “ 46. Petit larceny defined.
Punishment.
- “ 47. Personal goods, what may be considered as.
- “ 48. Horse stealing.
- “ 49. False marking, branding, &c., another’s animal.
- “ 50. Buying or receiving stolen property, &c.,
- “ 51. Not necessary to aver or prove conviction of thief.
- “ 52. Property to be restored to owner.
Sale shall not divest owner of his rights.
Officer arresting, to secure goods, &c.
- “ 53. Prosecutor and officer to be paid.
- “ 54. Falsely personating another, &c.
- “ 55. Obtaining money, &c., under false pretence.
- “ 56. Embezzlement, and when deemed larceny.
- “ 57. False receipt, &c., and fraudulent conversion of money by agents,
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- “ 58. Forgery defined.
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- “ 59. Counterfeiting gold or silver coin.
Punishment.
- “ 60. Necessary averments in indictments for forgery.
- “ 61. Forcible entry or detainer.
- “ 62. Malicious trespass.
- “ 63. Destroying monuments, boundary marks, &c.
- “ 64. Injury to fumes, aqueducts, &c.
- “ 65. Counterfeiting gold dust.
- “ 66. Willful and negligent burning of woods, grounds, &c.

SEC. 40. Every person who shall willfully and maliciously set fire to the dwelling house, barn, stable, out-house, ship, steamboat, or other vessel, or any water craft, mill, milk-house, banking house, distillery, manufactory, mechanic’s or artificers’ shop, store house, building, or room occupied as a shop or an office for professional business, or printing office of another, any public bridge, court house, jail, market house, seminary or college edifice, or building thereto belonging, or other public buildings of the value of five dollars, shall be deemed guilty of arson, and upon conviction thereof, shall be imprisoned in the penitentiary not more than ten years, nor less than one year, or in the county jail not more than six months, nor less than one month, and be fined in any sum not exceeding one thousand dollars; and should the death of any person ensue therefrom, known to be occupying or present on said premises, at the time such premises are wilfully set fire to, the offender, on conviction thereof, shall be deemed guilty of murder in the first degree.

SEC. 41. Every person who shall willfully and maliciously set fire to any pile or parcel of boards, timber, piles, or other lumber, cord-wood, ricks, stacks, or shocks of grain, hay or other vegetable products, or ve-

getable products severed from the soil, not in ricks, stalks, or shocks, or any standing grass or grain, or other cultivated vegetable product of the soil, shall, upon conviction thereof, be imprisoned in the county jail not more than one year, nor less than one month, and be fined in any sum not exceeding five hundred dollars.

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

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

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

SEC. 45. Every person who shall feloniously steal, take and carry, lead or drive away the personal goods or property of another, of the value of thirty dollars or more, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years nor less than one year.

SEC. 46. Every person who shall feloniously steal, take and carry, lead or drive away the personal goods or property of another under the value of thirty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof thereof shall be imprisoned in the county jail not more than two years nor less than one month.

SEC. 47. Bonds, promissory notes, bills of exchange, or other bills, orders, drafts, checks, or certificates, or warrants for or concerning money, goods or property due, or to become due, or to be delivered, and any deed or writing containing a conveyance of land or any valuable contract in force, or receipt, release, or defeasance, writ, process or public

record, or any other instrument whatever, shall be considered personal goods, of which larceny may be committed.

SEC. 48. If any person shall steal any horse, mare, gelding, foal or filly, ass or mule, of any value, or if any person shall receive or buy any horse, mare, gelding, foal or filly, ass or mule, that shall have been stolen, knowing the same to have been stolen, with intent, by such receiving or buying, to defraud the owner, or if any person shall conceal any horse thief, knowing him to be such, or if any person shall conceal any horse, mare or gelding, foal or filly, ass or mule, knowing the same to have been stolen, every person so offending shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary and kept at hard labor not more than ten nor less than one year.

SEC. 49. Every person who shall mark or brand, or alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his own property, but belonging to some other person, or cause the same to be done, with intent thereby to steal the same, or to prevent the identification thereof by the true owner, shall, on conviction thereof, be imprisoned in the penitentiary not more than five years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 50. Every person who shall buy, receive, or aid in the concealment of stolen property, money or goods, knowing the same to have been stolen, shall, upon conviction thereof, be imprisoned in the penitentiary not more than four years nor less than one year, or imprisoned in the county jail not more than two years nor less than one month, and be fined not exceeding five hundred dollars, nor less than one hundred dollars.

SEC. 51. In any prosecution for the offense of buying, receiving, or aiding in the concealment of stolen money or other property, known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted.

SEC. 52. All property obtained by larceny, robbery or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser, or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he shall be answerable for the same, and shall annex a schedule thereof to his return of the warrant.

SEC. 53. Upon any conviction of burglary, robbery or larceny, the court may order a suitable recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

SEC. 54. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed guilty of larceny, and shall, on conviction thereof, be imprisoned in the penitentiary not more than fourteen years nor less than one year, or imprisoned in the county jail any length of time not exceeding one year.

SEC. 55. If any person, with intent to defraud another, shall designedly, by color of any false token or writing, or any false pretense, obtain from any person any money, transfer, note, bond or receipt, or thing of value, such person shall, upon conviction thereof, be imprisoned in the penitentiary not more than five years nor less than one year, or imprisoned in the county jail for any length of time not exceeding one year.

SEC. 56. If any officer, agent, clerk, or servant, or person to whom any money or other property shall be entrusted for any specific purpose for hire, shall embezzle, or fraudulently convert to his own use, or shall take or secrete with intent to embezzle and fraudulently convert to his own use, any money or other property which shall have come into his possession, or shall be under his care or charge by virtue of such employment, or for such specific purpose, shall be deemed guilty of larceny, and, on conviction thereof, be imprisoned in the penitentiary not more than ten years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 57. If any warehouseman, miller, storage, forwarding, or commission merchant, or his or their servants, agents, or clerks, shall willfully and fraudulently make, or alter any receipt or other written evidence of the delivery into any warehouse, mill, store or other building belonging to him, them, or either of them, or his or their employers, of any grain, flour, pork, beef, or wool, or other goods, wares, or merchandise, which shall not have been so received or delivered into such mill, warehouse, store, or other building, previous to the making and altering such receipt or other written evidence thereof, upon conviction thereof, shall be imprisoned in the penitentiary not more than two years, nor less than six months, or imprisoned in the county jail for any length of

time not exceeding one year, and fined in any sum not exceeding one thousand dollars: *and provided further*, if any agent, clerk, officer, servant, or person to whom any money or other property, shall be entrusted, with or without hire, shall fraudulently convert to his own use, or shall fail to account to the person so entrusting it to him, shall be deemed guilty of larceny, and, on conviction thereof, shall be imprisoned in the penitentiary not more than ten years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 58. Every person who shall falsely make or assist to make, deface, destroy, alter, forge, or counterfeit, or cause to be falsely made, defaced, destroyed, altered, forged or counterfeited, any record, deed, will, codicil, bond, writing obligatory, promissory note for money or property, receipt for property, power of attorney, certificate of a justice of the peace, or other public officer, auditor's warrant, treasury note, county order, acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note for money or property, or any other instrument in writing, or any brand prescribed by law on tobacco, beef, bacon, or pork cask, lard keg or barrel, salt barrel or hay bale, or any person who shall utter or publish as true any such instrument, knowing the same to be false, defaced, altered, forged, or counterfeited, with intent to defraud any person, body politic or corporate, shall be deemed guilty of forgery, and on conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years nor less than one year, and be fined in any sum not exceeding five thousand dollars.

SEC. 59. Every person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this territory, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false or counterfeit coin as aforesaid, shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years, nor less than one year, and be fined in any sum not exceeding five thousand dollars, and all such tools and instruments, intended for such purposes aforesaid, shall be destroyed.

SEC. 60. In any case where the intent to defraud is necessary to constitute the offense of forgery, or any other offense that may be prosecuted, it shall be sufficient to allege in the indictment, an intent to de-

fraud, without naming therein the particular person or body corporate intended to be defrauded ; and on the trial of such indictment it shall be deemed sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, territory, county, city, town or village, or any body corporate, or any public officer in his official capacity, or any co-partnership or member thereof, or any particular person, and persons of skill shall be competent witnesses to prove a forgery.

SEC. 61. Every person who shall violently take or keep possession of any house, or close, with menaces, force and arms, and without the authority of law, shall be deemed guilty of forcible entry or forcible detainer, as the case may be, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

SEC. 62. Every person who shall maliciously or mischievously injure or destroy, or cause to be injured or destroyed, any property of another, or any public property, shall be deemed guilty of a malicious trespass, and on conviction thereof, be fined not exceeding three fold the value of the damage done, to which may be added imprisonment in the county jail not exceeding one year.

SEC. 63. Every person who shall willfully or maliciously remove any monuments of stone, wood or other durable material, lawfully erected for the purpose of designating the corner or any other point in the boundary of any lot or tract of land, or any post or stake lawfully fixed or driven in the ground for the purpose of designating a point in the boundary of any lot or tract of land, or alter the marks upon any tree, post, or other monument lawfully made for the purpose of designating any point, course or line in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction thereof, be imprisoned in the county jail not more than one year, and be fined in any sum not exceeding one thousand dollars, or fined only.

SEC. 64. Every person who shall willfully and maliciously cut, break, injure or destroy any bridge, mill-dam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining or agricultural purposes, or any embankment necessary to the same, or either of them, or shall willfully or maliciously make or cause to be made, any aperture in the dam, canal, flume, aqueduct, reservoir, embankment or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more

than one thousand dollars, or be imprisoned in the penitentiary at hard labor not more than two years, or both such fine and imprisonment.

SEC. 65. Any person who shall counterfeit any kind or species of gold dust, gold bullion or bars, lumps, pieces or nuggets of gold, or any description whatsoever of uncoined gold, currently passing in this territory, or shall alter or put off any kind of uncoined gold mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold as aforesaid; every such person so offending, or any person or persons aiding or abetting in or about said offense or offenses, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than fourteen years.

SEC. 66. Every person who shall willfully and maliciously set on fire, or cause to be set on fire any woods, prairie, or other grounds, other than his own, or shall intentionally or by gross neglect permit the fire to pass his own premises or grounds, to the injury of any other person or persons, shall, on conviction thereof, for every such offense, be fined in any sum not exceeding five hundred dollars.

CHAPTER IV.

OF OFFENSES AGAINST PUBLIC PEACE.

SECTION 67. Riot defined, punishment.

“ 68. Unlawful assemblages, how dispersed.

“ 69. Refusal to disperse, or obstructing command to do so.

“ 70. Disturbing public worship, or a lawful assemblage.

“ 71. Affray defined; punishment.

SEC. 67. If three or more persons shall do an act in a violent and tumultuous manner, they shall be deemed guilty of riot, and upon conviction thereof shall be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars, or be fined only.

SEC. 68. If three or more persons shall be unlawfully, riotously, or tumultuously assembled, any justice of the peace, sheriff, deputy sheriff, constable, or marshal of a city, or mayor or alderman thereof, shall go among the persons so assembled, or as near to them as possible,

and shall command them in the name of the territory of Washington, immediately to disperse. If the persons so assembled do not immediately disperse, it shall be lawful for every such officer to command sufficient aid, and to seize, arrest and secure in custody all such persons; and if necessary, an armed force may be called out, and shall obey the orders of any two of the magistrates or officers mentioned in this section, and if any such persons shall be killed or wounded by reason of their resisting the persons endeavoring to disperse or seize them, the magistrate or officers shall be held guiltless.

SEC. 69. All persons who shall have been commanded peaceably to disperse, shall refuse so to disperse, or shall willfully obstruct or hinder such officer, who shall declare himself as such, from commanding them to disperse, shall, on conviction, be imprisoned in the county jail not more than one year, and be fined in any sum not exceeding two hundred dollars, or fined only.

SEC. 70. Every person who shall disturb any religious society, or any member thereof, when met or meeting together for public worship, or shall sell or give away any spirituous liquor at any booth, wagon, shed, or open place, or any boat, canoe, or other watercraft, or in any building temporarily erected for the purpose of selling therein such liquors, within one mile of any collection of a portion of the citizens of this territory convened for the purpose of worship, or shall disturb any collection of people for any lawful purpose, such person shall, on conviction thereof, be imprisoned in the county jail not exceeding one month, and be fined in any sum not exceeding two hundred dollars, or fined only.

SEC. 71. If two or more persons by agreement fight in any public place, the persons so offending shall be deemed guilty of an affray, and upon conviction thereof, shall be imprisoned in the county jail not more than six months, and be fined in any sum not exceeding three hundred dollars, or be fined only.

CHAPTER V.

OF OFFENSES AGAINST PUBLIC JUSTICE, AND BY AND AGAINST PUBLIC OFFICERS.

- SECTION 72. Perjury, in judicial proceedings.
 " 73. Perjury, in any other case.
 " 74. Subornation of perjury.
 " 75. Punishment for perjury, or subornation of.
 " 76. Official bribery, punishment for.

- SECTION 77. Malfeasance in office, punishment for.
- " 78. Persons bribing or offering a bribe, how punished.
 - " 79. Escape or rescue of prisoner.
 - " 80. Jailor voluntarily suffering prisoner to escape, punishment.
 - " 81. Jailor suffering prisoner to escape through negligence, &c.
 - " 82. Obstruction of, or disobedience to legal process.
 - " 83. Officer refusing to serve process, how punished.
 - " 84. Inhumanity to prisoners, how punished.
 - " 85. Officer failing to perform duty, or doing any act prohibited by law.
 - " 86. Officer neglecting to pay over money collected, &c.
 - " 87. Auditor issuing unauthorized warrant, how punished.
 - " 88. Usurpation defined, how punished.
 - " 89. Officer performing duty before being qualified.
 - " 90. Of receiving unlawful fees.

SEC. 72. Every person who, having taken a lawful oath or affirmation, in any matter in which by law an oath or affirmation may be required, shall upon such oath or affirmation swear or affirm willfully, corruptly, and falsely, touching a matter material to the point in question, shall be deemed guilty of perjury.

SEC. 73. Every person who shall willfully, corruptly and falsely, before any officer authorized to administer oaths, under oath or affirmation, voluntarily make any false certificate, affidavit, or statement of any nature, for any purpose, shall be deemed guilty of perjury.

SEC. 74. Every person who shall suborn or procure any person to commit perjury, shall be deemed guilty of subornation of perjury.

SEC. 75. Every person duly convicted of perjury, or of subornation of perjury, shall be imprisoned in the penitentiary not more than twenty years, nor less than one year, and be fined in any sum not exceeding one thousand dollars.

SEC. 76. If any judge, justice of the peace, juror, commissioner, auditor, referee, arbitrator, or person summoned as a juror, shall accept, receive or agree for in any way, any bribe, present, or reward to him offered, for the purpose of obtaining or influencing his opinion, judgment, verdict, sentence, report or award, in any matter or cause depending or to be tried before him alone, or before him with others, he shall, on conviction thereof, be imprisoned in the penitentiary not more than seven years, nor less than one year, or be imprisoned in the county jail, not more than one year, nor less than one month, and be fined in any sum not exceeding one thousand dollars.

SEC. 77. If any executive, judicial, or ministerial officer, or member of the legislative assembly, shall accept or receive in any way, any bribe, present, or reward to him offered, for the purpose of inducing or influencing such officer to appoint any person to office, to give any vote

or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or voted or exercised any power in him vested, or performed any duty of him required with partiality or favor, or otherwise, contrary to law, he shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years, nor less than one year, or in the county jail not more than one year nor less than three months, and be fined in any sum not exceeding five thousand dollars.

SEC. 78. Every person who shall bribe, or offer or attempt to bribe any of the officers mentioned in the two preceding sections, shall, on conviction thereof, be imprisoned in the county jail any length of time not exceeding one year, and be fined in any sum not exceeding two thousand dollars, or fined only.

SEC. 79. Every person who shall convey into any penitentiary, jail or house of correction, or house of reformation, any disguise, or any instrument, tool, weapon or other thing, adapted to, or useful in aiding any prisoner there lawfully committed or detained, to make escape, or shall by any means whatever aid or assist any such prisoner, in his endeavor to escape therefrom, whether such escape be attempted or effected or not; and every person who shall aid or assist any prisoner in escaping, or in attempting to escape from any officer or person who shall have the lawful custody of such prisoner, or who shall forcibly rescue any prisoner from lawful custody of such persons, shall, on conviction thereof, be imprisoned in the penitentiary not more than four years, nor less than one year, or imprisoned in the county jail any length of time not exceeding one year, and be fined in any sum not exceeding five hundred dollars.

SEC. 80. If any jailor or other officer shall voluntarily suffer any prisoner in his custody, charged with or convicted of any criminal offense, to escape, he shall suffer, unless the prisoner so escaping be charged with or convicted of any capital offense, the like punishment and penalties as the prisoner so suffered to escape was sentenced to, or would be liable to suffer upon conviction for the crime or offense where-with he stood charged; and if the prisoner was charged with or convicted of a capital offense, he shall be imprisoned in the penitentiary not more than twenty years, nor less than five years.

SEC. 81. If any jailor or other officer shall, through negligence, suffer any prisoner in his custody, upon conviction or upon any criminal charge, to escape, or shall willfully refuse to receive into his custody any

prisoner lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction thereof, be imprisoned in the county jail not more than two years, and be fined not more than five hundred nor less than one hundred dollars, or fined only.

SEC. 82. Every person who shall obstruct the execution of any legal process, or who, on being required by any marshal, sheriff, or their deputies, or by any coroner, constable, or any conservator of the peace, to assist him in the execution of his office, or in the service of any process, shall fail to obey, without a valid cause for not obeying, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 83. If any officer authorized to serve process, shall willfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person charged with or convicted of any offense, or shall willfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall, on conviction thereof, be imprisoned in the county jail not more than one year, or be fined not exceeding three hundred, nor less than fifty dollars.

SEC. 84. If any sheriff, jailor, or other officer, shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, he shall, on conviction thereof, be imprisoned in the county jail not more than one year nor less than one day, and be fined in any sum not exceeding one thousand dollars.

SEC. 85. If any officer shall willfully fail to perform any duty within the time and in the manner prescribed by law, or shall do any act which he shall be specially prohibited from doing by law, he shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment in the county jail for any length of time not exceeding six months.

SEC. 86. If any officer or person required by law to collect, disburse, receive, or keep any public money, shall willfully neglect or refuse to pay over such money, at the time prescribed by law, or shall willfully refuse to pay any warrant lawfully drawn, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year nor less than month, or be fined in any sum not exceeding five thousand dollars.

SEC. 87. If any auditor shall knowingly issue any warrant not authorized by law, he shall, on conviction thereof, be imprisoned in the

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

SEC. 88. Every person who shall officiate in any place of authority, without being legally authorized, shall be deemed guilty of usurpation, and upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 89. If any person elected or appointed to an office, or his deputy, shall perform any of the duties of such office, without having taken an oath as prescribed by law, or before having given and filed the bond required of him, and in the manner prescribed by law, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 90. If any officer, whose fees are stated by law, shall corruptly exact or extort any greater fees for any services than by law are stated and allowed, or shall levy, demand, receive, or take under color of his office, any bond, bill, or note, or other assurance or promise whatever, securing the payment of a greater sum of money for any service than he is by law authorized to demand or receive, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding one thousand dollars.

CHAPTER VI.

OF OFFENSES AGAINST PUBLIC POLICY.

- SECTION 91. Nuisance, punishment.
- “ 92. Malicious prosecution, punishment.
- “ 93. Violation of license laws, punishment.
- “ 94. Common barratry.
- “ 95. Attempt to influence voters.
- “ 96. Voting more than once at one election.
- “ 97. Officer of election attempting to control a vote.
- “ 98. Voting without legal qualification, punishment for.
- “ 99. Officer of election ascertaining how a voter voted, &c.
- “ 100. Threatening and bribing voters, punishment for.
- “ 101. Lottery tickets, punishment for selling.
- “ 102. Gaming, punishment.
- “ 103. Keeping gaming apparatus or suffering their use, &c.
- “ 104. Violation of the estray law, punishment for.
- “ 105. Obstructing highway, bridge, &c.
- “ 106. Discharging ballast.
- “ 107. Obstructing navigable streams; proviso.
- “ 108. Discounting by officers of territorial or county warrants.
- “ 109. Supervisor of roads, neglect of duty by.
- “ 110. Fraudulent empanelling of juries.

- SECTION 111. Unlawful toll or ferriages, receiving of.
“ 112. Marriage law, violation of.
“ 113. Marriage certificate, failure to return.
“ 114. Marriage solemnized by parties unauthorized.
“ 115. Of a concealment of crime.
“ 116. Maliciously defacing guide-boards, monuments, &c.

SEC. 91. Every person who shall erect, or continue and maintain any public nuisance, to the injury of any part of the citizens of this territory, shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 92. If any person shall maliciously, without probable cause, attempt to cause an indictment to be found, or other prosecution, for any crime or misdemeanor, to be commenced against any person, or if two or more persons shall conspire together for that purpose, the person so sought to be indicted or otherwise prosecuted being innocent, such person or persons, so offending, shall, on conviction thereof, be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding one thousand dollars.

SEC. 93. Every person who shall, by himself or agent, transact any business, or do any act, without a license therefor, where such license is required by any law in this territory, shall on conviction thereof, be fined in any sum not exceeding five hundred dollars, and in all such cases where the principal is prosecuted, his agent may be compelled to testify; and when the agent is prosecuted, the principal may be compelled to testify.

SEC. 94. Every person who shall excite quarrels or lawsuits among the citizens of this territory, shall be deemed a common barrator, and, upon conviction thereof, shall be imprisoned in the county jail any length of time not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or fined only.

SEC. 95. If any person shall fraudulently cause, or attempt to cause any elector, at any election pursuant to law in this territory, to vote for a person different from the one he intended to vote for, such person so offending, shall be fined not more than one hundred, nor less than ten dollars.

SEC. 96. If any elector shall vote or attempt to vote more than once at any election, or shall knowingly hand in two or more tickets together, or having voted in one township, precinct or county, shall afterwards, on the same day, vote or attempt to vote in another township, precinct or county, such person shall be fined in any sum not exceeding fifty dollars, and be incapable of voting at any election, or holding any office, for two years thereafter.

SEC. 97. If any inspector, judge, or clerk of an election shall attempt to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person, such person, so offending, shall be fined in any sum not exceeding one hundred dollars.

SEC. 98. If any person knowing that he does not possess the legal qualifications of a voter, at any election authorized by law to be held in this territory for any office whatever, shall vote at such election, such person so offending, shall be fined not more than one hundred nor less than five dollars.

SEC. 99. If any judge, inspector, clerk, or other officer of an election, shall open or mark by folding or otherwise, any ticket presented by such elector at such an election, or attempt to find out the names thereon, or suffer the same to be done by any other person, before such ticket is deposited in the ballot box, such person, so offending, shall be fined in any sum not exceeding one hundred dollars.

SEC. 100. If any person shall use any threats, menaces, force, or any corrupt means, at or previous to any election, held pursuant to the laws of this territory, towards any elector, to hinder or deter such elector from voting at such election, or shall directly or indirectly offer any bribe or reward of any kind, to induce any elector to vote contrary to his inclination, or shall on the day of election give any public treat, or authorize any person to do so, to obtain votes for any person, such person so offending, shall be fined in any sum not exceeding five hundred dollars, and be incapable of holding any office for two years after conviction thereof.

SEC. 101. Every person who shall sell any lottery tickets, or share in any lottery, for the division of property to be determined by chance, or shall make or draw any lottery or scheme for a division of property, not authorized by law, on conviction thereof, shall be fined in any sum not exceeding five hundred dollars.

SEC. 102. Every person who shall deal at the game of cards called faro or monte, or other banking games, or shall set up, keep or exhibit an E-O or roulette table, or shuffle board, or any gaming table whatever, for the purpose of gaming, or shall have in his possession, to be used for such purposes, any gaming device whatever, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 103. Every person who shall suffer any gaming table, bank or gambling device, prohibited in this chapter, to be kept or exhibited, or used for the purpose of gaming, in any house, building, steamboat, raft, or other water craft, lot, yard, or garden, to him belonging or by

him occupied, or of which he has the control, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 104. If the taker up of estray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and willfully violate any of the provisions of the law regulating the taking up of estrays, such person, so offending, shall be fined in any sum not exceeding five hundred dollars, and not less than double the value of such estray property.

SEC. 105. Every person who shall in any manner obstruct any public highway, turnpike, plank road, or bridge, or injure any material used in the construction of such road or bridge, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 106. Every master, mate or other officer, or other person belonging to or in charge of any vessel, who shall discharge, or cause to be discharged, the ballast of such vessel into the navigable portions or channels of any of the inlets, bays, harbors, or rivers within, or bordering on this territory, where the water is less than ten fathoms deep, shall on conviction thereof, be fined in any sum not exceeding one thousand dollars: *Provided*, That nothing in this act shall be so construed as to prevent any such person from discharging ballast from such vessel on the beach at or above half tide in all waters where the tide ebbs and flows; and that no ballast shall be discharged on any of the flats included within the boundary of any town site or extension thereof.

SEC. 107. Every person who shall in any manner obstruct the navigable portion or channel of any bay, harbor, or river, or stream, within or bordering upon this territory, navigable and generally used for the navigation of vessels, boats, or other water crafts, or for the floating down of logs, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars: *Provided*, That the placing of any mill dam or boom across a stream, used for floating saw logs, shall not be construed to be an obstruction to the navigation of such stream, if the same shall be so constructed as to allow the passage of boats or logs without unreasonable delay.

SEC. 108. If any auditor, treasurer, sheriff, assessor, or county commissioner shall purchase, exchange, or receive in payment, during his term of office, any territorial or county order, or demand, for less than the amount of such order or demand, on conviction thereof shall be fined in any sum not exceeding one thousand dollars.

SEC. 109. If any supervisor of roads fail to keep the highways and bridges in his road district in as good repair as the available labor or other means of such district will enable him to do, or fail to discharge

any other duty required of him by law, he shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and upon prosecution for neglecting to keep a highway in good repair, it shall be sufficient to prove that such highway is commonly reputed as such.

SEC. 110. If any clerk of a district court, or any other person, shall be guilty of any fraud, either by practicing on a jury box previously to a draft, or in changing a juror, or any way in drawing of jurors, he shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 111. If any ferryman, ferry owner, ferry keeper, or keeper of a toll bridge or toll gate, himself, or by any person in his employment, shall demand or receive any greater fees on account of ferriage or toll, than is or may be fixed by law, or by the proper board doing county business, as the rates of ferriage or toll to be received by such person, upon conviction thereof, he shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one month.

SEC. 112. Any person authorized by the laws of this territory to join parties in marriage, who shall knowingly join in marriage any parties contrary to the provisions of the law regulating marriages, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 113. Any person having joined parties in marriage, who shall fail to return a certificate thereof, within the time prescribed by law, shall be fined in any sum not exceeding three hundred dollars.

SEC. 114. Every person who shall undertake to join parties in marriage, knowing that he is not authorized so to do, shall, upon conviction thereof, be imprisoned in the county jail not more than three months, or fined in any sum not exceeding five hundred dollars.

SEC. 115. If any person having knowledge of the commission of any crime, shall take any money, gratuity, reward, or any engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such crime, or not to prosecute therefor, he shall, on conviction thereof, be imprisoned in the county jail for any length of time not exceeding one year, or be fined in any sum not exceeding one thousand dollars.

SEC. 116. Any person who shall willfully or maliciously cut, carve, or otherwise deface or injure any guide-board, bridge, building, column, monument or structure, grounds or trees, belonging to the public, or any incorporated, charitable, religious or scientific institution, and, on conviction thereof, be fined in any sum not less than ten dol-

lars, which shall be recoverable in any court having competent jurisdiction thereof.

CHAPTER VII.

OF OFFENSES AGAINST MORALITY AND DECENCY.

- SECTION 117. Seduction defined; the evidence of seduced to be corroborated. Subsequent marriage, effect of.
- “ 118. Adultery or fornication.
- “ 119. Incest defined.
- “ 120. Polygamy defined; proviso as to absence of five years.
- “ 121. Notorious lewdness.
- “ 122. Publication, &c., of obscene books, pamphlets, &c.
- “ 123. Dead body, disinterment of.
- “ 124. Tombstones, &c., disfiguring of; using cemetery other than as burying ground.
- “ 125. Cruelty to animals.

SEC. 117. Every person who, under promise of marriage, shall have illicit carnal intercourse with any female of good repute for chastity, under the age of twenty-one years, shall be deemed guilty of seduction, and upon conviction thereof, shall be imprisoned in the penitentiary for not more than ten years, nor less than one year, or be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars; but no conviction shall be had under the provisions of this section on the testimony of the female seduced, unsupported by other evidence; *Provided*, that the subsequent intermarriage of the parties may be pleaded in bar of a conviction.

SEC. 118. Every person who shall live in open and notorious adultery or fornication, shall, upon conviction thereof, be imprisoned in the county jail not exceeding three months, or be fined in any sum not exceeding five hundred dollars, or fined only.

SEC. 119. All persons being within the degrees of consanguinity in which marriages are prohibited, or declared by law to be incestuous and void, who, knowing such consanguinity, shall intermarry with each other, shall be deemed guilty of incest, and upon conviction thereof, shall be imprisoned in the penitentiary not more than two years, or imprisoned in the county jail not more than one year, and fined in any sum not exceeding five hundred dollars.

SEC. 120. If any person who knowingly has a former husband or wife living, shall marry another, he or she shall be deemed guilty of the crime of polygamy, and shall, upon conviction thereof, be imprisoned in the penitentiary not more than four years nor less than one year, and be fined in any sum not exceeding five hundred dollars: *Provided*, That

the provisions of this section shall not extend to any person whose husband or wife shall have been continuously absent from the other, without having been heard from for the space of five years before such marriage, or to any person who shall have been divorced.

SEC. 121. Every person who shall be guilty of notorious lewdness or other public indecency, upon conviction thereof, shall be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or fined only.

SEC. 122. Every person who shall print, publish, sell, or distribute any book, or any pamphlet, ballad, printed paper or other thing, containing obscene language or obscene prints, pictures, figures or descriptions, or shall introduce into any family, school or other place of education, or shall buy, procure, receive or have in his possession any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of loan, sale, exhibition or circulation, or with the intent to introduce the same into any family, school or place of education, or shall expose the same to public view, shall, on conviction thereof, be imprisoned in the county jail not more than six months, or be fined in any sum not exceeding five hundred dollars.

SEC. 123. If any person not being lawfully authorized, shall willfully dig up, disinter, remove or convey away any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall, upon conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined not exceeding one thousand dollars, or fined only.

SEC. 124. Every person who shall willfully disfigure, injure or remove any tombstone, monument, fence, tree or shrubbery around or within any cemetery, or shall use such cemetery for any other purpose than a burying ground, he shall, upon conviction thereof, be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or shall be fined only.

SEC. 125. Every person who shall cruelly use, beat, torment, overload or overdrive any horse, ox, mule or other animal, whether belonging to himself or to another, shall, upon conviction, be fined in any sum not exceeding three hundred dollars.

CHAPTER VIII.

OF OFFENSES AGAINST PUBLIC HEALTH.

SECTION 126. Of the sale of unwholesome provisions.

“ 127. Sale of poisons, without label.

SECTION 128. Physician, &c., prescribing while intoxicated.

“ 129. Selling intoxicating liquor to minors.

“ 130. Permitting a minor to play at cards.

“ 131. Selling liquor to Indians.

SEC. 126. Every person who shall knowingly sell any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall, on conviction thereof, be imprisoned in the county jail not more than one year, and be fined not exceeding one thousand dollars, or fined only.

SEC. 127. Every apothecary, druggist or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, strychnine or other active poison, without having the word “poison,” and the true name thereof in English written or printed upon a label attached to the vial, box or parcel containing the same, shall, on conviction thereof, be imprisoned in the county jail not more than six months, and be fined in any sum not exceeding one hundred dollars, or fined only.

SEC. 128. If any physician or other person, while in a state of intoxication, shall prescribe any poison, drug or other medicine to another person, to his injury, he shall, on conviction thereof, be imprisoned in the county jail for any length of time not exceeding one year, and fined not exceeding five hundred dollars, or fined only.

SEC. 129. Every person who shall sell or give to a minor, or person under the age of twenty-one years, intoxicating or spirituous liquor, after being requested not to do so by the parent or guardian of such minor, shall be deemed guilty of a high misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and shall be imprisoned in the county jail for any time not exceeding six months; and in case such person has a license to sell liquor such license shall be revoked.

SEC. 130. If any person shall allow any minor to play at cards in his house, after being requested not to do so by the parent or guardian, he shall be liable to the same penalties as for furnishing to such minor spirituous liquors, as mentioned in the foregoing section.

SEC. 131. Any tavern keeper, grocery keeper, or other person or persons, or Indian, who shall sell, barter, give, or in any manner dispose of any spirituous liquor or any other liquor of intoxicating quality, to any Indian or Indians within this territory, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, by indictment in any court having competent jurisdiction to try the same, shall forfeit and pay to the use of the county in which the offense may have been committed, a fine of not less than twenty-five dollars, and not more than five hundred dollars.

CHAPTER IX.

OF PRINCIPALS AND ACCESSORIES.

- SECTION 132. Accessory before the fact regarded as principal.
 " 133. Accessory after the fact, who is deemed, and how punished.
 " 134. Accessory after the fact in felony, when may be indicted, &c

SEC. 132. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, and all persons concerned in the commission of an offense, whether they directly counsel the act constituting the offense, or counsel, aid and abet in its commission, though not present, shall hereafter be indicted, tried and punished as principals.

SEC. 133. Every person not standing in the relation of husband or wife, parent or grand parent, child or grand child, brother or sister by consanguinity or affinity to the offender, who, after the commission of any felony, shall harbor, conceal or maintain, or assist any principal, felon or accessory before the fact, or shall give the offender any other aid, knowing that he had committed a felony, or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial or punishment, shall be deemed accessory after the fact, and shall, on conviction thereof, be imprisoned in the county jail not more than one year, or be fined in any sum not exceeding five hundred dollars.

SEC. 134. Every person who shall become an accessory after the fact to any felony, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, or shall, or shall not be amenable to justice, by any court having jurisdiction to try the principal felon, and either in the county where such person shall become an accessory or in the county where such principal felony shall have been committed.

CHAPTER X.

OF FINES.

- SECTION 135. Fines to go to the school fund.
 Penalty of collecting officer failing to pay over.

SEC. 135. All fines imposed on any person by the provisions of this act where the same shall be collected, shall be paid to the county treasurer as school funds of the county where such conviction shall have

been had, who shall give duplicate receipts therefor, one of which shall be filed with the county auditor; and all officers refusing or neglecting to pay over any fines within one month after they shall have been received, shall, upon conviction thereof, be fined in four fold the amount of such fines so received.

CHAPTER XI.

GENERAL PROVISIONS RELATIVE TO CRIMES AND PUNISHMENTS.

- SECTION 136. Jurisdiction when offense committed partly in two counties.
 " 137. Offenses on boundaries of two counties, prosecuted in either.
 " 138. Jurisdiction in cases of burglary.
 " 139. Jurisdiction in cases of homicide.
 " 140. For offenses against property, possession will sustain indictment.
 " 141. The term "person," how construed.
 " 142. Of terms implying singular or plural, and of gender.
 " 143. Of offenses against laws heretofore in force.
 " 144. Pending prosecution how far affected by this act.
 " 145. The words "county" and "district," convertible terms.

SEC. 136. When a public offense has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

SEC. 137. Offenses committed on the boundary line of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

SEC. 138. When property taken in one county by burglary, robbery, larceny or embezzlement, has been brought into another county, the jurisdiction is in either county.

SEC. 139. If any mortal wound is given, or poison administered in one county, and death, by means thereof, ensue in another, the jurisdiction is in either.

SEC. 140. In the prosecution of any offense committed upon, or in relation to, or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

SEC. 141. When the term "person" or other word is used to designate the party whose property is the subject of an offense, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this territory, or any state or territory, or any public or private corporation, as well as an individual.

SEC. 142. Every term in this act implying one only, shall, when required, be construed to mean two or more, and any term implying two or more, shall also be construed to mean, when required, but one, except in cases where two or more are necessary to constitute the offense, and every term implying sex, shall, when necessary, be construed to mean both or either.

SEC. 143. No offense committed against the laws heretofore in force, shall be affected by the provisions of this act, except where any punishment may have been mitigated by those provisions, they may be extended and applied to any judgment hereafter to be pronounced.

SEC. 144. No prosecution for any offense committed, shall be affected by the provisions of this act, except that the proceeding in such prosecution shall be conformed, when necessary, to the provisions of the act regulating proceedings in criminal prosecutions.

SEC. 145. So far as the jurisdiction of offenses cognizable by the district court, and the trial of criminals is concerned, each judicial district shall constitute one county; and whenever in this act the word "county" or "district" occur, they shall be construed to mean either "district" or "county," whenever such construction shall be required to carry into effect and conform the practice of the courts to the act of Congress, approved August 16, 1856.

CHAPTER XII.

OF SEARCH WARRANTS AND PROCEEDINGS THEREON.

- SECTION 146. Search warrant for stolen property.
 " 147. Search warrant to detect counterfeiting or gaming.
 " 148. Warrants to whom directed, and what to command.
 " 149. Execution of a search warrant.

SEC. 146. When complaint shall have been made on oath, to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretenses, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue a warrant for such property.

SEC. 147. Any such magistrate, when satisfied that there is a reasonable cause, may, also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

1st—To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

2d—To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

SEC. 148. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and property, or things to be searched for, shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case.

SEC. 149. When any officer in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized, shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant, shall be destroyed under direction of the court or magistrate.

CHAPTER XIII.

DEMANDING FUGITIVES FROM JUSTICE.

- SECTION 150. Governor may make requisition for.
- “ 151. When demand is made upon the executive, &c.
- “ 152. A fugitive from justice may be arrested and held.
- “ 153. Examination of such person, and proceedings thereon.
- “ 154. Such person may be discharged, when, and how.
Subject to demand by executive at any time.
- “ 155. The complainant to be answerable for costs.

SEC. 150. The governor of this territory may, in any case authorized by the constitution and laws of the United States, appoint agents

to demand of the executive authority of any state or territory, any fugitive from justice, or any other person charged with felony or any other crime in this territory, and whenever an application shall be made to the governor for that purpose, the prosecuting attorney or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the ground of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence and his opinion as to the expediency of the demand, but the governor may, in any case, appoint such agents without requiring the opinion of, or any report from the prosecuting attorney, and the accounts of the agents appointed for such purpose, shall in all cases be audited by the territorial auditor, and paid from the territorial treasury.

SEC. 151. When a demand shall be made upon the governor of this territory by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory, with treason, felony, or any other crime, the prosecuting attorney or any other prosecuting officer, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody, or is under recognizance to answer for any offense against the laws of this territory or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor be satisfied that such demand is conformable to law and ought to be complied with, he shall issue his warrant under the seal of the territory, authorizing the agents who make such demand, either forthwith or at such time as shall be designated by the warrant, to take and transport such person to the line of the territory at the expense of such agents, and shall also by such warrant require the civil officers within this territory to afford all needful assistance in the execution thereof.

SEC. 152. Whenever any person shall be found within this territory, charged with an offense committed in any state or territory, and liable, by the constitution and laws of the United States, to be delivered on the demand of the Executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offense, and such other matters as are necessary to bring the offense within the provisions of law, issue

a warrant to bring the person so charged before the same or some other court or magistrate so authorized within the territory, to answer such complaint as in other cases.

SEC. 153. If, upon the examination of the person charged, it shall appear to the court or magistrate, by proof in addition to the oath of the complainant, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain a warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison and there be detained until such day, in like manner as if the offense charged had been committed in this territory; and if the person so recognizing shall fail to appear according to the conditions of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there be detained until the day so appointed for his appearance before the court or magistrate.

SEC. 154. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and be detained as before provided. Whenever the person so appearing shall be recognized, committed or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SEC. 155. The complainant in such cases shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board, at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails to do so, the jailor may forthwith discharge the person from his custody.

CHAPTER XIV.

OF THE GRAND JURY.

- SECTION 156. Of challenges to the panel.
- “ 157. Of challenges to individual grand jurors.
- “ 158. Proceedings when a challenge to panel allowed.
- “ 159. Proceedings when to individual juror allowed.
- “ 160. Form of oath of grand jury.
- “ 161. Foreman and clerk of grand jury to be appointed.
- “ 162. To be charged by court, and may ask advice of court.
- “ 163. Prosecuting officer may attend.
- “ 164. Of what offenses to have cognizance.
- “ 165. To enquire especially as to certain matters.
- “ 166. Of evidence before grand jury.
- “ 167. Twelve necessary to find indictment.
- “ 168. Bound to secrecy as to indictments found, &c.
- “ 169. Prohibited from testifying, &c., in court.
- “ 170. May be re-summoned at same term.

SEC. 156. Challenges to the panel shall be allowed to any person in custody, or held to answer for an offense, when the clerk has not drawn from the jury box the requisite number of ballots to constitute a grand jury, or when the drawing was not done in the presence of the proper officers; and such challenges shall be in writing and verified by affidavit, and proved to the satisfaction of the court.

SEC. 157. Challenges to individual grand jurors may be made by such person for reason of want of qualification to sit as such juror, and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially, and without prejudice.

SEC. 158. If a challenge to the panel be allowed, the panel shall be discharged, and the court may order the sheriff to summon from the bystanders and the body of the county a sufficient number of persons to act as grand jurors at such term of the court.

SEC. 159. If a challenge to an individual juror be allowed, he shall be discharged and the panel filled.

SEC. 160. The following oath shall be administered to the grand jury:

You, as grand jurors for the body of the (district or county, as the case may be,) do solemnly swear (or affirm) that you will diligently enquire into, and true presentment make, of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the United States of America, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy,

hatred or malice ; neither will you leave any person unrepresented through fear, favor, affection or reward, or the hope thereof; but that you will present things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this territory, so help you God.

SEC. 161. A foreman of the grand jury shall be appointed by the court, who may remove him and appoint another at any time, and such foreman shall have power to administer all oaths and affirmations to witnesses, who shall appear before such grand jury, and the jury may appoint one of their number as clerk to keep a minute of their proceedings.

SEC. 162. The grand jury shall be charged by the court as to the nature of their duties, and may at any reasonable time ask the advice of the court as to any legal questions upon which they may desire information.

SEC. 163. The prosecuting officer may attend on the grand jury for the purpose of examining witnesses, and giving them such advice as they may ask.

SEC. 164. The grand jury shall have cognizance of all offenses against the laws of the United States, and the laws of this territory.

SEC. 165. The grand jury shall especially inquire as to the offences of any person confined in prison on a criminal charge ; into the condition and mismanagement of the public prisons in the county ; into the willful misconduct in office of public officers, and shall in their discretion examine the public records of the county.

SEC. 166. The grand jury are not bound to hear evidence for the defendant ; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may cause process to issue for the witnesses.

SEC. 167. No indictment shall be found unless twelve grand jurors vote for the finding thereof.

SEC. 168. No grand juror shall disclose the fact that an indictment for a felony has been found against any person not in custody or under recognizance, until such person has been arrested.

SEC. 169. No grand juror shall be allowed to state or to testify in any court in what manner he, or any member of the jury, voted on any question before them, or what opinion was expressed by any juror in relation to such question, or what question was before them ; and in

charging the grand jury the court shall remind them of the provisions of this and the preceding sections.

SEC. 170. Whenever the grand jury shall have been dismissed at any term of the court for which they shall have been impaneled, before the final adjournment, they may be summoned to attend again at the same term, if necessary; and if a full jury do not attend, the number may be completed from the bystanders.

CHAPTER XV.

OF INDICTMENTS.

- SECTION 171. To be signed, endorsed and returned.
- “ 172. Court may cause correction thereof to be made.
- “ 173. Requisites of.
- “ 174. Certain mistakes, omissions, &c., not ground for quashing.
- “ 175. May be amended, when.
- “ 176. In offenses relating to property.
- “ 177. Judgments, &c., how averred.
- “ 178. Private statute, how pleaded.
- “ 179. For perjury, necessary averments.
- “ 180. Forgery, misdescription when immaterial.
- “ 181. Pleas in abatement.

SEC. 171. Indictments shall be signed by the prosecuting attorney, and endorsed a true bill, and such endorsement, signed by the foreman of the grand jury, and the names of the witnesses examined before the grand jury, or relied on by the territory, endorsed thereon and returned into open court.

SEC. 172. The court shall examine the indictments returned, and if it appear that the prosecuting attorney has neglected to sign his name, or the foreman of the grand jury to sign the endorsement of a true bill, or that the names of the witnesses are not endorsed thereon, the court must cause the proper correction to be made in the presence of the grand jury.

SEC. 173. An indictment shall specify the name of the court, and the names of the parties. It shall be direct and certain as regards the party charged, the offense charged, and the particular circumstances of the offense charged when necessary.

SEC. 174. No indictment shall be quashed for a mistake in the name of the county in the title, for want of an allegation of time or place of any material fact, when they have been once stated in the body of the indictment, nor because figures are used to express dates and numbers, nor for any mistake in concluding, contrary to the form of the stat-

ute or statutes, as the case may be, or for the omission of the words "force and arms," or "against the peace and dignity of the territory of Washington," or for the want of the signature of the prosecuting attorney.

SEC. 175. All indictments may be amended by the record, and in all matters of form, when the same can be done without injury to the substantial rights of the defendant.

SEC. 176. In an indictment for an offense committed in relation to property, it is sufficient to state the name of any one, or names of several joint owners.

SEC. 177. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is sufficient to allege generally, that the judgment or determination was duly made or had before such court or officer; but the facts constituting the jurisdiction must be established on the trial.

SEC. 178. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title, and the day of its approval, and the court must take notice thereof.

SEC. 179. In indictments for perjury, in a judicial proceeding, it shall only be necessary to set forth in the indictment the names of the parties to the action, in which the perjury is alleged to have been committed, in what court the party charged, and by whom, averring such court or officer to have competent authority, the statement sworn to, in substance, together with the proper averments to falsify the record on which the perjury may be assigned, without setting forth the pleading, matter or proceedings, or authority of the court or officer, before whom the perjury is alleged to have been committed, and in an indictment for perjury, in swearing to any written instrument, or any statement in writing, it shall only be necessary to set forth that part of the instrument alleged to have been falsely sworn to, and to negative the same with the name of the officer or court before whom the instrument was sworn to.

SEC. 180. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

SEC. 181. No plea in abatement of an indictment shall be allowed, except for causes, where the defendant, had he been in custody or under recognizance, could have challenged the panel, or for causes that would be good ground for challenge to four, or more, individual jurors,

CHAPTER IX.

OF PROCEEDINGS BEFORE TRIAL.

- SECTION 182. Of warrants upon indictments.
- “ 183. Criminal process to whom directed.
- “ 184. Bail to be endorsed on warrant, by whom fixed.
- “ 185. Attachments returnable after term, court to fix bail.
- “ 186. Officer must show authority to arrest.
- “ 187. In case of resistance by defendant, powers of officer.
- “ 188. In escape or rescue of prisoner.
- “ 189. Of recognizances in open court, and entered.
- “ 190. Officer may take recognizance, &c.
- “ 191. In recognizances so taken, duty of clerk, &c.
Clerk's duty upon receipt thereof, effect of such recognizance.
- “ 192. Of deposit in lieu of bail.
- “ 193. Of forfeiture of recognizances.
- “ 194. Rights of party indicted for capital offense.
- “ 195. Rights of party indicted for a felony.
- “ 196. Satisfaction to party injured, in what cases to discharge a prisoner,
&c.
- “ 197. Nolle prosequi may be entered on leave of court.

SEC. 182. When an indictment is found, the court may direct the clerk to issue a warrant, returnable forthwith; if no order is made, the clerk must issue a warrant upon all indictments, within ten days after the close of the term.

SEC. 183. All criminal process issuing out of the district court shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law. When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same: *Provided*, That final process shall in no case be executed by any other person than the legally authorized officer, or in case he is disqualified, some suitable person appointed by the court or judge thereof out of which the process issues, who shall make such appointment in writing, and before such appointment shall take effect, the person so appointed shall give surety to the party interested, for the faithful performance of his duties which bonds of suretyship shall be in writing and approved by the court or judge making the appointment, and be placed on file with the papers in the case.

SEC. 184. The court, at each term, must order the amount in which persons charged by indictment are to be held to bail, and the clerk

must indorse the amount on the warrant. If no order fixing the amount of bail has been made, the sheriff may present the warrant to the judge of the district court, and such judge must thereon indorse the amount of bail to be required: or if there is no such judge in the county, the clerk may fix the amount of bail.

SEC. 185. When writs of attachment are returnable after the close of the term, the court must direct the amount of bail to be required of the defendant.

SEC. 186. The officer must inform the defendant that he acts under authority of a warrant, and must also show the warrant if required.

SEC. 187. If, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

SEC. 188. If a person arrested escape, or be rescued, the person from whose custody he made his escape, or was rescued, may immediately pursue and retake him, at any time, and within any place in the territory. To retake the person escaping, or rescued, the person pursuing has the same power to command assistance as given in cases of arrest.

SEC. 189. Recognizances in criminal proceedings may be taken in open court, and entered on the order book,

SEC. 190. Any officer authorized to execute a warrant in a criminal action, may take the recognizance, and justify and approve the bail; he may administer an oath and examine the bail as to its sufficiency.

SEC. 191. Every recognizance, taken by any peace officer, must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and from the time of filing it has the same effect as if taken in open court.

SEC. 192. The defendant may, in the place of giving bail, deposit with the clerk of the court to which he is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody.

SEC. 193. If, without sufficient excuse, the defendant neglect to appear for trial, or judgment, or upon any other occasion when his presence in court may be lawfully required, according to the condition of his recognizance, the court must direct the default to be entered upon its minutes, and the recognizance of bail, or money deposited as bail, as the case may be, is thereupon forfeited.

SEC. 194. As soon as may be, after the finding of an indictment for a capital crime, the party charged shall be served with a copy thereof,

by the sheriff or his deputy, at least twenty-four hours before trial, and shall, on demand upon the clerk, by himself or counsel, have a list of the petit jurors returned, delivered to him at least twenty-four hours before trial, and shall, also, have process to summon such witnesses as are necessary to his defense, at the expense of the county.

SEC. 195. Every person indicted for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance or in custody to answer for such offense, he or his attorney shall be furnished with a copy of the indictment, and of all endorsement thereof without paying any fees therefor.

SEC. 196. Whenever an indictment is found against any person for an assault and battery, or other misdemeanor, for which the party injured may have a remedy by civil action, except where the offense was committed by or upon any sheriff, or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear in court where such indictment is pending and acknowledge satisfaction for the injuries sustained, the court may, on payment of the costs accrued, order all further proceedings to be stayed and discharge the defendant from the indictment, which shall forever bar all remedy for such injury by civil action.

SEC. 197. The court may, in its discretion, on motion of the prosecuting attorney, order a *nolle prosequi* to be entered in any case, but no prosecuting attorney shall, without leave of the court, in any case cause such entry to be made.

CHAPTER XVII.

OF THE DOCKET.

SECTION 198. What it shall specify.

SEC. 198. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments pending, to be tried at the term according to the date of their filing, and specifying opposite to the title of each action, whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail, and shall, in like manner, enter therein, all indictments found during the term, and on which issues of fact are joined, all cases sent to the court on change of venue, and all cases sent to the court by a magistrate on appeal or otherwise.

CHAPTER XVIII.

OF THE ARRAIGNMENT OF THE DEFENDANT.

- SECTION** 199. Proceedings in plea of guilty.
" 200. Standing mute equivalent to plea of "not guilty."
" 201. Counsel when to be assigned prisoner by the court.
" 202. Proceedings in case of misnomer.
" 203. Misnomer not to stay proceedings.
" 204. In misdemeanor, arraignment by counsel allowed.

SEC. 199. If on the arraignment of any person, he shall plead guilty, if the offense charged be not murder, the court shall, in their discretion, hear testimony, and determine the amount and kind of punishment to be inflicted; but if the defendant plead guilty to a charge of murder, a jury shall be empaneled to hear testimony, and determine the degree of murder and the punishment therefor.

SEC. 200. If, on the arraignment of any person who is indicted, he shall refuse to plead or answer, or shall not confess the indictment to be true, the court shall order a plea of not guilty to be entered, and thereupon the proceedings shall be the same as if he had pleaded not guilty to the indictment, and, for cause shown, he shall have reasonable time to answer the indictment.

SEC. 201. If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and he shall be asked if he desire the aid of counsel, and if it appear that he is unable to employ counsel, by reason of poverty, counsel shall be assigned him by the court.

SEC. 202. When the defendant is arraigned, he shall be interrogated if the name by which he is indicted be not his true name; he shall then declare his true name, or be proceeded against by the name in the indictment.

SEC. 203. If he allege that another name is his true name, it must be entered in the minutes of the court, and the subsequent proceedings on the indictment may be had against him by that name, referring also, to the name by which he is indicted.

SEC. 204. If the indictment be for a misdemeanor, punishable by fine only, the defendant may appear upon arraignment by counsel.

CHAPTER XIX.

OF WITNESSES AND EVIDENCE.

- SECTION 205. Witnesses may be compelled to attend and testify before grand jury and in open court.
 May be recognized.
- “ 206. Clerk when to issue subpoena for witnesses.
- “ 207. Competent witnesses.
- “ 208. When, and how far confessions may be taken as evidence.
- “ 209. Rules of evidence in civil actions to be applied to criminal prosecutions.

SEC. 205. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the territory, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may recognize witnesses, with or without sureties, to attend and testify at the same or next term of the court, or at any term of a court within the territory.

SEC. 206. The clerk shall, at the time of issuing a warrant for the defendant, issue a subpoena for all the witnesses whose names are indorsed on the indictment, and any others required; but in no case shall a continuance be granted to the territory on account of the absence of any witness whose name is not indorsed on the indictment.

SEC. 207. Witnesses competent to testify in civil cases shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests, shall not be protected from testifying as to confessions, or information received from any defendant, by virtue of their profession and character; and Indians shall be competent witnesses in any prosecutions in which an Indian may be a defendant.

SEC. 208. The confession of a defendant, made under inducement, with all the circumstances, may be given in evidence against him, except when made under the influence of fear, produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony.

SEC. 209. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions.

CHAPTER XX.

VENUE.

- SECTION 210. Defendant may demand a fair trial.
- “ 211. When a change of venue may be granted. Clerk to certify the papers.
- “ 212. No change of venue from the district to be allowed on account of the prejudice of the inhabitants of any county. Proceedings upon affidavit that party cannot have justice from jury of particular county, and in cases now pending where change of venue ordered.
- “ 213. Defendant and witnesses to be recognized to appear where venue is placed.

SEC. 210. The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county, or some part thereof, and demand to be tried by disinterested triers.

SEC. 211. When the affidavit is founded on prejudice of the judge, the court may, in its discretion, grant a change of venue to some county in another district, or may continue the cause to the next term of the court, which may be held by any other district judge; if the affidavit is founded upon excitement or prejudice in the county, or district, against the defendant, the court may, in its discretion, grant a change of venue to the most convenient county or district. The clerk must thereupon make a transcript of the proceedings and order of court, and, having sealed up the same with the original papers, deliver them to the sheriff, who must without delay deposit them in the clerk's office of the proper county, and make his return accordingly.

SEC. 212. No change of venue from the district shall be allowed on account of the prejudice of the inhabitants of any particular county, but where a party or his attorney shall make his affidavit that the inhabitants of any particular county are so prejudiced or excited, or so particularly interested in the cause or question, that he believes the party cannot have justice done by a jury of that county; or where, in cases now pending, there has already been a change of venue from any particular county ordered on account of prejudice, then no juror for that particular case shall be taken from that county, unless by consent of the party making the objection, but the case shall be tried by the jurors from the other counties, who may be in attendance as grand and petit jurors, and if, from challenges or any other cause, there shall not remain twelve competent jurors, then the case may be tried by a number less

than twelve: *Provided*, That the parties litigant consent to so try the case.

SEC. 213. When a change of venue is ordered, if the offense be bailable the court shall recognize the defendant, and, in all cases, the witnesses to appear at the term of the court to which the change of venue was granted.

CHAPTER XXI.

OF TRIALS.

- SECTION 214. Issues of fact to be tried by jury.
Mode of trial in civil cases, applicable.
- " 215. Peremptory challenge by defendant.
Co-defendants must join in challenge
- " 216. Peremptory challenge of territory.
- " 217. Of challenges to the panel, must be in writing.
- " 218. Of challenges for cause.
- " 219. In capital cases, who are excluded as jurors.
- " 220. Oath of the jury.
- " 221. Trial may be submitted to the court.
- " 222. Except in misdemeanors, accused to be present during trial.
- " 223. In misdemeanor, bail may be given, and trial proceed.
- " 224. Court to decide all questions of law, instructions, &c.
- " 225. Jury not to separate.
- " 226. View may be ordered.
- " 227. Defendants indicted jointly, may be tried separately.
- " 228. Of discharge of one defendant, to give evidence, &c.
Such discharge abates further prosecution.
- " 229. Of failure to charge proper offense in indictment.
- " 230. When venue is improperly laid.
- " 231. In case such mistake has occurred, jury may be discharged.
- " 232. In trials of offenses consisting of degrees.
- " 233. Defendant may be found guilty of an inferior degree.
- " 234. Defendant may be found guilty of an offense included in that charged.
- " 235. In trials of co-defendants, jury may convict all or either.
- " 236. Court may direct jury to re-consider verdict, when.
- " 237. In acquittals on grounds of insanity.
- " 238. Rendition of verdict, how made.
- " 239. Verdict must state amount of fine and punishment to be inflicted.
- " 240. Judgments to be rendered according to verdict.
Verdict to carry costs, &c.

SEC. 214. Issues of fact, joined upon an indictment, shall be tried by a jury of twelve persons, and the law regulating the drawing, retaining and selecting jurors, and trials by jury in civil cases, shall apply to criminal cases, so far as the same may be applicable.

SEC. 215. In prosecution for capital offenses, the defendant may challenge peremptorily twelve jurors: in prosecution for offenses punishable by imprisonment in the penitentiary six jurors; in all other prosecutions, three jurors. When several defendants are on trial together, they must join in their challenges.

SEC. 216. The prosecuting attorney, in capital cases, may challenge peremptorily, six jurors, in all other cases, three jurors.

SEC. 217. Challenges to the panel shall only be allowed for a material departure from the forms prescribed by law, for the drawing and return of the jury, and shall be in writing, sworn to and proved to the satisfaction of the court.

SEC. 218. Challenges for cause shall be allowed for such cause as the court may, in its discretion, deem sufficient, having reference to the causes of challenge prescribed in civil cases, as far as they may be applicable, and to the substantial rights of the defendant.

SEC. 219. No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death, shall be compelled or allowed to serve as a juror on the trial of any indictment for such an offense.

SEC. 220. The jury shall be sworn or affirmed to well and truly try the issue between the territory and the defendant, according to the evidence; and, in capital cases, to well and truly try, and true deliverance make, between the territory and the prisoner at the bar, whom they shall have in charge according to the evidence.

SEC. 221. The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in capital cases.

SEC. 222. No person prosecuted for an offense punishable by death, or by confinement in the penitentiary, or in the county jail, shall be tried unless personally present during the trial.

SEC. 223. No person prosecuted for an offense punishable by a fine only, shall be tried without being personally present, unless some responsible person, approved by the court, undertakes to be bail for stay of execution, and payment of the fine and costs that may be assessed against the defendant. Such undertaking must be in writing, and is as effective as if entered into after judgment.

SEC. 224. The court shall decide all questions of law which shall arise in the course of the trial. The same laws in relation to giving instructions to the jury by the court, and the argument of counsel and taking exceptions, as is now provided in the civil practice act, shall also govern in criminal cases, except as herein specially provided.

SEC. 225. Juries in criminal cases shall not be allowed to separate, except by consent of the defendant and the prosecuting attorney, but shall be kept together, without meat or drink, unless otherwise ordered by the court, to be furnished at the expense of the county.

SEC. 226. The court may order a view by any jury impaneled to try a criminal case.

SEC. 226. When two or more defendants are indicted jointly, any defendant requiring it shall be tried separately.

SEC. 228. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving testimony for a co-defendant. The order of discharge is a bar to another prosecution for the same offense.

SEC. 229. When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant shall not be discharged, if there appear to be good cause to detain him in custody; but the court must recognize him to answer to the offense shown, and if necessary, recognize the witnesses to appear and testify.

SEC. 230. When it appears, at any time before verdict or judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment to be corrected, and direct that all the papers and proceedings be certified to the proper court of the proper county, and recognize the defendant and witnesses to appear at such court, on the first day of the next term thereof, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced.

SEC. 231. When a jury has been impaneled, in either case contemplated in the two last preceding sections, such jury may be discharged without prejudice to the prosecution.

SEC. 232. When the defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein.

SEC. 233. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree

charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offense.

SEC. 234. In all other cases, the defendant may be found guilty of an offense, the commission of which is necessarily included within that with which he is charged in the indictment.

SEC. 235. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly.

SEC. 236. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to re-consider their verdict; and if, after such re-consideration, they return the same verdict, it must be entered, but it shall be good cause for new trial; but where there is a verdict of acquittal, the court cannot require the jury to reconsider it.

SEC. 237. When any person indicted for an offense shall, on trial be acquitted by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge, or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept; otherwise he shall be discharged.

SEC. 238. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all appear, their verdict must be rendered in open court; if all do not appear, the rest must be discharged without giving a verdict, and the cause must be tried again at the same or next term.

SEC. 239. When the defendant is found guilty, the jury must state in their verdict the amount of fine, and the punishment to be inflicted.

SEC. 240. When the defendant is found guilty the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise.

CHAPTER XXII.

OF NEW TRIALS AND ARREST OF JUDGMENT.

- SECTION 241.** Application and causes for new trial.
 " 242. When to be set forth by affidavit.
 " 243. Judgment may be arrested on motion.
 " 244. The court may arrest judgment without motion.
 " 245. When judgment is arrested, powers of the court.
 " 246. Exceptions allowed to defendant as in civil cases.

SEC. 241. An application for a new trial must be made before judgment, and may be granted for the following causes :

1st—When the jury has received any evidence, paper, document or book not allowed by the court, to the prejudice of the substantial rights of the defendant.

2d—Misconduct of the jury.

3d—For newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial.

4th—Accident or surprise.

5th—Admission of illegal testimony and misdirection of the jury by the court, in a material matter of law, excepted to at the time.

6th—When the verdict is contrary to law and evidence ; but not more than two new trials shall be granted for these causes alone.

SEC. 242. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the preceding section, the facts on which it is based shall be set out in an affidavit.

SEC. 243. Judgment may be arrested on the motion of the defendant for the following causes :

1st—No legal authority in the grand jury to inquire into the offense charged, by reason of its not being within the jurisdiction of the court.

2d—That the facts as stated in the indictment do not constitute a crime or misdemeanor.

SEC. 244. The court may also, on its view of any of these defects, arrest the judgment without motion.

SEC. 245. When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offense properly charged, the court may order the defendant to be re-committed, or admitted to bail anew, to answer a new indictment.

SEC. 246. Exceptions may be taken by the defendant, as in civil cases, on any matter of law by which his substantial rights are prejudiced.

CHAPTER XXIII.

OF JUDGMENTS AND EXECUTIONS.

- SECTION 247.** Court to pronounce judgment, when.
- “ 248. Of the presence of defendant, in pronouncing judgment.
- “ 249. When defendant is not present, a warrant to issue for his arrest.
- “ 250. Defendant may show cause why judgment should not be pronounced.
- “ 251. When bench warrant may issue for arrest of defendant.
- “ 252. Defendant to be committed until costs are paid.
- “ 253. Execution upon judgment for fine, &c.
- “ 254. When court may recognize defendant to keep the peace.
- “ 255. Proceedings in case of breach of such recognizance.
- “ 256. Stay of execution for fine and costs.
- “ 257. Sureties for such stay to be approved by clerk.
- “ 258. Person committed until fine and costs are paid, to pay during term, &c.
- “ 259. Clerk to deliver to sheriff a transcript of conviction and sentence.
- “ 260. Form of the sentence to the penitentiary.
- “ 261. Where there is no penitentiary in territory, or jail in county.
- “ 262. Defendant may work out fine and costs, or unexpired term of imprisonment.
- “ 263. Of death warrants.
- “ 264. Punishment of death, to be hanging by the neck.
- “ 265. Sheriff to return warrant: what to state thereon; clerk's duty upon its receipt.
- “ 266. When the time for the execution passes, court or judge by whom fixed, may appoint a day.
- “ 267. Final record to be made by clerk; what to contain.

SEC. 247. After verdict of guilty, or finding of the court against the defendant, if the judgment be not arrested, or a new trial granted, the court must pronounce judgment.

SEC. 248. For the purpose of judgment, if the conviction be for an offense punishable by imprisonment, the defendant must be personally present; if for a fine only, he must be personally present, or some responsible person must undertake for him to secure the payment of the judgment and costs; judgment may then be rendered in his absence.

SEC. 249. If in any case the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in this territory, as a warrant of arrest in other cases.

SEC. 250. When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him.

SEC. 251. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited may direct the clerk to issue a bench warrant for his arrest.

SEC. 252. When the defendant is adjudged to pay a fine and costs, the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law.

SEC. 253. Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions.

SEC. 254. Every court before whom any person shall be convicted upon an indictment for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum, to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize.

SEC. 255. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

SEC. 256. Every defendant against whom a judgment has been rendered for fine and costs, may stay the execution for the fine assessed, and costs, for sixty days from the rendition of the judgment, by procuring one or more sufficient sureties, to enter into a recognizance in open court, acknowledging themselves to be bail for such fine and costs.

SEC. 257. Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment, and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in this act, in committal for default to pay or secure the fine and costs.

SEC. 258. If any person ordered into custody until the fine and costs adjudged against him, shall not, before the final adjournment of the court, pay, or cause the payment of the same to be secured, the clerk of the court shall issue a warrant to the sheriff, commanding him to imprison such defendant in the county jail until such fine and costs are paid or secured, or until he has been imprisoned in such jail one day

for every three dollars of such fine or costs, but execution may at any time issue against the property of the defendant, as in other cases.

SEC. 259. When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, who shall execute it accordingly.

SEC. 260. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order.

SEC. 261. If there shall be no penitentiary within the territory, or other prisons, the court may order the prisoner to be imprisoned in any county jail, if there be one, or any other place of confinement within the territory, at the expense of the territory; and if there is no county jail or county prison, the court may order the defendant, sentenced to the county jail, to be confined in the penitentiary, if there be one, or in any county jail, or other place of confinement in the territory, at the expense of the county in which the conviction was had.

SEC. 262. When a defendant is committed to jail on failure to pay any fine or costs, if there be no such jail, he shall, under the order of the county commissioners, work out the amount of such fine and costs, at the rate of three dollars for every day's labor, and if there be a county jail, he may elect so to do; and in case he shall so work out his fine and costs, no execution shall issue therefor. When any defendant is in the custody of the sheriff, by virtue of a sentence of imprisonment in the county jail, and there be no county jail in the county, he shall, under order of the county commissioners, who shall make such order, cause such person to work out his unexpired term of imprisonment, in such manner as they may direct.

SEC. 263. When judgment of death is rendered, a warrant signed by the judge, and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day in which the judgment shall be executed; which shall not be less than thirty nor more than ninety days

from the time of judgment. And the sheriff or officer to whom said warrant was delivered shall return the same within twenty days after the time fixed for the execution.

SEC. 264. The punishment of death prescribed by law must be inflicted by hanging by the neck.

SEC. 265. The sheriff shall return and file with the clerk the warrant, with a statement of his doings thereon, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

SEC. 266. Whenever the time appointed for the execution of a prisoner shall have passed, from any cause, the court by whom the time was fixed, or the judge or judges thereof, shall cause the prisoner to be brought immediately before the said court, judge or judges, and proceed to appoint a day for the carrying into effect of the sentence of death.

SEC. 267. The clerk of the district court shall make a final record of all the proceedings in a criminal prosecution, within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders, or decision, and bill of exceptions.

CHAPTER XXIV.

OF WRITS OF ERROR AND APPEALS.

- SECTION 268. Re-examination in district and supreme court, may be had.
By whom writ may be sued out.
- “ 269. Appeals may be taken at terms at which judgment was rendered.
- “ 270. Writs of error, how sued out, served and returned.
- “ 271. Of the transcript of the records, &c.
- “ 272. Of transcript, when writ or appeal taken by prosecuting attorney.
- “ 273. Transcript, to be filed within sixty days.
- “ 274. Judgment of supreme court in suits of error or appeals.
- “ 275. Hearing of writs of error and appeal in supreme court.
- “ 276. Writ of error stays proceedings in capital case.
- “ 277. Writ of error, how far a supersedeas, in cases of felony.
- “ 278. Any co-defendant, entitled to.
- “ 279. Supreme court may discharge defendant or remand him.
- “ 280. Not to be dismissed for informality.
- “ 281. Opinions of supreme court, to be in writing and recorded.
- “ 282. A certified transcript of order of supreme court, how far binding.
- “ 283. Prosecutions heretofore decided, may be re-examined.
- “ 284. Power of supreme court to make rules.

SEC. 268. Every final judgment, order, or decision of a district

court in a criminal prosecution, may be re-examined upon a writ of error, in the same court for error in fact, within one year, and in the supreme court for error in law, within two years. The writ may be sued out by the defendant for all errors, and by the prosecuting attorney when the error complained of is in quashing the indictment, or where a judgment is arrested by reason of the facts, as stated in the indictment, not constituting a crime or misdemeanor.

SEC. 269. Appeals may be taken from any final judgment, from which a writ of error would lie, by the defendant and prosecuting attorney, as provided in the preceding section, at the term of the court at which the judgment was rendered.

SEC. 270. Writs of error shall be sued out and served in the same manner as notice in civil action; and when sued out by the defendant, shall be served on the prosecuting attorney, and when sued out by the prosecuting attorney, on the defendant or his attorney, and returned as in civil actions.

SEC. 271. The defendant, on appeal or writ of error, shall be entitled to a transcript of the record, on payment of the fee therefor, and the transcript shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment, journal entries, pleadings, minutes of challenge to panel of petit jurors, judgment, order, decision, and bill of exceptions, certified to by the clerk.

SEC. 272. The transcript, when the writ of error is sued out, or the appeal taken by the prosecuting attorney, shall contain a copy of the indictment, and the order, decision, or judgment of the court from which the appeal is taken, or on which error is to be assigned.

SEC. 273. If the transcript shall not be filed within sixty days, the appeal or writ of error shall be dismissed, unless it shall appear that the plaintiff in error, or appellant, was not in fault; and the court may order a new transcript or further record to be certified to at any time.

SEC. 274. The supreme court may reverse, affirm, or modify the judgment appealed from, or may, if necessary or proper, order a new trial. In either case, the cause must be remanded to the court below, with proper instructions, together with the opinion of the court. But whenever any judgment is affirmed, the court may order it to be enforced by the proper officer.

SEC. 275. On hearing of writs of error, the supreme court shall examine all errors assigned; and on the hearing of appeals, shall examine all errors and mistakes excepted to at the time, whether waived by the strict rules of law or not; but the court shall consider all amendments which could have been made as made, and shall give judgment

without regard to technical errors or defects, or exceptions which do not affect the substantial rights of the defendant.

SEC. 276. A writ of error or appeal may operate to stay proceedings, in a capital case, on the allowance by a judge of the supreme court, and after sufficient notice to the prosecuting attorney of the time and place of making the application; and such order, certified to by the clerk of the district court of any county, under the seal thereof, when served on the sheriff, shall stay further proceedings in the case.

SEC. 277. In any case in which a party is convicted of a felony, and an appeal is taken or a writ of error obtained in behalf of said party, such appeal or writ of error shall operate as a supersedeas, in so far as to stay the execution of the sentence, if the same is to be enforced by imprisonment in the penitentiary; but in no case shall a party convicted of felony be allowed the benefit of bail, but such a party shall be confined in some county jail, or some other place of imprisonment.

SEC. 278. When several defendants are tried jointly, any one or more of them may take an appeal, or sue out a writ of error.

SEC. 279. When a judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the supreme court must direct that the defendant be discharged: but if it appear that the defendant is guilty of an offense, although defectively charged in the indictment, the supreme court, if the defendant is imprisoned, must direct the keeper of the place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the district court thereof; and such keeper shall be entitled to the usual fees therefor.

SEC. 280. No appeal or writ of error shall be dismissed for any informality or defect in taking or suing out the same, if such informality or defect shall be corrected within a reasonable time.

SEC. 281. All opinions of the supreme court, in criminal prosecutions, must be given in writing, and recorded in the order book.

SEC. 282. A transcript of any order or judgment, or both, of the supreme court, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate.

SEC. 283. All criminal prosecutions, heretofore decided in this territory, may at any time within one year after the decision thereof be re-examined on writs of error, and within two years after such decision, may be re-examined on appeal, according to the provisions of this act,

and on re-examinations, the court shall be governed by the law then in force.

SEC. 284. The supreme court shall have power to make any rules, not inconsistent with the provisions of this or other acts.

CHAPTER XXV.

MISCELLANEOUS PROVISIONS.

- SECTION 285. Persons in custody, cost of maintenance, &c.
 " 286. Jail of county in which court is held, free to all counties.
 " 287. What amount allowed for custody, &c., of prisoner.
 Of costs of conveying prisoners.
 " 288. To what county fines and forfeitures belong.
 How to be applied.
 " 289. Certain officers to complain of violations of law.
 " 290. Governor may commute the death penalty, pardon, respite, or relieve.
 " 291. Recognizances forfeited, to be certified to clerks of district court.
 Duty of prosecuting attorney in such case.
 " 292. Recognizances not to be barred or defeated.
 Defect in form not to arrest judgment.
 May be recorded after execution awarded.
 " 293. Person acquitted not liable for costs.
 " 294. Bail, when required, shall justify.
 " 295. Officer may break open doors, &c., to make arrest; when.
 " 296. Benefit of clergy abolished.
 " 297. Laws and usages heretofore in force.

SEC. 285. All persons in custody, charged with the commission of crime within the jurisdiction of the district court, and all persons who may be placed in custody or committed to the district court, shall, in the first instance, be a charge upon the county where they belong, and in custody of the sheriff of that county, if he be in attendance upon the court; if he be not in attendance, then they shall be in charge of the sheriff of the county in which the court is held.

SEC. 286. The jail of the county in which the district court is held, shall be free to all prisoners coming from any county in the district, and in no instance shall more than one dollar a day be allowed for the custody and maintenance of a prisoner.

SEC. 287. All prisoners, whom it may be necessary to convey to the place where the district court is held, or to any place for an examination before the judge, if conveyed beyond the bounds of the county in which they are confined, shall be conveyed to and from their place of confinement by the sheriff of the county in which they are confined, or the sheriff of the county to which such prisoner belongs, at the expense, in the first instance, of the county to which such prisoner belongs; and

such sheriff shall have a right to the custody of the prisoner within the limits of any county in this territory through which he may pass; and for the temporary confinement of his prisoner, may use the county jail of any county free of charge, except for board, which shall not exceed thirty cents a meal.

SEC. 288. All fines and forfeitures shall belong to the counties from which the defendants come, to be applied to the same purposes as if the court was a district court of the county.

SEC. 289. It shall be the duty of all county school superintendants and school directors to make complaint in all cases which shall come to their knowledge of a criminal violation of the laws relating to schools and education. It shall be the duty of road supervisors to make complaint in all cases which shall come to their knowledge, of a criminal violation of the laws relating to roads and highways. It shall be the duty of all constables and sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge within their respective jurisdictions.

SEC. 290. Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life, at hard labor; and in all cases in which the governor is authorized to grant pardons, or commute sentence of death, he may, upon the petition of the person convicted, commute a sentence, or grant a pardon, upon such conditions, and with such restrictions, and under such limitations, as he may think proper; and he may issue his warrant to all proper officers to carry into effect such pardon or commutation; which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves, from time to time, as he may think proper.

SEC. 291. All recognizances, taken and forfeited before any justice of the peace, or magistrate, shall be forthwith certified to the clerk of the district court of the county; and it shall be the duty of the prosecuting attorney to proceed at once by action, against all the persons bound in such recognizances, and in all forfeited recognizances whatever, or such of them as he may elect to proceed against.

SEC. 292. No action brought on any recognizance, given in any criminal proceeding whatever, shall be barred or defeated, nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court,

or before what justice the party or witness was bound to appear; and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded.

SEC. 293. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of any officer, or for any charge of subsistence while he was in custody, except for the fees of witnesses summoned by him, and those of the officer summoning such witnesses.

SEC. 294. Bail shall, when required, justify as in civil cases.

SEC. 295. To make an arrest in criminal actions, the officer may break open any outer or inner door, or window of a dwelling house or other building, or any other inclosure, if, after notice of his office and purpose, he be refused admittance.

SEC. 296. The plea of the benefit of clergy is abolished.

SEC. 297. The laws and usages of this territory relative to pleading and practice, heretofore in force in criminal cases, and not inconsistent herewith, as far as the same may operate in aid thereof, or to supply any omitted case, are hereby continued in force, but all laws heretofore enacted upon any matter provided for by this act, and inconsistent with its provisions, are hereby repealed: *Provided*, That no offense committed against the laws heretofore in force shall be affected by the provisions of this act, except where any punishment may have been mitigated by those provisions, they may be extended and applied to any judgment hereafter to be pronounced.

PASSED, January 28th, 1863.

AN ACT

RELATING TO JUSTICES OF THE PEACE, AND TO THEIR PRACTICE AND JURISDICTION.

- CHAPTER I. Of election and qualification of Justices of the peace.
- “ II. Jurisdiction of justices of the peace.
- “ III. Commencement of actions, service and return of process.
- “ IV. Pleadings and adjournments.
- “ V. Trial by jury.
- “ VI. Of judgment.
- “ VII. Executions and proceedings thereon.
- “ VIII. Of replevin.
- “ IX. Forcible entry and detainer.
- “ X. Proceedings for contempt.
- “ XI. Certiorari and proceedings thereon.
- “ XII. Of appeals.
- “ XIII. Title to land.
- “ XIV. Witnesses and depositions.
- “ XV. Actions concerning mining claims.
- “ XVI. Forms in civil actions.
- “ XVII. Criminal jurisdiction.
- “ XVIII. Forms in criminal cases.
- “ XIX. Miscellaneous provisions.
- “ XX. Examination of offenders, commitment and bail.

CHAPTER I.

ELECTION OF JUSTICES OF PEACE, AND QUALIFICATION, &c.

- SECTION 1. Justices, when and where elected.
- “ 2. Each precinct entitled to one.
Commissioners may authorize an additional justice.
- “ 3. Who eligible as justice.
- “ 4. Election of justice, how conducted.
Certificate, oath to be filed.
- “ 5. Justice to give bond; form of.
- “ 6. Bond to be filed; action upon.
- “ 7. Term of office.
- “ 8. Vacancies; how filled.
- “ 9. Jurisdiction throughout county, but to reside in precinct.
- “ 10. Provision in case of a division of a precinct.
- “ 11. In case of death, resignation, &c., books, papers, &c.
- “ 12. Penalty for neglect to deliver books, &c.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the qualified voters of each election precinct, in the several organized counties of this territory, shall, at the time and place of holding the annual election, elect one or more justices of the peace.

SEC. 2. Each precinct shall be entitled to one justice of the peace, but the board of county commissioners, at the time of organizing such precinct, or at any time afterwards, may, if they deem proper, authorize an additional justice of the peace to be elected therein.

SEC. 3. No person shall be eligible to the office of justice of the peace who is not a qualified voter, and who has not been a resident of the county in which he is elected six months next preceding his election; nor shall any sheriff, coroner, or clerk of the district court be eligible to, or hold such office.

SEC. 4. The election of justice of the peace shall be conducted, and return of such election made in the same manner, as other elections; and every person duly elected, shall be entitled to a certificate of election, and shall take an oath of office; which oath shall be endorsed on the back of the certificate of election, and together with the certificate, filed in the office of the county auditor.

SEC. 5. Every person elected a justice of the peace, shall, at the time of filing his oath of office in the office of the county auditor, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said auditor, in the sum of five hundred dollars, conditioned that he will faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace; said bond may be in the following form:

Know all men by these presents, that we, J. P, A. B, and C. D, are held and firmly bound unto the board of county commissioners of the county of _____, in the territory of Washington, in the sum of five hundred dollars, for the payment of which, we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals. Dated this _____ day of _____, A. D. 18—.

Whereas, the said J. P, has been duly elected a justice of the peace, in and for the precinct of _____, in the county of _____, A. D. 18—. Now the condition of the above obligation is such, that if the said J. P. shall faithfully pay over, according to law, all moneys

which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise in full force.

J. P. [L. s.]

A. B. [L. s.]

C. D. [L. s.]

SEC. 6. Such bond shall be filed in the office of the county auditor; and every person aggrieved by a breach of the condition thereof, may, by an action upon the bond, have judgment against the justice, and his sureties, for such sum as he may show himself entitled to, with costs, and interest at the rate of twenty-five per cent. per annum; and upon any such judgment, stay of execution shall not be allowed.

SEC. 7. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified; and every justice heretofore elected and qualified, shall continue to act as such until his term of office expires, and until his successor is elected and qualified.

SEC. 8. All vacancies existing in the office of the justice of the peace, whether happening by death, resignation or otherwise, may be filled by appointment by the board of commissioners of the proper county. Every person so appointed shall hold his office until the next election; and is required to qualify in the same manner, as if he had been duly elected to the office of justice of the peace, under the provisions of this act.

SEC. 9. The jurisdiction of justices of the peace, elected in pursuance of the provisions of this act, shall be co-extensive with the limits of the county in which they are elected or appointed; and no other or greater, whether said county be attached to any other county for judicial purposes, or not. But every justice of the peace shall continue to reside in the precinct for which he was elected, or appointed during his continuance in office.

SEC. 10. When a precinct shall be divided, and any justice of the peace of the original precinct shall fall into the new one, he shall continue to discharge the duties of justice of the peace until his term of office expires, and his successor is elected and qualified.

SEC. 11. If any justice of the peace shall die, resign, or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records, and papers, appertaining to his office, or relating to any suit, matter or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear, try and

determine such matter, suit or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such matter or suit was commenced to have done; *Provided*, That if there be no other justice of the peace in said precinct, such docket, books, records and papers, shall be delivered to the county auditor, who on demand shall deliver the same to a justice of said precinct, when there shall be one qualified therein, who shall exercise the same powers as though they had been originally delivered to him.

SEC. 12. Every person whose duty it is to deliver over the docket, books, records and papers, as prescribed in the last section, shall forfeit and pay, for the use of the county fifteen dollars for every three months, neglect to perform such duty, which sum may be recovered at the suit of any person.

CHAPTER II.

JURISDICTION OF JUSTICES OF THE PEACE.

- SECTION 13. Co-extensive with county for which elected.
- “ 14. Office to be in precinct for which elected.
May issue process throughout county.
- “ 15. Not to hold his office with an attorney, &c.
- “ 16. Jurisdiction conferred, and practice in justices' court.
- “ 17. Actions cognizable, enumerated.
- “ 18. Actions not in jurisdiction of a justice.

SEC. 13. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater unless otherwise expressly provided by statute.

SEC. 14. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere; but he may issue process in any place in the county.

SEC. 15. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice of the peace.

SEC. 16. Every justice of the peace elected in any precinct in this territory, is hereby authorized to hold a court for the trial of all actions in the next section enumerated, to hear, try and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary

powers which are possessed by courts of record in this territory; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter.

SEC. 17. Every justice of the peace shall have jurisdiction over, and cognizance of the following actions and proceedings:

1st—Of an action arising on contract, for the recovery of money only, if the sum claimed do not exceed one hundred dollars.

2d—Of an action for damages, for an injury to the person or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars.

3d—Of an action for a penalty, not exceeding one hundred dollars.

4th—Of an action upon a bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment, as it shall become due.

5th—Of an action on an undertaking or surety bond, taken by him, if the amount claimed do not exceed one hundred dollars.

6th—Of an action for the foreclosure of any mortgage, or the enforcement of any lien on personal property, when the debt secured does not exceed one hundred dollars.

7th—Of an action for damages, for fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed one hundred dollars.

8th—Of an action for a forcible or unlawful detention of lands, tenements, or other possessions.

9th—Of an action to try the right of occupancy or possession to a mining claim.

10th—To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars.

11th—And shall, in all cases, have power to issue writs of attachment upon goods, chattels, moneys and effects, where the amount does not exceed one hundred dollars.

SEC. 18. The jurisdiction conferred by the last section, shall not however extend to the following civil actions:

1st—In which the title to real property shall come in question.

2d—Nor to an action for the foreclosure of a mortgage on, or the enforcement of a lien on real estate.

3d—Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction.

4th—Nor to any action against an executor or administrator, as such.

CHAPTER III.

COMMENCEMENT OF ACTIONS—SERVICE AND RETURN OF PROCESS.

- SECTION 19. Justice to keep a docket; what to be entered therein.
- “ 20. How actions may be instituted.
- “ 21. Plaintiff a non-resident, may be required to give security for costs.
- “ 22. Process how issued and directed.
- “ 23. Of notice to defendant, and form thereof.
- “ 24. Notice, by whom to be served.
- “ 25. Constable or sheriff to make return thereon.
- “ 26. Warrant of arrest, when it may be issued.
- “ 27. Before issuing warrant, plaintiff to give bond.
- “ 28. Warrant, how served.
- “ 29. Officer making the arrest to give notice to the plaintiff.
Warrant to be indorsed.
- “ 30. How long defendant may be detained.
- “ 31. On what conditions defendant may have a continuance.
- “ 32. Appointment of special officer to execute process.
- “ 33. Penalty for failing to execute process, or making false return.
- “ 34. How infant plaintiff may sue.
- “ 35. Guardian for infant defendant.
- “ 36. Parties entitled to one hour to make their appearance.
When justice may postpone time of appearance.

SEC. 19. Every justice of the peace shall keep a docket, in a well bound book, in which he shall enter :

1st—The titles of all actions commenced before him.

2d—The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand.

3d—The date of the notice and the time of its return; and if an order to arrest the defendant be made, the statement of the facts on which the order is issued.

4th—The time when the parties, or either of them, appear, or their non-appearance, if default be made.

5th—A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any set-off be pleaded, a similar statement of the set-off, and the amount estimated, and every motion, rule, order, and exception with the decision of the court thereon.

6th—Every continuance, stating at whose request, and for what time.

7th—The demand for a trial by jury, when the same is made, and

by whom made; the order for the jury, and the time appointed for the trial and return of the jury.

8th—The names of the jury who appear and are sworn: the names of all witnesses sworn, and at whose request.

9th—The verdict of the jury, and when received; and if the jury disagree and are discharged, the fact of such disagreement and discharge.

10th—The judgment of the court, and the time when rendered.

11th—The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt and costs, and the fees due to each person separately.

12th—The fact of an appeal having been made and allowed, and the time when.

13th—Satisfaction of the judgment, or any money paid thereon, and the time when.

14th—And such other entries as may be material.

SEC. 20. Actions may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process.

SEC. 21. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs before the commencement of the action.

SEC. 22. All process issued by justices of the peace, shall run in the name of the United States, be dated the day issued, and shall be signed by the justice granting the same, and shall be directed to the sheriff or any constable of the proper county.

SEC. 23. All civil actions in justice's courts shall be commenced by service upon the defendant of a true copy of the complaint and the notice, which notice shall be attached to the copy of the complaint, and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six, nor more than twenty days from the date of the filing of the complaint. The notice shall be substantially as follows:

Territory of Washington, }
 _____ county, ss. }
 To _____,

You are hereby notified to be and appear at my office, in _____, on the _____ day of _____ 18—, at the hour of _____ M., to answer to the foregoing complaint, or judgment will be taken against you as confessed, and the prayer of the plaintiff granted.

Dated _____, 18—.

_____ J. P.

SEC. 24. The service shall be made by any sheriff or constable of the county, unless otherwise directed, who shall certify to such service upon the body of the complaint on file in the justice's office, and in case of absence of the defendant service shall be made in the same manner, as is provided for service of process, in actions commenced in the district court.

SEC. 25. Every constable or sheriff serving any process, shall return thereon in writing, the time and manner of service, and shall sign his name to such return, and indorse thereon his fees for service.

SEC. 26. A justice of the peace shall issue a warrant of arrest in such cases within his jurisdiction, and for such causes, and upon such proof, as is provided for an order for a warrant in the act regulating civil actions.

SEC. 27. Before issuing the warrant of arrest, the justice shall require a bond on part of the plaintiff, with one or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which may be sustained by reason of the arrest, not exceeding the sum specified in the bond, which shall be at least one hundred dollars.

SEC. 28. The warrant shall be served by arresting the defendant, and taking him before the justice of the peace who issued the same; but if such justice, at the return thereof, be absent or unable to try the action, the officer, shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself.

SEC. 29. The officer making the arrest shall immediately give notice thereof to the plaintiff, his agent or attorney, and indorse on the warrant the time of the arrest, and the time of serving notice on the plaintiff.

SEC. 30. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant.

SEC. 31. If the defendant, on his appearance, demand a continuance, the same may be granted, on condition that he remain in custody, execute and file with the justice a bond, with one or more sufficient sureties to be approved by the justice, to the effect that he will render himself

amenable to the process of the court; or that the sureties will pay to plaintiff the amount of any judgment which he may recover in the action. On filing such bond, the justice shall order the defendant to be discharged from custody.

SEC. 32. Every justice, issuing any process authorized by this chapter, upon being satisfied that such process will not be executed for want of an officer, to be had in time to execute the same, may, by an indorsement upon the process, empower any suitable person, not being a party to the action, to execute the same; and the person so empowered, shall thereupon possess all the authority of a constable, in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

SEC. 33. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured, ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action.

SEC. 34. No action shall be commenced by an infant plaintiff, except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein.

SEC. 35. After the service and return of process against an infant defendant, the action shall not be further prosecuted, until a guardian for such infant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action.

SEC. 36. The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the notice for appearance, but shall not be required to remain longer than that time, unless both parties appear: and the justice being present, is actually engaged in the trial of another action or proceeding; in such case he may postpone the time of appearance until the close of such trial.

PLEADINGS AND ADJOURNMENTS.

- SECTION 37.** Pleadings to take place on appearance of parties
- “ 38. What the pleadings shall be.
- “ 39. When the pleadings shall be in writing.
- “ 40. Substance of oral, to be entered on the docket.
Written pleadings to be filed. No particular form required.
- “ 41. Statement of want of sufficient knowledge, equivalent to denial.
- “ 42. In action on account of instrument for the payment of money.
Adverse party entitled to inspection of the original.
- “ 43. Pleadings to be verified on oath.
- “ 44. Of material allegations not denied.
- “ 45. Either party may object to the pleading of the other, and of amendment.
- “ 46. Variance between proof and pleading, to be disregarded.
- “ 47. Amendments to the pleadings.
- “ 48. Set off to be alleged in the answer.
Defendant may have judgment for the balance found due.
- “ 49. Defendant on set-off, where excess due defendant exceeds jurisdiction of justice.
- “ 50. Of continuance.

SEC. 37. The pleadings in justices' court shall take place upon the appearance of the parties, unless they shall have been previously filed, or unless the justice shall, for good cause shown, allow a longer time than the time of appearance.

SEC. 38. The pleadings in the justice's court shall be—

1st—The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

2d—The answer of the defendant, which may contain a denial of the complaint, or any part thereof; and also a statement, in a plain and direct manner, of any facts constituting a defense.

3d—When the answer sets up a set-off by way of defense, the reply of the plaintiff.

SEC. 39. The pleadings shall be in writing, when the action is for one of the following causes:

1st—For the foreclosure of any mortgage, or the enforcement of any lien on personal property.

2d—For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions.

3d—To recover the occupancy or possession of a mining claim. In all other cases, the pleadings may be oral or in writing.

SEC. 40. When the pleadings are oral, the substance of them shall be entered by the justice in his docket. When in writing, they shall be filed in his office, and a reference made to them in his docket.

Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

SEC. 41. A statement in an answer or reply, that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party to form a belief, shall be deemed equivalent to a denial.

SEC. 42. When the cause of action, or set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set-off. The court may at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if it be not so exhibited, may prohibit its being given in evidence.

SEC. 43. Every complaint, answer, or reply, shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified.

SEC. 44. Every material allegation in a complaint, or relating to a set-off in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case.

SEC. 45. Either party may object to a pleading by his adversary, or to any part thereof that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 46. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 47. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omission in the allegations or denials, necessary to support the action or defense, when by such amendment substantial justice will be promoted.

If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party, in consequence of such amendment, a continuance shall be granted. The court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

SEC. 48. To entitle a defendant to any set-off he may have against the plaintiff, he must allege the same in his answer; and the statutes regulating set-offs in the district court, shall in all respects be applicable to a set-off in a justice's court, if the amount claimed to be set-off, after deducting the amount found due the plaintiff, be within the jurisdiction of the justice of a justice of the peace; and judgment may, in like manner, be rendered by the justice in favor of the defendant, for the balance found due the plaintiff.

SEC. 49. When the set-off of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case, the court shall not render judgment for any further sum in favor of the defendant.

SEC. 50. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if the defendant be not under arrest, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects shall be governed by the law applicable to continuance in the district court.

CHAPTER V.

TRIAL BY JURY.

- SECTION 51. Either party may demand a jury.
 " 52. Number of jurors.
 " 53. Justice shall issue a venire.
 " 54. Sheriff or constable to execute the venire.
 " 55. Either party may challenge the jurors.
 " 56. Challenges for cause.
 " 57. Justice to administer oath to jury.

- SECTION 58. Verdict to be delivered to justice, and entered on docket.
 " 59. Jury unable to agree, may be discharged, and new venire issue.
 " 60. Penalty of juror failing to attend.

SEC. 51. Before the justice shall commence an investigation of the merits of the cause by an examination of the witnesses, or the hearing of any other testimony, either of the parties may demand of the justice that the cause be tried by jury: *Provided*, The party demanding the jury, shall first pay to the justice the amount of six dollars as a jury fee, which shall be paid over by the justice to the jury, on the rendition of their verdict in the case, and taxed as costs against the losing party: *and provided also*, That this act shall not apply to a case of forcible entry and detainer, nor to criminal actions.

SEC. 52. The jury shall consist of six persons, unless the parties agree upon any number of jurors less than six, to try the cause: in which case the jury shall consist of such number, not exceeding six, as the parties may agree upon.

SEC. 53. The justice shall issue a venire, directed to the sheriff, or any constable of the county where the cause is to be tried, commanding him to summon six (or such number as the parties may have agreed upon) good and lawful men of the county, qualified to serve as jurors in the district court of the same county, who shall be nowise of kin to either party, nor interested in the action, to appear before said justice, at a time and place to be named therein, to make a jury for the trial of the cause between the parties therein named.

SEC. 54. The sheriff or constable shall execute such venire fairly and impartially, and shall not summon any person whom he has reason to believe is biased or prejudiced for or against either of the parties. He shall summon the jurors personally, and shall make a list of the persons, which he shall certify and annex to the venire, and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the sheriff or constable shall immediately summon others to serve in their place.

SEC. 55. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual jurors, and shall be peremptory, or for cause. Each party shall be entitled to two peremptory challenges.

SEC. 56. Challenges for cause may be taken on any ground that would be a good cause of challenge on the trial of an action in the district court. Challenges for cause shall be tried by the justice.

SEC. 57. When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause.

SEC. 58. When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket.

SEC. 59. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce.

SEC. 60. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

CHAPTER VI.

OF JUDGMENT.

SECTION 61. When the action may be dismissed without prejudice.

“ 62. Upon failure of defendant to appear.

“ 63. If a jury not demanded, justice to hear and determine the cause.

“ 64. Judgment when to be rendered.

“ 65. Defendant may offer in writing to allow judgment for a specified sum.

If plaintiff fail to recover judgment for greater sum, to pay costs.

“ 66. Costs to go to prevailing party.

SEC. 61. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

1st—When the plaintiff voluntarily dismisses the action before it is finally submitted.

2d—When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.

3d—When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal.

SEC. 62. When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

1st—When the defendant has been served with a true copy of the

complaint, judgment shall be given without further evidence for the sum specified therein.

2d—In other cases the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint.

SEC. 63. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly.

SEC. 64. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases, it shall be entered within three days after the close of the trial.

SEC. 65. If the defendant, at any time before the trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued: but if he do not accept such offer before trial, and fail to recover on the trial of the action a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided.

SEC. 66. When the prevailing party is entitled to costs, by this act the justice shall add their amount to the judgment; or in case of the failure of the plaintiff to recover, or in case of dismissal of the action, he shall enter up judgment in favor of the defendant for the amount of such costs.

CHAPTER VII.

OF EXECUTIONS AND PROCEEDINGS THEREON.

- SECTION 67. Execution, how long it may be stayed.
- “ 68. Requisites of stay bond.
- “ 69. Form of bond.
- “ 70. At the expiration of the stay, how execution to be satisfied.
- “ 71. Bail may have judgment against defendant.
- “ 72. If judgment stayed, execution to be revoked.
- “ 73. Of setting off mutual judgments.
- “ 74. Where judgment proposed to be set off was rendered before another justice.

- SECTION 75.** Action of justice after allowance or disallowance.
- " 76. Execution issued on the application of the party, entitled to the same.
Exception.
- " 77. Of judgment not satisfied during continuance in office of justice rendering.
- " 78. Execution unsatisfied in one county, transcript to be sent to justice of another county, who shall issue execution.
- " 79. Execution, to whom directed, when dated and when returnable.
To be against goods and chattels.
- " 80. Before delivery of execution, certain entries to be made in docket and on execution.
- " 81. Execution not satisfied, may be renewed.
- " 82. Of sales on execution, notice, &c.
- " 83. Goods and chattels to be sold at public sale to highest bidder.
Return of execution.
- " 84. Officer not to be a purchaser at such sale.
- " 85. When execution may be issued against the person of defendant.
- " 86. When garnishees may be summoned.
- " 87. Justice may issue execution against prevailing party for fees and costs; when.
- " 88. Method of proceeding upon adverse claim to property levied on.
- " 89. Construction of the last section.

SEC. 67. The execution upon a judgment by a justice of the peace, may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party, and for the following periods of time, to be calculated from the date of the judgment :

1st—If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month.

2d—If it be for more than twenty-five dollars, two months.

SEC. 68. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering of the judgment, enter into a bond before the justice, to the adverse party, in a sufficient sum to secure the payment of the judgment and costs, conditioned to be void upon such payment, at the expiration of the stay.

SEC. 69. Such bond shall be signed by the person entering into the same, and may be in the following form :

Whereas, A. B. has obtained a judgment before J. P., one of the justices of the peace in and for _____ county, on the _____ day of _____, 18____, against C. D., for _____ dollars. Now, therefore, I, E. F., acknowledge myself bound to A. B., in the sum of _____ dollars; this bond to be void, if such judgment

shall be paid at the expiration of —— month after the time it was rendered.

Dated the —— day of ——, 18—.

E. F.

SEC. 70. If at the expiration of such stay the judgment be not paid, the execution shall issue against both, the principal and bail. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money, collected by him on the execution, was collected from the bail, and the time when the same was received.

SEC. 71. After the return of such execution, the bail shall be entitled, on application to the justice, to have the judgment, or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his use; and he may collect the same from the defendant by execution, together with interest at the rate of twelve per cent. per annum.

SEC. 72. If a judgment be stayed, in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with like effect as he is hereinafter directed to revoke an execution, after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody.

SEC. 73. If there be mutual justice's judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, one may be set-off against the other, by the justice before whom the judgment against which the set-off is proposed, may be.

SEC. 74. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off shall produce before such justice a transcript of such judgment, upon which there is a certificate of the justice before whom such may be, that it is unsatisfied in whole or in part, and that there is no appeal, and that such transcript was obtained for the purpose of being set-off against the judgment to which it is offered as a set-off. The justice granting such transcript shall make an entry thereof on his docket, and all further proceedings on such judgment shall be stayed, unless such transcript be returned with the proper justice's certificate thereon, that it has not been allowed in set-off.

SEC. 75. If any justice shall set-off one judgment against another, he shall make an entry thereof on his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

SEC. 76. Execution for the enforcement of a judgment in a justice's court may be issued on the application of the party entitled thereto, in the manner hereinbefore prescribed; but after the lapse of five years from the date of the judgment, no execution shall issue except by leave of the justice before whom such judgment may be, upon reasonable notice, to the defendant.

SEC. 77. When any judgment shall have been rendered by any justice of the peace, and the same not be satisfied during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered shall issue execution upon such unsatisfied judgment in the same manner, and with like effect, as if he himself had rendered the judgment.

SEC. 78. If the defendant have not goods and chattels in the county in which judgment was rendered, sufficient to satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs as in other cases.

SEC. 79. The execution shall be directed (except when it is otherwise specially provided,) to the sheriff or any constable of the county where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and it shall be against the goods and chattels of the person against whom the same is issued.

SEC. 80. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall indorse thereon the time of the reception of the same.

SEC. 81. If an execution be not satisfied, it may, at the request

of the plaintiff, be renewed from time to time by the justice who issues the same, or the justice to whom his docket is transferred, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force in all respects for thirty days, and no longer; and an entry of such renewal shall be made in the docket of the justice.

SEC. 82. The officer, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county, of the time and place, when and where they will be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

SEC. 83. At the time and place so appointed, if the goods and chattels be present for inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

SEC. 84. No officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, and every such purchase shall be absolutely void.

SEC. 85. If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued after the return of an execution against his property unsatisfied in whole or in part. An execution against the person may likewise be issued after such return, where the defendant has been arrested upon a warrant and not discharged according to law.

SEC. 86. If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall, on demand of the plaintiff, summon in writing as garnishees, such persons as may be named to the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees, and the like proceeding shall be had thereon, before the justice to final judgment, as in proceedings by attachment.

SEC. 87. Any justice of the peace may issue an execution against the prevailing party, to collect fees and costs for which such party may be liable, after an execution has been first issued against the other party, and returned "no property found."

SEC. 88. If any property levied on, be claimed by any person other than the defendant in the execution, the sheriff or constable shall summon from his county, six persons qualified as jurors between the parties to try the validity of the claim; such officer shall also give reasonable notice of the claim, and of the trial of the plaintiff; who may appear and contest the claim before the jury. The jury and witnesses of the parties shall be sworn by the officer, and if their verdict be in favor of the claimant, the officer may relinquish the levy unless the plaintiff give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff or constable and the witnesses shall be the same as for similar services in a justice's court, and shall be paid by the claimant if the verdict be against him, otherwise by the plaintiff. On the trial, the defendant and the claimant may be examined as witnesses by the plaintiff.

SEC. 89. Nothing contained in the last section shall be so construed as to prevent the claimant of property levied on by execution from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed.

CHAPTER VIII.

OF REPLEVIN.

- SECTION 90. Plaintiff may claim delivery of property, when.
- “ 91. Affidavit to be made by plaintiff; its contents.
- “ 92. Justice to order the delivery; order to be indorsed on the affidavit bond to be given.
- “ 93. On receipt of order, affidavit and bond, sheriff to take the property.
Copies to be served on the defendant.
- “ 94. Defendant may except to the sureties.
- “ 95. Defendant may require the return of the property upon giving bond.
- “ 96. Defendant's sureties to justify.
Officer responsible until their justification, &c.
- “ 97. Action of officer when property is concealed.
- “ 98. Disposition of the property.
- “ 99. Method of proceeding in adverse claims to property.
- “ 100. Officer to make return of affidavit, &c., to the justice, when.

SEC. 90. The plaintiff in an action to recover the possession of personal property may at the time of issuing such summons, or at any time before answer, claim the immediate delivery of such property as provided in this act.

SEC. 91. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing :

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

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

3d—The alleged cause of the detention thereof, according to his best knowledge, information and belief ;

4th—That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure, and

5th—The actual value of the property.

SEC. 92. The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff or any constable of the county, to take the same from the defendant and deliver it to the plaintiff upon receiving a proper bond.

SEC. 93. Upon the receipt of the affidavit and order with a bond, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect, that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order and bond, by delivering the same to him personally, if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual abode of either within the county, with some person of suitable age and discretion ; or if neither have any known place of abode in the county, putting them into the post office, directed to the defendant at the post office nearest to him.

SEC. 94. The defendant may, within two days after the service of a copy of the affidavit, order and bond, give notice to the officer that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the

justice; and the officer shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they justify, or new sureties be substituted, and they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

SEC. 95. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the officer a bond executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter.

SEC. 96. The defendant's sureties, upon one day's notice to the plaintiff, or his attorney, shall justify before the justice, and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is complete, or expressly waived, and may retain the property until that time, but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff.

SEC. 97. If the property, or any part thereof, be concealed in a building or inclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or inclosure to be broken open and take the property into his possession.

SEC. 98. When the officer shall have taken property as in this chapter 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. 99. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by a bond executed by two sufficient sureties accompanied by their affida-

vits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff over and above their debts and liabilities, exclusive property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent, shall be valid against the officer unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 100. The officer shall return the order and affidavit with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

CHAPTER IX.

FORCIBLE ENTRY AND DETAINER.

- SECTION 101. Entry into lands, in what cases and how to be made.
- “ 102. Person entitled to the premises to be restored to the possession.
- “ 103. Complaint in writing to be made to a justice of the peace.
- “ 104. Justice to issue summons.
- “ 105. How summons shall be served.
- “ 106. Jury to be summoned.
- “ 107. Sufficient jurors not attending, &c., justice may order others to be summoned.
- “ 108. Plaintiff failing to attend, to be non-suited.
- “ 109. Defendant failing to appear, case may be tried ex parte, or continued.
- “ 110. If defendant appear, to file his answer in writing.
- “ 111. Mode of trial, and proof required.
- “ 112. Proceedings on finding defendant guilty.
- “ 113. Verdict to be in writing; form of.
- “ 114. Proceedings in case of a verdict of “not guilty.”
- “ 115. New trial may be granted, when.
- “ 116. Title shall in no issue be inquired into.
- “ 117. One year’s quiet possession a plea in bar.
- “ 118. Of recovering possession of premises, after termination of lease, &c.
- “ 119. For causes mentioned in the last section, jury not necessary.
- “ 120. In an action for recovery of demised premises, defendant may, before judgment, pay the amount due, with interest and costs.
- “ 121. Justice to have power to continue, as in other cases.
- “ 122. Nothing in this act to bar or prevent the party injured from bringing his action to recover possession of the premises, or damages for trespass, or injury committed.

SEC. 101. No person shall make entry into lands, tenements, or

other possessions, but in cases where entry is given by law; and in such cases he shall not enter with force, but only in a peaceable manner.

SEC. 102. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person, entitled to the premises may be restored to the possession thereof, in the manner hereinafter provided.

SEC. 103. The person entitled to the possession of the premises may make complaint in writing, on oath, to a justice of the peace of the county in which the premises are situated, setting forth that the person complained of is in possession of the lands or tenements in question,—describing them; and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be, and the time when.

SEC. 104. Upon receiving such complaint, the justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the justice on a day in such summons named.

SEC. 105. The summons shall be served by the officer as in other cases, and at the same time a copy of the complaint shall, in like manner, be served on the defendant. The officer shall, in his return, state the time and manner of such service.

SEC. 106. The justice shall, at the time of issuing the summons, issue a venire to the sheriff or constable, commanding him to summon six good and lawful men, qualified to serve as jurors, to appear at the time and place appointed for the trial of the complaint, to be a jury in the case. Such venire shall be returned on or before the day appointed for the trial; and the officer shall endorse thereon the list of the jurors summoned.

SEC. 107. If a sufficient number of jurors do not attend, or attending, are set aside by challenging peremptorily, or for cause, the justice may order the sheriff or constable to complete the number, by summoning other jurors.

SEC. 108. If the plaintiff fail to appear at the time appointed for hearing the complaint, in person, by agent, or attorney, and prosecute his action, he shall be non-suited, and the defendant shall recover his costs.

SEC. 109. If the defendant fail to appear at the time appointed for hearing the complaint, the justice may proceed ex-parte, or continue the cause, at his discretion; but he shall not continue it for a longer

time than ten days, nor to any other place than that named in the summons for the hearing of the cause.

SEC. 110. If the defendant appear, he shall, before the trial, file his answer in writing, and under oath, in which he shall set forth his defense.

SEC. 111. The jury shall consist of six persons, unless the parties agree on a less number; and when duly empanelled and sworn, the justice shall cause the complaint to be read to them, and then call on the plaintiff to support the same by proof, but the plaintiff shall not be required to make further proof of the forcible entry and detainer, than that he was lawfully possessed of the premises, and that the defendant unlawfully entered and detains the same.

SEC. 112. If the jury on the trial find the defendant guilty, the justice shall record the verdict, and give judgment thereon, with costs, and also issue a writ of restitution, directed to the sheriff or constable, to cause the plaintiff to be repossessed of the premises to which shall be added a clause commanding the officer to levy the costs of the goods and chattels of the defendant.

SEC. 113. The verdict of the jury shall be in writing, and shall be in the form, or to the effect following:

"We, the jury, find the defendant guilty," or, if in favor of the defendant, "not guilty of said forcible entry and detainer, in manner and form as the plaintiff in his complaint hath alleged;" or the jury may find the defendant guilty as to part, and not guilty as to the balance of the charge, as laid in the plaintiff's complaint; if so, they shall state it specially in their verdict.

SEC. 114. When the jury find a verdict of "not guilty," for the defendant the verdict shall be so recorded, and the justice shall enter judgment against the plaintiff for costs, and issue execution therefor against his goods and chattels.

SEC. 115. In all cases of forcible entry and detainer, the justice shall have power to grant a new trial, if the same be applied for on the day the verdict is rendered, and good cause be shown, on affidavit, therefor, which shall be within ten days after granting the same, but not more than one new trial shall be granted to either party.

SEC. 116. The title shall in no issue be inquired into, on any complaint of forcible entry or detainer.

SEC. 117. One year's quiet possession of the premises, immediately preceding the filing of the complaint, by the party complained of, or those under whom he holds, may be pleaded by any defendant, in bar

of the plaintiff's demand of possession, unless the estate therein be ended.

SEC. 118. The person entitled to any premises, may recover possession thereof in the manner hereinbefore provided, in the following cases :

1st—When any person shall hold over any lands or tenements after the time for which they are demised or let to him, or to the person under whom he holds, or contrary to the conditions or covenants of any lease or agreement under which he holds.

2d—When any rent shall have become due on any such lease or agreement, and the tenant or person in whose possession shall have neglected or refused, for ten days after demand of the possession, made in writing, to deliver up possession of the premises, or to pay the rent so due.

3d—When any person shall continue in possession of any premises, sold by virtue of any mortgage or execution, after the sheriff's deed therefor shall have been recorded.

4th—When any tenant at will, or by sufferance, shall hold over after the determination of his estate, by a notice to quit, as provided by law.

SEC. 119. When the plaintiff shall file a complaint for an unlawful detainer, for any one of the causes mentioned in the last section, it shall not be necessary for the justice to issue a venire for a jury, at the time of issuing the summons; but the justice shall, at the time of trial proceed to hear and determine the complaint, unless either party shall call for a trial by jury, in which case the justice shall issue a venire, in the same manner, and the same proceedings shall thereupon be had as in cases of forcible entry and detainer.

SEC. 120. When the action shall be brought to recover the possession of premises demised or let, for the reason that the tenant or person in possession has refused or neglected to pay the rent due, it shall be lawful for the defendant, at any time before judgment, to pay to the justice, for plaintiff, the rent then in arrear, with interest and the costs of the action, and thereupon, no writ of restitution shall be awarded.

SEC. 121. The justice shall have the same power to continue actions for forcible entry and detainer, as in other cases.

SEC. 122. Neither the judgment nor anything contained in this act, shall bar or prevent the party injured from bringing an action to recover the possession of the premises, or to recover damages for the trespass or injury committed against the aggressor, or party offending.

CHAPTER X.

OF PROCEEDINGS FOR CONTEMPT BEFORE JUSTICES OF THE PEACE.

- SECTION 123. Justice may punish for contempt in certain cases.
 " 124. Contempt, how punished.
 " 125. Person to have an opportunity to be heard.
 " 126. If the offender be present, he may be summarily arraigned.
 " 127. Form of warrant for contempt.
 " 128. Proceedings in case of conviction. Form of judgment.
 " 129. Mode of enforcing judgment.

SEC. 123. In the following cases, and no others, a justice of the peace may punish for contempt:

1st.—Persons guilty of disorderly, contemptuous and insolent behavior towards such justice while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings which tend to interrupt such proceedings, or impair the respect due to his authority.

2d.—Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice.

3d.—Persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

SEC. 124. Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding two days, at the discretion of the justice, unless otherwise provided by statute.

SEC. 125. No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defense; and for that purpose the justice may issue his warrant to bring the offender before him.

SEC. 126. If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

SEC. 127. The warrant for contempt may be in the following form:

Territory of Washington, }
 _____ county, ss. }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to apprehend A. B., and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt alleged to have been committed

on the — day of —, A. D., 18—, before the said justice, while engaged as a justice of the peace in a judicial proceeding.

Dated this — day of —, A. D., 18—.

J. P.

Justice of the Peace.

SEC. 128. Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offense, and the judgment rendered thereon, and may be in the following form :

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

Whereas, on the — day of —, A. D., 18—, while the undersigned, one of the justices of the peace of the said county, was engaged in the trial of an action between C. D., plaintiff, and E. F., defendant, in said county, A. B., of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly.) And whereas, the said A. B. was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof. And whereas, the said A. B. did not show cause against the said charge—be it therefore ordered, that the said A. B. is adjudged to be guilty, and is convicted of the contempt aforesaid, and is adjudged by the undersigned to pay a fine of —dollars, (or be imprisoned, &c.)

Dated this — day of —, A. D., 18—.

J. P.

Justice of the peace.

SEC. 129. If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice. If he be adjudged to pay a fine, process may be issued to collect the same ; and when so collected, it shall forthwith be paid by the justice into the county treasury.

CHAPTER XI.

CERTIORARI AND PROCEEDINGS THEREON.

- SECTION 130. Proceedings may be removed to probate court on certiorari.
 “ 131. When, and in what manner a certiorari can be obtained.
 “ 132. How served.
 “ 133. Justice to make a special return.
 “ 134. Justice may be compelled to make or amend such return.
 “ 135. When the case may be brought to argument.
 “ 136. Judgment of the appellate court, how given.
 “ 137. Proceedings in case of a reversal of a judgment which had been collected.

SEC. 130. If any person shall conceive himself injured by error in any process, proceeding, or judgment, or order given by any justice of the peace within this territory, it shall be lawful for such person to remove such process, proceeding, judgment or order, to the probate court, as hereinafter provided.

SEC. 131. Within twenty days after the rendition of the judgment, or if the error be committed after judgment, then within twenty days after such error was committed, the party applying for such certiorari, his agent, or attorney, shall file in the office of the clerk of the probate court for the proper county, an affidavit, stating that in his belief there is reasonable cause for granting such certiorari, for error in such judgment or proceeding, (setting forth the ground of error alleged,) and that the application is made in good faith, and not for the purpose of delay, and further shall execute a bond to the adverse party, with one or more sureties, to be approved by the clerk in double the amount of the judgment and costs rendered before the justice, to the effect that the party applying will prosecute the writ of certiorari to final judgment; and abide any order the court may make therein.

SEC. 132. The writ of certiorari shall be served on the justice within ten days after it has been issued; and if a bond be executed in pursuance of the last section, and a certificate of the clerk to that effect be served on the justice, all further proceedings in law in such case shall cease; and if the execution shall have issued on such judgment, the justice shall immediately recall the same.

SEC. 133. Upon the service of a writ of certiorari to reverse a judgment, it shall be the duty of the party serving the same, to deliver at the same time to the justice, a copy of the affidavit on which the certiorari was procured, and the justice shall make a special return as to all the facts contained in such affidavit, and of the proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the probate court within ten days after the service of the writ, together with all the papers in the action; and he shall also certify the time when the writ was served upon him.

SEC. 134. The probate court shall have power to compel such justice to make or amend such return by rule, attachment or mandamus, as the case may require.

SEC. 135. When the writ of certiorari and return shall be filed with the clerk, the case may be brought on to argument before the probate court at any time thereafter, according to the statutes relating thereto.

SEC. 136. The probate court shall, after hearing the case, give judgment as the right of the matter may appear, without regarding technical omissions, imperfections, or defects in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part, and issue execution as upon other judgments rendered before said court.

SEC. 137. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, such court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue therefor.

CHAPTER XII.

OF APPEALS TO THE PROBATE COURT.

- SECTION 138. Who may appeal.
- " 139. When and how an appeal may be taken.
 - " 140. No appeal allowed unless a bond shall be executed.
 - " 141. In case of an appeal from a judgment for the delivery of the possession of premises, a writ of restitution to be issued, unless appellant executes a bond.
 - " 142. Appeal being allowed, all further proceedings before justice to be suspended.
 - " 143. Property taken on execution to be released, and defendant to be discharged from imprisonment.
 - " 144. When and in what manner the probate court becomes possessed of the cause.
 - " 145. Issue to be tried on the same pleadings, unless otherwise directed.
 - " 146. Probate court may compel the justice to make a transcript of the proceedings, and amend such transcript when defective, &c.
 - " 147. Appeal not to be dismissed on account of defective bond, when.
 - " 148. Judgment against appellant, how rendered.

SEC. 138. Any person considering himself aggrieved by any judgment or decision of a justice of the peace, may, in person or by his agent, appeal therefrom to the district court of the same county where the judgment was rendered, or the decision made.

SEC. 139. Such appeal shall be taken within twenty days after the judgment is rendered, or the decision made, and shall be by filing a notice of appeal with the justice, and serving a copy thereof on the adverse party or his attorney.

SEC. 140. No appeal shall be allowed in any case, unless a bond shall be executed on the part of the appellant by one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs which may be awarded against him on the appeal; or if a

stay of proceeding before the justice be claimed, a bond with two or more sureties in a sum equal to twice the amount of the judgment, to the effect that the appellant will pay the costs and judgment, provided the sum appealed from be affirmed, or if affirmed only in part, then to the extent in which it may be affirmed.

SEC. 141. If the judgment appealed from direct the delivery of the possession of premises in an action of forcible entry and detainer, or of a mining claim, a writ of restitution may be issued and executed, unless a bond be entered into on the part of the appellant with two or more sureties to the effect that during the possession of such premises or mining claim by the appellant, he will not commit, nor suffer to be committed, any waste, destruction, or injury thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the premises or mining claim, from the time of the appeal until the delivery of the possession thereof, and all costs of the appeal. The amount of such bond shall be fixed by the justice before whom the action was tried.

SEC. 142. Upon appeal being made, and a bond filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if, in the meantime, execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed.

SEC. 143. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution; and if the body of the defendant have been taken on execution, he shall be discharged from imprisonment.

SEC. 144. On or before the first day of the term of the court, next after the appeal has been taken, the appellant shall furnish the probate court with a transcript of all the entries made in the justice's docket relating to the case, together with all the process and other papers relating to the action, and filed with the justice, which shall be certified by such justice to be correct, and upon the filing of such transcript the probate court shall become possessed of the cause, and shall proceed in the same manner as near as may be, as in actions originally commenced in that court, except as herein otherwise provided.

SEC. 145. The issue before the justice shall be tried in the probate court without other or new pleadings, unless otherwise directed by the court.

SEC. 146. Upon an appeal being made and allowed, the probate court may by rule and attachment compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may by rule and attachment compel him to amend the same.

SEC. 147. No appeal allowed by a justice shall be dismissed on account of the bond being defective, if the appellant will, before the motion is determined, execute and file in the probate court such a bond as he should have executed by the allowance of the appeal, and pay all costs that shall have accrued by reason of such defect.

SEC. 148. In all cases of appeal to the probate court, if on the trial anew in such court, the judgment be against the appellant, in whole or in part, such judgment shall be rendered against him and his sureties in the bond for the appeal.

CHAPTER XIII.

TITLE TO LAND.

SECTION 149. Justice how to proceed when title to land in question.

SEC. 249. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the district court of the county, a transcript of all the entries made in his docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the district court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the costs shall abide the event of the suit.

CHAPTER XIV.

OF WITNESSES AND DEPOSITIONS.

SECTION 150. Witnesses may be subpoenaed within twenty miles.

“ 161. By whom and how subpoena may be served.

- SECTION 152. Witnesses failing to appear, an attachment may issue.
- “ 153. Attachment, to whom directed.
Fees of office, by whom paid.
- “ 154. Person subpoenaed neglecting to appear, liable for damages.
- “ 155. Party to action may be examined as a witness at instance of adverse party.
- “ 156. Testimony of party may be rebutted.
- “ 157. Party refusing to testify, judgment may be taken against him.
- “ 158. Party to action by adverse party may be examined in his own behalf.
- “ 159. When depositions may be taken.
- “ 160. Notice of how served, and deposition how to be taken, certified and returned.
- “ 161. When depositions may be read on trial.
- “ 162. Changes of venue may be allowed.

SEC. 150. A subpoena issued by a justice of the peace shall be valid to compel the attendance of a witness in the justice's court, if such witness be within twenty miles of the place of trial.

SEC. 151. A subpoena may be served by any white person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy at his usual place of abode.

SEC. 152. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpoenaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness; *Provided*, That no attachment shall issue against a witness in any civil action, unless his fees for mileage, and one day's attendance, have been tendered or paid in advance, if previously demanded by such witness, from the person serving the subpoena.

Sec. 153. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs.

SEC. 154. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for all damages which such party may have sustained by reason of his non-appearance: *Provided*, That such witness

had the fees allowed for mileage, and one day's attendance paid, or tendered him in advance, if demanded by him at the time of service.

SEC. 155. A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken.

SEC. 156. The examination of a party thus taken, may be rebutted by adverse testimony.

SEC. 157. If a party refuse to attend and testify at the trial, or give his deposition before trial, when required, his complaint, answer or reply, may be stricken out, and judgment taken against him.

SEC. 158. A party examined by an adverse party may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received.

SEC. 159. Either party, in an action depending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go, more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial.

SEC. 160. The notice shall be served, and the deposition taken, certified, and returned, according to the law regulating the taking of depositions to be read in the district court.

SEC. 161. The justice shall allow every deposition to be taken, certified and returned, according to law, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness, whose deposition is so offered,

1st—Is dead, or resides more than twenty miles from the place of trial; or,

2d—Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity;

3d—That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party offering the deposition.

SEC. 162. Change of venue may be allowed for the same causes for which they are allowed in the district court.

CHAPTER XV.

AN ACTION TO RECOVER POSSESSION OF A MINING CLAIM.

- SECTION 163. By whom, and in what manner complaint to be made.
 " 164. Mode of proceeding.
 " 165. Custom, in absence of statute, shall govern.

SEC. 163. Any person claiming the right to the occupancy and possession of a mining claim, withheld by another, may make complaint in writing, and on oath, to a justice of the peace of the county in which the mining claim is situated, setting forth the facts constituting his right to such possession and occupancy, and such a description of the mining claim as can conveniently be given, and that the defendant wrongfully withholds the possession from him.

SEC. 164. Upon filing such complaint, the same proceeding shall be had before the justice as in actions for a forcible entry and detainer, and if judgment be rendered for the plaintiff, a writ of restitution may in like manner be issued, to place the plaintiff in possession of such mining claim.

SEC. 165. In an action to recover possession of a mining claim, proof shall be admitted of the customs, usages or regulations established and in force at the bar or diggings embracing such claim; and such customs, and regulations, when not in conflict with the laws of the United States or this territory, shall govern the decision of the action:

CHAPTER XVI.

FORMS IN CIVIL ACTIONS IN JUSTICE'S COURT.

The following or equivalent forms may be used by justices of the peace, in civil actions and proceedings under this chapter, to wit:

FORM OF A WARRANT.

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

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to take the body of C. D., if he be found in your county, and bring him forthwith before the undersigned, one of the justices of the peace in and for said county, at his office in ———, to answer A. B., in a civil

action ; and you are hereby commanded to give due notice thereof to the said plaintiff, his agent or attorney ; and have you then and there this writ.

Given under my hand this — day of —, 18—.

J. P.,
Justice of the peace.

FORM OF SUBPENA.

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

To ——— :

In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, on the — day of —, 18—, at — o'clock in the — noon, at his office in —, to give evidence in a certain cause, then and there to be tried, between A. B., plaintiff, and C. D., defendant, on the part of (the plaintiff, or defendant as the case may be.)

Given under my hand this — day of —, 18—.

J. P.,
Justice of the peace.

FORM OF AN EXECUTION.

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

To the sheriff or any constable of said county :

Whereas, judgment against C. D., for the sum of — dollars, and — dollars, costs of suit, was recovered on the — day of —, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A. B. These are therefore, in the name of the United States, to command you to levy on the goods and chattels of the said C. D., (excepting such as the law exempts,) and make sale thereof according to law, to the amount of the said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A. B., for his debt, interests and costs.

Given under my hand this — day of —, 18—,

J. P.,
Justice of the peace.

JUSTICE OF THE PEACE.

FORM OF A VENIRE FOR A JURY.

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

To the sheriff or any constable of said county :

In the name of the United States, you are hereby commanded to summon six good and lawful men of your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the —— day of ——, 18—, at — o'clock in the —— noon of said day, at his office in ——, to make a jury for the trial of a civil action, between A. B. plaintiff, and C. D. defendant : and have you then and there this writ.

Given under my hand this —— day of ——, 18—.

J. P.,
 Justice of the peace.

FORM OF EXECUTION AGAINST THE BODY.

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

To the sheriff or any constable of said county ·

Whereas, judgment against C. D., for the sum of —— dollars, and for —— dollars, costs of suit, was recovered on the —— day of ——, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A. B., and an execution against his property returned unsatisfied ; these are therefore, in the name of the United States, to command you to take the body of the said C. D., and him convey and deliver to the keeper of the jail of said county, who is hereby commanded to receive and keep the said C. D. in safe custody in prison, until the aforesaid sum, and all legal expenses, be paid and satisfied, or until he be discharged therefrom by due course of law ; and of this writ make due return within thirty days.

Given under my hand this —— day of ——, 18—.

J. P.,
 Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION.

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

To the sheriff or any constable of said county :

Whereas, judgment against C. D., for the sum of ——— dollars, and for ——— dollars, costs of suit, was recovered on the ——— day of ———, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A. B. ; and whereas, on the — day of ———, 18—, E. F. became surety to pay said judgment and costs, in ——— month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C. D. and E. F. have failed: these are therefore, in the name, &c., (as in the common form.)

FORM OF ORDER IN REPLEVIN.

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

To the sheriff or any constable of said county :

In the name of the United States, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless, before such delivery, the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this ——— day of ———, 18—.

J. P.,
 Justice of the Peace.

FORM OF A WRIT OF ATTACHMENT.

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

To the sheriff or any constable of said county :

In the name of the United States, you are commanded to attach, and safely keep, the goods and chattels, moneys, effects, and credits of C. D., (excepting such as the law exempts,) or so much thereof as shall satisfy the sum of ——— dollars, with interest and costs of suit, in whosoever hands or possession the same may be found in your county, and to provide that the goods and chattels so attached may be subject to further proceeding thereon, as the law requires; and of this writ make legal service and due return.

FORM OF SUMMONS IN FORCIBLE ENTRY AND DETAINER.

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

To the sheriff or any constable of said county :

Whereas, A. B., of ———, hath exhibited unto the undersigned, one of the justices of the peace in and for said county, a complaint against C. D., for a forcible entry and detainer of the following premises, to wit : ——— You are hereby commanded to summon the said C. D., if he be found in your county, to appear before the undersigned, on the ——— day of ——— 18—, at ——— o'clock in the ——— noon, at his office in ———, then and there to make answer to, and defend against the complaint aforesaid. And you are also hereby commanded to serve a copy of the said complaint on the said C. D.; and upon this writ make due return with your doings thereon.

Given under my hand this ——— day of ———, 18—.,

J. P.,

Justice of the peace.

FORM OF WRIT OF RESTITUTION IN FORCIBLE ENTRY AND DETAINER.

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

To the sheriff or any constable of said county :

Whereas, A. B. did make complaint in writing to the undersigned, a justice of the peace in and for said county, against C. D. of the said county, that he had been guilty of a forcible entry and detainer of a certain tract of land (or other possessions,) of the said A. B.: And whereas, a jury was empaneled and sworn to enquire of said complaint, and did return their verdict that the said C. D. was guilty of a forcible entry and detainer of the following described tract of land, to wit :—(here describe the premises of which the defendant is found guilty of forcibly entering and detaining;) And whereas, judgment was entered thereon by said justice, and that the said A. B. should have restitution of the premises; therefore, in the name of the United States, you are hereby commanded to cause the said C. D. to be removed forthwith from the premises aforesaid, and that the said A. B. have peaceable restitution of the same, and also that you levy of the goods and chattels of C. D. found in your county, the sum of ——— dollars, being the amount of costs on the trial aforesaid, together with ——— dollars for this writ,

and also your own fees, and make return of this writ within thirty days next after the date hereof.

FORM OF UNDERTAKING FOR ARREST.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for — county, for a warrant to arrest C. D., defendant, founded upon an affidavit of the said plaintiff, setting forth that C. D., (here state the cause for the arrest:) Now, therefore, we, A. B. plaintiff, and E. F. acknowledge ourselves bound to C. D., in the sum of — dollars, to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of — dollars.

Dated this — day — 18—.

A. B.
E. F.

FORM OF UNDERTAKING IN REPLEVIN.

Whereas, A. B., plaintiff, has commenced an action before J. P., one of the justices of the peace in and for — county, against C. D., defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to-wit: (here set forth the property claimed.) Now, therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto C. D. in the sum of — dollars, for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause be recovered against the plaintiff.

Dated the — day of —, 18—.

A. B.
E. F.
G. H.

FORM OF UNDERTAKING IN ATTACHMENT.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for — county, for a writ of attachment against the personal property of C. D., defendant, (a foreign corporation, a non-resident, or because he has assigned, secreted, &c.): Now, therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D., in the sum of — dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may

be awarded to the defendant, and all damages which he may sustain by reason of the said attachment, and not exceeding the sum of —— dollars.

Dated the —— day of ——, 18—.

A. B.
E. F.

FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT.

Whereas, a writ of attachment has been issued by J. P., one of the justices of the peace in and for —— county, against the personal property of C. D., defendant, in an action in which A. B. is plaintiff: Now, therefore, we, C. D., defendant, E. F. and G. H., acknowledge ourselves bound unto J. K., constable, in the sum of —— dollars, (double the value of the property,) engaging to deliver the property attached, to wit: (here set forth a list of the articles attached,) or pay the value thereof to the sheriff or constable, to whom execution upon a judgment obtained by the plaintiff in the aforesaid action may be issued.

Dated, this —— day of ——, 18—.

C. D.
E. F.
G. H.

FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE ON CLAIM OF PROPERTY BY A THIRD PERSON.

Whereas, L. M. claims to be owner of, and have the right to possession, of certain personal property, to-wit: (here describe it) which has been taken by J. K., constable in —— county, upon an execution by J. P., justice of the peace in and for the county of ——, upon a judgment obtained by A. B., plaintiff, against C. D., defendant: Now, therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto the said J. K., constable, in the sum of —— dollars, to indemnify the said J. K. against such claim.

A. B.
E. F.

CHAPTER XVII.

CRIMINAL PRACTICE AND JURISDICTION.

SECTION 166. Jurisdiction of justices of the peace.

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- SECTION 168. When offense is committed within view of justice.
- “ 169. Proceedings of justice on return of warrant.
- “ 170. Prisoner or territory may demand a jury.
- “ 171. Finding of the jury.
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- “ 173. No fine assessed or judgment entered without examination of witnesses.
- “ 174. In case of injury to person or property, party injured must be a witness.
- “ 175. What witnesses to be summoned.
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- “ 178. Stay of execution.
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- “ 183. Justice at certain dates to pay over to the county treasurer certain moneys.

SEC. 166. The jurisdiction of justices of the peace in criminal prosecutions, shall be co-extensive with their respective counties, and they shall have concurrent jurisdiction with the district court, in affrays, assaults and battery, violation of estray laws, obstructing of highways and bridges, charging extra tolls at ferries and bridges, neglect of roads by supervisors, public indecency, having obscene books, pamphlets for exhibition or otherwise, forcible entry and detainer, malicious trespass, and in cases of petit larceny and public nuisance, and on conviction, shall have power to fine the person so offending, in any sum not exceeding one hundred dollars.

SEC. 167. Any justice shall, on complaint on oath in writing before him, charging any person with the commission of any crime or misdemeanor, of which he has jurisdiction, issue a warrant for the arrest of such person, and cause him to be brought forthwith before him for trial.

SEC. 168. Where any offense is committed in view of any justice he may, by verbal direction to any constable, or if no constable be present, to any citizen, cause such constable or citizen to arrest such offender, and keep him in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant.

SEC. 169. On the return of any warrant issued by him, it shall

be the duty of the justice to docket the cause, and unless continuance be granted, forthwith to hear and determine the cause, and either acquit, convict and punish, or hold to bail the offender, if the offense be bailable and prove to be one which should be tried in the probate or district court, or in default of bail, commit him to jail, as the facts and the law may justify.

SEC. 170. The prisoner or the territory may demand a jury, which may be empannelled and sworn as in civil cases, or he may be tried by the justice.

SEC. 171. Such justice or jury, if they find the prisoner guilty, shall assess his punishment, or if in their opinion the punishment they are authorized to assess, is not adequate to the offense, they may so find; and in such case, the justice shall order such defendant to enter into recognizance to appear at the next term of the court, having jurisdiction thereof, and shall also recognize the witnesses, and proceed as provided by the act regulating criminal proceedings in like cases.

SEC. 172. The defendant may plead guilty to any offense charged.

SEC. 173. No justice shall assess a fine or enter a judgment thereon until a witness or witnesses have been examined, to state the circumstances of the transaction; and he shall have power either to enter judgment and assess a fine, or order the defendant to enter into recognizance to appear at the next term of the district court; and where the offense charged is an injury to the person or property, the party injured in person or property must be present and examined as a witness, unless prevented by sickness, or beyond the reach of process.

SEC. 174. In all cases arising under this act, it shall be the duty of the justice of the peace to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment if necessary.

SEC. 175. Continuance may be granted, either on application of the prisoner, or the prosecuting attorney, or prosecuting witness, under the same rules as in civil cases; the cost of such continuance shall abide the event of the prosecution in all cases, and the justice shall recognize the defendant and the witnesses to appear from time to time, in the same manner as is provided in other criminal examinations before him.

SEC. 176. In all cases of conviction, under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him to jail until the judgment is satisfied, or the payment thereof be secured, and further proceedings therein shall be had as in like cases in the district or probate court.

SEC. 177. Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties to be approved by the justice, to enter into recognizance before him for the payment of the fine and costs, the entry of such recognizance shall be made on the docket of the justice, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the justice shall proceed as in like cases in the district court.

SEC. 178. Every person convicted before a justice of the peace of any offense, may appeal from the sentence within ten days thereafter, to the probate court then next to be held in the same county, and such appellant shall be committed to abide the sentence of said justice, until he shall recognize to the territory in such reasonable sum, with such sureties as said justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal, and to abide the sentence of the court thereon, and in the mean time to keep the peace, and be of good behaviour.

SEC. 179. The justice shall also recognize the witnesses, or if they are not present, indorse their names on the copy of proceeding. The justice on such appeal shall make a copy of the conviction and other proceedings in the case, and transmit the same together with the recognizance and an abstract bill of the costs to the clerk of the court appealed to, who shall issue a subpoena for the witnesses, if they are not under recognizance.

SEC. 180. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same, but if convicted in the appellate court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of the sentence, to pay the costs of the prosecution. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the probate or district court may award sentence against him for the offense whereof he was convicted, in like manner as if he had been convicted thereof in that court, and if he be not then in custody, process may be issued to bring him into court to receive sentence.

SEC. 181. It shall be the duty of every justice, on the first Mondays in January and July in each year, and on going out of office, to pay over to the treasurer of his county all moneys he may have received on account of fines, and all fees which may have remained unclaimed in his hands for twelve months, and he shall, at the same time deliver to such treasurer a statement in writing, showing by items the sources from which such money was derived, and shall append thereto an affida-

vit, that he has received no other money for fines, not before paid over to such treasurer, and has no other fees unclaimed for twelve months, in his hands; and the treasurer's receipt therefor, he shall file with the auditor, who shall give him a quietus.

CHAPTER XVIII.

FORMS OF PROCEEDING IN CRIMINAL CASES.

SEC. 182. The following, or equivalent forms, may be used by justices of the peace in criminal proceedings under this act:

FORM OF A WARRANT.

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

To the sheriff or any constable of said county:

Whereas A. B., has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that on the ——— day of ———, 18—, at ——— in said county, (here insert the substance of the complaint, whatever it may be.) Therefore, in the name of the United States, you are commanded forthwith to apprehend the said C. D., and bring him before me, to be dealt with according to law.

Given under my hand this ——— day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF A SEARCH WARRANT.

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

To the sheriff or any constable of said county:

Whereas, A. B., has this day made complaint on oath to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels, to wit: (here describe them,) the property of the said A. B., have been within ——— days past, or were on the ——— day of ———, by some person or persons unknown, stolen, taken and carried away out of the possession of the said A. B., in the county

aforesaid; and also that the said A. B. verily believes that the said goods, or a part thereof, are concealed in or about the house of C. D., in said county, (describe the premises to be searched.) Therefore, in the name of the United States, you are commanded that with the necessary and proper assistance, you enter into the said house, (describe the premises to be searched,) and then diligently search for the said goods and chattels; and if the same, or any part thereof, be found on such search, bring the same, and also the said C. D. forthwith before me, to be disposed of according to law.

Given under my hand this — day of —, 18—.

J. P.,
Justice of the peace.

FORM OF COMMITMENT WHERE JUSTICE ON THE TRIAL SHALL FIND
THAT HE HAS NOT JURISDICTION OF THE CASE.

Territory of Washington, }
 — county, ss. }

To any constable, and the keeper of the jail of said county:

Whereas, C. D. of —, &c., has been brought this day before the undersigned, one of the justices of the peace in and for said county, charged on the oath of A. B., with having on the — day of —, 18—, in said county, committed the offense of, (here state the offense charged in the warrant,) and in the progress of the trial of said charge, it appearing to the said justice that the said C. D. has been guilty of the offense of (here state the new offense found on the trial) committed at the time and and place aforesaid; and whereas, the said C. D. has failed to give bail in the sum of — dollars, for his appearance to answer at the next term of the district court, as required by me; therefore, in the name of the United States, &c., (as in the last form) to receive the said C. D. into your custody in the said jail, and him there safely keep until he be discharged by due course of law.

Given under my hand this — day of —, 18—.

J. P.,
Justice of the peace.

FORM OF A WARRANT TO KEEP THE PEACE.

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

To the sheriff or any constable of said county :

Whereas, A. B. has this day complained in writing and under oath, to the undersigned, one of the justices of the peace in and for said county, that he has just cause to fear, and does fear that C. D., late of said county, will, (here state the threatened injury or violence, as sworn to.) Therefore, in the name of the United States, you are commanded to apprehend the said C. D., and bring him forthwith before me, to show cause why he should not give surety to keep the peace and be of good behaviour towards all the people of this territory, and the said A. B. especially, and further to be dealt with according to law.

Given under my hand this — day of ———, 18—.

J. P.

Justice of the Peace.

FORM OF COMMITMENT UPON SENTENCE.

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

To any constable, and the keeper of the county jail of said county :

Whereas, at a justice's court held at my office in said county, for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having on the — day of — 18—, in said county, committed, (here state the offense) and upon conviction, the said court did adjudge and determine that the said C. D. should be imprisoned in the county jail of said county, for ——— days; therefore, you, the said constable, are commanded in the name of the United States, forthwith to convey and deliver the said C. D. to the said keeper; and you, the said keeper, are hereby commanded to receive the said C. D. into your custody in the said jail, and him there safely keep until the expiration of said ——— days, or until he shall thence be discharged by due course of law.

Dated this — day of ———, A. D., 18—.

J. P.

Justice of the peace.

FORM OF CERTIFICATE OF CONVICTION.

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

At a justices' court, held at my office in said county before me, one of the justices of the peace, in and for said county; for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having on the — day of —, 18—, in said county committed, (here insert the offense,) and upon conviction, the said court did adjudge and determine that the said C. D. should pay a fine of — dollars, (or be imprisoned as the case may be,) and the said fine has been paid to me.

Given under my hand this — day of —, 18—.,

J. P.,
 Justice of the peace.

FORM OF AN EXECUTION.

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

To the sheriff or any constable of said county:

Whereas, at a justice's court held at my office in said county for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having on the — day of —, 18—, in said county, committed, (here state the offense,) and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of — dollars, and ——— dollars costs; and whereas, the said fine and costs have not been paid; these are therefore, in the name of the United States to command you to levy on the goods and chattels, &c., (as in execution in civil cases.)

CHAPTER XIX.

MISCELLANEOUS PROVISIONS.

PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

- SECTION 183. Powers of a justice of the peace.
 " 184. Proceedings when complaint is made to magistrate.
 " 185. Duty of magistrate at hearing, &c.
 " 186. When warrant for apprehension of person complained of to issue.
 " 187. Proceedings, when there is just cause to fear that offense threatened will be committed.
 " 188. When person fails to recognize, must be committed, &c.

- SECTION 189. If complaint frivolous, &c., complainant liable for costs.
- “ 190. Costs, how paid, &c.
- “ 191. Appeals from justice of peace, to probate court.
- “ 192. On appeal, witnesses shall be recognized
- “ 193. Powers of the appellate court.
- “ 194. Consequence of appellant failing to prosecute appeal.
- “ 195. Person committed for not finding sureties, &c., may be discharged, when.
- “ 196. Recognizances to be filed in district court.
- “ 197. Person may be recognized to keep the peace without process, &c.
- “ 198. Suit on recognizance, remission of portion of penalty.
- “ 199. Surety may surrender principal. Person surrendered may recognize anew.

SEC. 183. Justices of the peace shall have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, in the manner herein provided.

SEC. 184. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offense against the property or person of another, the magistrate shall examine the complainant, and any witness who may be produced on oath, and reduce such complaints to writing, and cause the same to be subscribed by the complainant.

SEC. 185. It shall be the duty of every magistrate examining a party charged with an offense, or with an intention to commit an offense, to examine all the witnesses he shall deem material, and reduce their testimony to writing, a copy of which, whether the accused is discharged, committed, or held to bail, or shall take an appeal, he shall transmit to the clerk of the court having jurisdiction of the offense.

SEC. 186. If, upon examination, it shall appear that there is just cause to fear that such offense may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

SEC. 187. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, hear and examine the complaint. And if it shall appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be required to enter into recognizance with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of the territory, and especially towards the person

requiring such security, for such term as the magistrate shall order, not exceeding one year, but he shall not be ordered to recognize for his appearance at the district court, unless he is charged with some offense for which he ought to be held to answer at said court.

SEC. 188. If the person so ordered to recognize shall fail to enter into such recognizance, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

SEC. 189. If, upon examination it shall not appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

SEC. 190. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give good security for the peace, or for his good behavior, the magistrate may further order that the costs of prosecution, or any part thereof shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

SEC. 191. All appeals in criminal complaints from a justice of the peace, shall be had and taken to the probate court when sitting for the transaction of criminal business.

SEC. 192. The magistrate from whose order an appeal is so taken, shall require such witnesses as he may think necessary to support the complaint, to recognize for their appearance at the court to which the appeal is made.

SEC. 193. The court before which such appeal is prosecuted, may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable.

SEC. 194. If any party appealing shall fail to prosecute his appeal his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for costs which shall be ordered, by the court appealed to, to be paid by the appellant.

SEC. 195. Any person committed for not finding sureties or refusing to recognize as required by the magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

SEC. 196. Every recognizance taken pursuant to the foregoing provisions, shall be transmitted by the magistrate to the district or probate court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

SEC. 197. Every person who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any judge of a court of record, make an affray or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such judge or magistrate shall contend with hot and angry words to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal may be committed as before directed.

SEC. 198. Whenever upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

SEC. 199. Any surety in a recognizance to keep the peace, or for good behaviour, or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance, and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged.

CHAPTER XX.

OF EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

SECTION 200. Duty of a justice of the peace, probate judge, upon complaint being made in a criminal case.

“ 201. The sheriff may pursue to any county in the territory.

“ 202. A magistrate to take recognizance for appearance.

“ 203. Defendant failing to recognize, may be ordered into custody.

- SECTION 204. If it appear no offense has been committed, the complainant must pay cost.
- “ 205. When justices may take cognizance of the case.
- “ 206. Whenailable offense has been committed, the defendant may be held to bail.
- “ 207. Certain cases when justice shall not take a recognizance, unless surety be approved by another justice; defendant in custody may be recognized.
- “ 208. Justice may associate one or more magistrates with him. No fees to be taxed for such associate.
- “ 209. Witnesses may be recognized.
- “ 210. When witness may be recognized.
- “ 211. Provision when married woman or minor is a material witness.
- “ 212. All witnesses refusing to recognize may be committed.
- “ 213. Testimony may be reduced to writing.
- “ 214. Examinations and recognizances must be filed with the clerk of the district court.
- “ 215. When a magistrate may discharge a recognizance, or supersede a commitment.
- “ 216. When default to be recorded; duty of the prosecuting attorney.
- “ 217. Magistrate to forward an abstract of costs in all cases where the defendant is recognized.
- “ 218. In counties where no probate court is held.
- “ 219. Repealing section.

SEC. 200. Upon complaint being made to any justice of the peace or probate judge, or judge of the district court, in open court, or in vacation, that a criminal offense has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant, and if it shall appear that any offense has been committed of which the district court has exclusive jurisdiction, the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the person issuing the warrant, unless he shall be absent or unable to attend thereto, then before some other magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

SEC. 201. If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall, either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this territory, and for that purpose may command aid, and exercise the same authority as in his own county.

SEC. 202. The magistrate before whom such accused person shall be brought, when the offense is bailable, may, at the request of such person, with or without examination, allow him to enter into recognizance, with sufficient sureties, to be approved by the magistrate, conditioned for his appearance at the next term of the court having cognizance of the offense.

SEC. 203. If the defendant shall not enter into recognizance with sureties, the magistrate shall proceed to hear and examine the complaint and may adjourn the examination from time to time, not exceeding in all ten days from the time such defendant shall have been brought before him, and in case of such adjournment, the magistrate may, if the offense be bailable, take a recognizance with sufficient sureties for the appearance of the defendant at such further examination; and if he fail to enter into such recognizance, he shall be ordered into custody until the time appointed for such examination.

SEC. 204. If it should appear upon the whole examination that no offence has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged, and if in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint.

SEC. 205. If it should appear that an offense has been committed, of which a justice of the peace has jurisdiction, and one which would be sufficiently punished by fine not exceeding one hundred dollars, if the magistrate having the complaint is a justice of the peace, he shall cause the complaint to be altered, and proceed as in like cases before a justice of the peace, or any other magistrate; he shall certify the papers with a statement of the offense appearing to be proved, and recognize the witnesses and the defendant to appear before the nearest justice of the peace, at a time appointed, who shall proceed as herein provided.

SEC. 206. If it appears that a bailable offense has been committed, the magistrate shall order the defendant to enter into recognizance, with sufficient sureties, for his appearance at the next term of the district court, and if he shall not do so, or the offense be not bailable, he shall commit him to jail.

SEC. 207. No justice of the peace shall take a recognizance from any defendant charged with murder in the second degree, manslaughter, kidnapping, arson, rape, or burglary, robbery, or grand larceny, unless the sureties therein shall be approved by some other justice of the peace, or the probate judge of the county; and if the defendant be in custody for not entering into recognizance of bail, any judge of probate in the

county, or any judge of the district court, may allow him to enter into recognizance in the amount required, or in any amount they may think fit, with sufficient sureties.

SEC. 208. Any magistrate to whom complaint is made, or before whom any defendant is brought, may associate with himself one or more magistrates of the same county, and they may, together execute the powers and duties before mentioned; but no fees shall be taxed for such associates.

SEC. 209. Where the person arrested is held to bail, or committed to jail, or forfeits his recognizance, the magistrate shall recognize the witnesses for the prosecution to be and appear at the term of the court to which the party is recognized, bailed or committed.

SEC. 210. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his appearance at court.

SEC. 211. When any married woman or minor is a material witness, any other person, may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman, or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

SEC. 212. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

SEC. 213. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses.

SEC. 214. All examinations and recognizances taken by any magistrate in pursuance of the provisions of this law, shall be certified and returned by him to the prosecuting attorney, on or before the first day of the next term thereof, and if such magistrate shall neglect to return the same, he may be compelled forthwith by rule of court and in case of disobedience, may be proceeded against by attachment, as far contempt.

SEC. 215. When any person shall be committed to prison, or shall be under examination or recognizance to answer any charge for a misdemeanor for which the party injured may have a remedy by a civil action,

except where the offense was committed upon a sheriff or other officer, justice, or violently, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, or is conducting the examination, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all costs which may have accrued, discharge the recognizance, or supersede the commitment by an order under his hand, and may also discharge all recognizances and supersede the commitment of all witnesses in the case.

SEC. 216. When any person under recognizance in any criminal prosecution, either to appear and answer before a justice, or to testify in any court, shall fail to perform the condition of any recognizance, his default shall be recorded; and it shall be the duty of the prosecuting attorney to proceed at once by action against the person bound by recognizance, or such of them as he may elect.

SEC. 217. In all cases where any magistrate shall order a defendant to recognize for his appearance before a justice of the peace, or the district court, he shall forward with the papers in the case, an abstract of the costs that have accrued in the case and such costs shall be subject to the final determination of the case.

SEC. 218. For all necessary purposes arising under this act, and in all the counties in this territory where no probate court is held or organized under the provisions of an act defining the jurisdiction and practice in the probate courts in Washington territory, passed January 16th, 1863, wherever the word "probate court" occurs in this act, it may be construed to mean "district court."

SEC. 219. All laws and parts of laws heretofore in force, inconsistent with the provisions of this act, are hereby repealed, and this act shall take effect and be in force from and after the time of its passage.

PASSED, January 23d, 1863.

AN ACT

TO REGULATE FEES AND COSTS:

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the fees and compensation of the several officers and persons herein named, shall be as follows, to wit :

CLERK OF THE SUPREME AND DISTRICT COURTS.

1st. For filing declaration, petition, pleas, demurrer, affidavit, exhibit, or any other paper in each cause, each,.....	10
For issuing capias, attachment, execution, certiorari, supersedeas, habeas corpus, information, mandate, writ of error, replevin, and for any other original writ, each,.....	1 00
For entering each writ,.....	25
For issuing writs of venditione, exponas, or order of sale, every hundred words,.....	20
For entering appearance of either party, personally, or by attorney, charged but once,.....	20
For entering sheriff's return on any writ, for every folio,.....	20
For docketing appeals from justices' court,.....	50
For writs of venire, for jury, charged in each cause,.....	1 00
For receiving panel and swearing jury,.....	50
For swearing witnesses, each,.....	10
For entering claim for each witness for their attendance,.....	20
For giving order thereof for each witness,.....	20
For entering judgment, recognizance, special rule, continuance, discontinuance, retraxit, rule of reference, allowance of writ of habeas corpus, confession of judgment or default, or consent, rule, or plea, notice of appeal to supreme or district court, each,.....	75
For entering surrender of principal by bail, exonerator cancelling bail bond, discharge of recognizance, issue joined, motion, non-suit, report of referees, appeals from inferior courts, appeals to higher courts, and acknowledgments, each,....	75
For taking affidavits, each,.....	50
For taking affidavits, with seal attached,.....	1 00
For writing affidavits per folio,.....	20

SHERIFFS.

2d. For service of every notice and complaint, and return thereof on each defendant, besides mileage at ten cents per mile,...	1 00
For levying each writ of execution, on real or personal property, besides mileage at ten cents per mile,.....	1 00
For service of <i>capias ad satisfaciendum</i> , upon the body of each defendant named in the writ, besides mileage,.....	2 00
For every bail bond,.....	1 00
For serving writ of possession, without the aid of the county, besides mileage,.....	3 00
For serving writ of possession, with the aid of the county, besides mileage,.....	5 00
For executing a writ of inquiry, and returning the same with inquiry,.....	3 00
For copy of any complaint, notice, writ or process necessary to complete a service, for each one hundred words,.....	20
For serving and returning a notice to witness, besides mileage, for each person therein named,.....	50
For summoning each grand and petit juror, to be paid out of the county treasury, besides mileage,.....	50
For summoning jury in other cases, besides mileage,.....	4 00
Percentage on all moneys actually made and paid to the sheriff on execution, decree, or sale of real estate, under one thousand dollars, two per cent.	
Percentage on all sums over one thousand dollars, one per cent.	
For serving declaration in ejectment, and return, besides mileage,.....	1 00
For making a deed of land sold on execution, decree, or order of court, to be paid by the grantee,.....	4 00
For serving <i>scire facias</i> for each defendant, besides mileage,...	1 00
For calling jury,.....	50
For calling each witness,.....	10
For bringing up a person on a writ of <i>habeas corpus</i> , besides mileage,.....	2 00
For each day's attendance on any court of record,.....	3 00
For posting each notice of election, besides mileage,.....	50
For executing a sentence of death,.....	50 00
For each mile necessarily traveled in going and returning from the court to the place of service,.....	10

JUDGE OF PROBATE.

3d. For granting letters of administration,.....	1 00
For probate of will or testament,.....	1 00
For granting letters testamentary,.....	1 00
When the same are contested,.....	3 00
Taking bonds in any case,.....	1 00
Hearing complaints against spendthrifts and lunatics,.....	3 00
Appointing guardian,.....	1 00
Decree of settlement of an estate,.....	1 00
When contested,.....	2 00
Order of distribution,.....	1 00
Examining inventory of appraisement, or bill of sale, and filing the same in office, each,.....	1 00
Every writ, or process, under seal,.....	1 00
Each order of court on record,.....	50
Examining accounts, each hundred words, counting two figures for a word,.....	20
Warrant to appraise or divide an estate,.....	1 00
Issuing commission,.....	1 00
Allowing appeal,.....	25
Approving securities in bonds, each,.....	20
Assigning dower in real estate,.....	1 00
Assigning personal estate to widow,.....	1 00
Refusing letters of administration or probate of will, to be paid by the losing party,.....	2 00
For every continuance when asked by a party,.....	50
Order for the sale of personal estate,.....	1 00
Certificate of necessity for the sale of real estate,.....	1 00
Order for partition of real estate,.....	1 00
Allowing reports on the accounts of executors or administrators,	50
Extending letters of administration,.....	50
Decree respecting the probate of will or codicil,.....	1 00
A quietus,.....	50
Filing each paper,.....	10
Administering an oath,.....	20
Recording all papers required by law to be recorded, for each hundred words,.....	20
Order of apportionment of an insolvent estate among the creditors,	2 00
Acknowledgment with seal,.....	50

Entering appointment of executors, administrators or guardians, or other appointments necessary,.....	1 00
Issuing letters of guardianship,.....	1 00
For hearing each contested case, to be taxed as cost against the party in default,.....	3 00
Issuing citations to executors, administrators and guardians,....	1 00
Copies of papers and records, each one hundred words,.....	20

COUNTY COMMISSIONERS.

4th—For services per diem, besides mileage,	3 00
Mileage going to the county seat, for each mile travelled,.....	0 15

COUNTY AUDITOR.

5th—For making out assessment roll to county assessor for each quire such roll may contain,	10 00
For making out original tax duplicate for each one hundred words such duplicate may contain, counting every two fig- ures as a word,	0 20
For making out exhibit of receipts and expenditures of county for past year, counting every two figures as a word,	0 20
For each settlement of his accounts, or of any other officer with the county,.....	1 00
For filing each paper, exhibit, or necessary document connected with the duties of his office,.....	0 10
For attending each regular and special term of board of county commissioners, per diem,	3 00
For recording proceedings of board of county commissioners, for each one hundred words,	0 20
For each order drawn on county treasurer,	0 20
For copy of any order drawn upon the order of the board,.....	0 50
For drawing each receipt,.....	0 20
For each notice delivered to the sheriff for general or special elections,	0 50
For opening and examining election returns and making abstracts of votes and copies thereof, per diem,.....	3 00
For each certificate of election, to be paid by the parties entitled to the same,.....	1 00
For each order for view of road,.....	1 00
For taking bonds for county officers and all other persons required by the board or by law, to give bonds, each,.....	1 00

FEEES AND COSTS.

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For taking oaths of county officers and other persons, and certifying to the same,	1 00
Administering an oath,	25
For each bond executed by the commissioners to purchase of county property, and other purposes,	2 00
For each deed executed by county commissioners,	3 00
For each poll book delivered to sheriff or judges of election,	1 00
For filing each bond, oath, receipt, bill, order, appointment and petition, report, resignation, deed, affidavit and all other papers required to be put on file,	10
For issuing each license under seal for grocery, tavern, ferry, or to peddlers, showmen, or managers or owners of circuses and all other licenses, to be paid by the party to whom granted,	1 00
For entering license on record,	25
For entering approval of county commissioners of license granted in vacation in each case to be paid by applicant,	1 00
For notifying clerk of the district court of the selection of grand and petit jurors, each list,	1 00
For all writs ordered issued by the board, or required by law, the same fees as are allowed the clerk of the district court for the same service,	
For reading and entering petition for view of road, to be paid by petitioners,	1 00
For reading and entering remonstrance against view of road, or petition for damages, each to be paid by the person remonstrating,	1 00
For entering appointment of road viewers,	50
For reading and entering report of road viewers,	50
For notifying justices of the peace or county commissioners to attend the opening and examining of the election returns, each,	50
For certified copy of commissioners' proceedings, or parts thereof, for each one hundred words, to be paid by the party requiring such copy,	20
For filing each deed or instrument in writing for record,	25
For making final settlement of any account with the county, each one hundred words such account may contain,	20
And for similar services required to be rendered, the same fees as are allowed by this act for similar services.	
For each certificate as recorder of liens on record against the property of any person,	50

NOTARY PUBLIC.

6th—For every protest of a bill of exchange or promissory note,	2 00
Attesting any instrument of writing and seal,	1 00
Noting a bill of exchange or promissory note for non-acceptance or non-payment,	1 00
Taking acknowledgement of any legal instrument,	1 00
Registering protest of bill of exchange or promissory note,	1 50
Certifying an affidavit, and all other certificates under seal,	1 00
Each oath or affirmation without seal,	50
Being present at demand, tender or deposit, and noting the same, besides mileage, at ten cents per mile,	1 00
For any instrument of writing drawn by a notary public, for each one hundred words,	50

CORONERS.

7th—For each inquest he may hold, besides mileage,	10 00
When performing the duties of sheriff, shall receive the same fees as sheriffs are entitled to receive for services performed.	
For drawing all necessary writings, each one hundred words, ...	20
For issuing venire,	1 00

JURORS.

8th—Each grand and petit juror shall be allowed for each day's attendance, if not a talesman,	3 00
For every mile travel to and from the seat of justice,	10
Talesman serving as a petit juror, each trial, where he may be detained more than one day, per diem,	3 00
For every day's attendance upon justice of the peace's court, be- sides mileage at ten cents per mile, to and from,	2 00
For serving on inquest, besides mileage,	2 00

JUSTICES OF THE PEACE.

9th—For a capias or notice,	50
For a warrant in criminal cases,	1 00

FEEES AND COSTS.

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For taking a recognizance of bail,	1 00
For committing to jail,	1 00
For every subpœna for one person,	25
For all persons more than one named in a subpœna,	20
For entering judgment on trial,	1 50
For entering a judgment of confession or default,	1 00
For issuing an execution,	1 00
For each one hundred words on certified copy of proceedings on appeal, certiorari, or otherwise,	0 20
For every adjournment at the request of either party,	0 50
For entering a rule of reference or copy thereof, each,	0 25
For swearing witnesses, jurors or arbitrators, each,	0 20
For issuing writs of attachment,	1 00
For scire facias,	1 00
For entering a discontinuance or satisfaction,	50
For the acknowledgement of a deed, or other instrument of writing, with a certificate thereof,	1 00
For acknowledgement of a deed, or other instrument of writing without certificate,	50
For a venire for a jury,	1 00
For a writ of restitution,	1 00
For taking affidavits each,	50
For every search warrant,	1 00
For attending with clerk of the board of county commissioners at the opening of the poll books, per diem, besides mileage,	3 00
For marrying each couple at office,	5 00

CONSTABLES.

10th. For service of complaint, and notice on each defendant, besides mileage,	1 00
For summoning a jury on a dead body, besides mileage,	5 00
For service and return of a capias or warrant, besides mileage,	1 00
For committing to prison, besides mileage,	1 00
For serving an execution on goods, besides mileage,	1 00
For all moneys made on an execution, five per centum.	
For every day's attendance upon any court of record,	3 00
For serving other writs or any process, besides mileage,	1 00
For summoning jury before justice of the peace,	3 00
All sheriffs, when performing the duties of constables, shall be allowed no other fees than those allowed to constables as above.	

WITNESSES.

11th. For every day's attendance upon the supreme or district court, besides mileage,.....	2 00
For every day's attendance upon county commissioners or probate court, besides mileage,.....	2 00
For every day's attendance upon justice of the peace court besides mileage,.....	2 00
That the clerks of the several courts in this territory shall, for services under the several acts of congress upon the subject of naturalization, receive the fees hereinafter specified, and no more:	
For entering a declaration of intention to become a citizen of the United States,.....	3 00
For certificate of such entry under a seal of the court,.....	2 00
For entering the final admission of an alien to the rights of citizenship, and for a certified copy thereof, under the seal of the court,.....	5 00

MISCELLANEOUS PROVISIONS.

SEC. 2. The clerk of the county commissioners shall, in all cases where his fees are paid out of the county treasury, be paid by order of said commissioners, who shall be satisfied of the correctness of his account; and the same shall be authenticated by his oath, and filed with the county treasurer.

Sec. 3. All officers shall, when requested so to do, make out a bill of their fees in every case, and for any services, specifying each particular item thereof, and receipt the same when it is paid, which bill of fees shall always be subject to examination and correction by the several courts; and any officer who refuses or declines to comply with the requirements of this section shall forfeit his fees in every case.

SEC. 4. All acts and parts of acts in conflict herewith are hereby repealed, and no fees or compensation for services not provided for herein, shall be received or demanded, except as hereinafter provided, unless some special existing law provides for the payment of such services, and if such law exists, then he shall be entitled to receive such compensation as therein provided; it being the true intent and meaning of this act to supersede and operate instead of laws or parts of laws heretofore enacted.

SEC. 5. Each and every officer who shall be called on or required

to perform services for which no fees and compensation are provided for in this act, shall be allowed fees similar and equal to those allowed for services of the same kind for which allowance is made herein.

SEC. 6. All officers and other persons entitled by the provisions of this act to charge mileage, shall charge at the rate of ten cents per mile, and only for the distance actually and necessarily traveled, and in no case shall constructive mileage be allowed.

SEC. 7. The fees as enumerated and fixed by this act, shall apply to, and be the fees of the officers named herein in the counties of Clarke, Clalam, Cowlitz, Chehalis, Ferguson, Island, Jefferson, King, Kitsap, Klickitat, Lewis, Skamania, Snohomish, Sawamish, Thurston, Pierce, Pacific, Wahkiakum and Whatcom.

SEC. 8. This act shall take effect and be in force from and after its passage.

PASSED, January 28th, 1863.

AN ACT

IN RELATION TO GRAND AND PETIT JURORS.

- SECTION 1. Who are qualified jurors.
- “ 2. County auditor to transmit to district clerk statement of number of jurors.
When such statement shall be transmitted.
- “ 3. District clerk to submit statement of jurors to district judge.
Apportionment by judge of jurors for each county.
Grand jurors limited to sixteen—petit jurors to twenty-four.
Clerk to transmit allotments to respective county auditors.
- “ 4. County commissioners, when and how shall select jurors.
- “ 5. Time and manner of summoning grand and petit jurors.
One venire for grand and petit jurors.
- “ 6. Duties of sheriff in, and manner of summoning jurors.
Manner of return of service to clerk of court.
- “ 7. Mandate to county auditor failing to comply with provisions of section 1.
Mode of service and requisites of mandate.
Penalty for failing to obey said mandate—how enforced.
- “ 8. Counties failing to return summons of jurors, proceeding against.
When auditor and county commissioners liable to be summoned as jurors.

- SECTION 8. Court may fill up panel by summons on any county in district.
- “ 9. Until apportionment, judges shall fix the allotment.
Jurors to be summoned at least ten days before term.
- “ 10. Number of grand jury.
- “ 11. When court may discharge a grand juror, and fill the panel.
- “ 12. After discharge as grand juror, may serve as petit juror.
- “ 13. Attachment against juror failing to attend—fine for non-attendance.
Writ of attachment not to issue till subsequent term.
At subsequent term, juror may show cause for non-attendance.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington* That all qualified electors and householders shall be competent to serve as grand jurors within the county where they reside, or 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 more than 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 person or persons aforesaid, serving thereon, if qualified in other respects. Nor shall the disqualification of any member of a grand or petit jury affect the indictment or verdict unless the juror for that cause was challenged or excepted to, before the rendition of the verdict.

SEC. 2. That, upon the first Monday in May, in each and every year, it shall be the duty of every county auditor to transmit to the clerk of the district court of the district in which his county is situated, a statement of the number of qualified grand and petit jurors in his county.

SEC. 3. Upon the receipt of such statements, the clerk of the district court shall submit the same to the judge of the district, who shall determine the number of grand and petit jurors to be drawn from the several counties in the district, to attend at each term of the court for the year ensuing, and until a new allotment is made; which number shall be proportioned to the whole number of qualified jurors in the district, and shall not exceed sixteen for grand jurors, and twenty-four for petit jurors, and, upon such determination, the clerk shall transmit, under the seal of the court, a copy of the same to the several county auditors,

SEC. 4. At the first meeting of the board of county commissioners, after the auditor shall have received the copy of the determination of the judge, he shall submit the same to the board of county commissioners, who shall select from the qualified jurors the number required to attend at each term of the court for the ensuing year.

SEC. 5. At least thirty days before the time appointed for the holding any term of the district court, the auditor shall issue a summons directed to the sheriff of his county, commanding him to summon the several persons who have been selected as jurors for that term, to attend as such jurors at the time and place appointed for holding the court, on the first day of the term. He shall embrace in one summons all those required for grand and petit jurors, specifying which are grand and which are petit jurors.

SEC. 6. It shall be the duty of the sheriffs of the several counties to call at the office of the county auditor, on or before the thirtieth day prior to the commencement of any term of the district court, and receive from said auditor the summons for jurors, which he shall forthwith serve; and having indorsed thereon the time and manner of his service, he shall seal the same up, and, directing it to the clerk of the district court, shall immediately transmit it to him by mail or other safe opportunity.

SEC. 7. If the clerk of the district court shall fail to receive the statement mentioned in section one, within fifteen days after the first Monday in May, he shall issue a mandate under the seal of the court to the auditor of the county from which such failure occurs, commanding him forthwith to make and return such statement to his office, which mandate shall be directed to the sheriff of the county and be by him served and returned as other process is served and returned; and every auditor who, after being duly served with such mandate, shall fail to comply with its command, shall be liable to an attachment for contempt and may be fined by the court in any sum not exceeding fifty dollars, and shall be liable to the costs of the attachment.

SEC. 8. If the clerk of the district court shall not receive from any county a return of the jurors summoned, fifteen days before the time appointed for the commencement of the term of the district court, he shall issue his summons to the sheriff of the delinquent county, commanding him to summon the requisite number of grand and petit jurors; which summons the sheriff shall forthwith execute by summoning the requisite number of qualified jurors, and return as is hereinbefore provided: *Provided*, That if jurors have already been summoned, the sheriff

shall return to said writ the names of those summoned, with the time and manner of the service: *And provided further*, That in case the failure has arisen from the neglect of the auditor or board of county commissioners to discharge the duties required of them by this act, they shall themselves be liable to be called as jurors, and shall be summoned by the sheriff. When, from any cause, there are not a sufficient number of qualified and competent grand and petit jurors in attendance, the court may order a sufficient number of qualified jurors to be summoned from any county or counties in the district.

SEC. 9. Until the apportionment and selection of jurors as provided in this act, the judges of the district court shall apportion to each county the number to be furnished by each county, and the clerk of the district court shall issue his summons to the sheriffs of the several counties, commanding him to summon from his county the requisite number of qualified grand and petit jurors, who shall be summoned at least ten days before the commencement of the term of court they are required to attend.

SEC. 10. The grand jury shall consist of not more than sixteen nor less than fourteen.

SEC. 11. In case of sickness, or for other good cause, the court may discharge one or more from the panel of grand jurors, and cause others to be empaneled in their place.

SEC. 12. After the grand jury shall have been discharged as a grand jury, it shall be discretionary with the court to require their attendance as petit jurors during the remainder of the term.

SEC. 13. Any juror, who shall have been personally served with a summons ten days before the term of the court which he is required to attend, and shall fail to attend without sufficient excuse, shall be liable to an attachment, and may be fined in any sum not exceeding fifty dollars: *Provided*, That no writ of attachment shall issue until the next term thereafter, and not then, if the delinquent juror shall, by affidavit or other proof, furnish a sufficient excuse.

SEC. 14. This act to take effect and be in force from and after its passage, and all acts or parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed.

PASSED, January 24th, 1863.

AN ACT

IN RELATION TO ATTORNEYS AND COUNSELLORS AT LAW.

- SECTION 1. Who may be admitted to practice.
- “ 2. Application for admission, and proof thereon.
- “ 3. Examination.
- “ 4. Order entitling him to admission.
- “ 5. General duties of attorneys.
- “ 6. Authority of an attorney.
- “ 7. Proceedings when an attorney appears without authority.
- “ 8. Compelling attorney to produce authority.
- “ 9. Attorney, how changed.
- “ 10. Notice of change.
- “ 11. Notice to appoint attorneys.
- “ 12. Lien of attorneys.
- “ 13. Proceedings to compel delivery of papers.
- “ 14. Proceedings when attorney claims lien.
- “ 15. Removal and suspension of attorneys.
- “ 16. By whom proceedings may be instituted.
- “ 17. How they shall be instituted.
- “ 18. Who may practice in courts of record.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the following persons are entitled to practice as attorneys and counsellors in all the courts of this territory :

1st—Those who were duly admitted as attorneys or counsellors 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.

2d—Those 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.

3d—All other white male persons 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.

SEC. 2. All persons applying for admission to practice as attorneys and counsellors in the territory, except those provided for in the first and second clauses of the foregoing section, must apply to the supreme court or any district court of the territory when in session, and must show—

1st—That he is of the age of twenty-one years, which, proof may be made by his own affidavit.

2d—That he is a person of good moral character, which may be proved by certificate or other evidence satisfactory to the court.

3d—That he has diligently studied the common law, and the laws of this territory for at least eighteen months previous to the date of his 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.

SEC. 3. The applicant must also be examined as to his qualifications of learning and ability, by the judges or under their direction, at the term at which application is made.

SEC. 4. If upon the examination he be found duly qualified, the court must direct an order to be entered to the effect that the applicant is a citizen of the United States, of the age of twenty-one years, of good moral character, and possesses the requisite qualifications of learning and ability, to practice as an attorney and counsellor in all the courts of this territory, and upon the entry of the order, such applicant shall be entitled to practice as such attorney and counsellor.

SEC. 5. It shall be the duty of an attorney and counsellor—

1st—To support the Constitution of the United States and the laws of this territory.

2d—To maintain the respect due to the courts of justice and judicial officers.

3d—To counsel or maintain such actions, proceedings or defenses, only, as appear to him legal and just, except the defense of a person charged with a public offense.

4th—To employ for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.

5th—To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client.

6th—To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

7th—Never to reject from any consideration personal to himself, the cause of the defenceless or oppressed.

SEC. 6. An attorney and counsellor has authority—

1st—To bind his client in any of the proceedings in an action or special proceeding by his agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and

stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding, or unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him, or signed by the party against whom the same is alleged, or his attorney—

2d—To receive money claimed by his client in an action or special proceeding, during the pendency thereof, or after judgment, and upon the payment thereof, and not otherwise, to discharge the claim, or acknowledge satisfaction of the judgment.

3d—This section shall not prevent a party employing a new attorney from issuing an execution upon a judgment, or to take other proceedings prescribed by statute for its enforcement.

SEC. 7. If it be alleged by a party for whom an attorney appears, that he does so without authority, the court may, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his acts; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his assumption of authority.

SEC. 8. The court, or a judge, may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear.

SEC. 9. The attorney in an action or special proceeding, may be changed at any time before judgment or final determination as follows:

1st—Upon his own consent, filed with the clerk or entered upon the minutes; or

2d—Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney have been paid by the party asking such change to be made.

SEC. 10. When an attorney is changed, as provided in the last section, written notice of the change, and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party; until then, he shall be bound to recognize the former attorney.

SEC. 11. When an attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney, must, at least twenty days before any further proceedings against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.

SEC. 12. An attorney has a lien for his compensation, whether specially agreed upon or implied, as hereinafter provided :

1st—Upon the papers of his client, which have come into his possession in the course of his professional employment.

2d—Upon money in his hands belonging to his client.

3d—Upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party.

4th—Upon a judgment to the extent of the costs included therein, and if there be a special agreement, to the extent of the costs and such compensation as may be specially agreed upon, from the time of giving notice to the party against whom the judgment is recorded.

SEC. 13. When an attorney refuses to deliver over money or papers, to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt.

SEC. 14. If, however, the attorney claim a lien, upon the money or papers, under the provisions of this act, the court or judge may :

1st—Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action ; or

2d—Summarily to inquire into the facts on which the claim of a lien is founded, and determine the same ; or

3d—To refer it, and upon the report, determine the same as in other cases.

SEC. 15. An attorney and counsellor may be removed or suspended by any court of record, at a regular term thereof, for either of the following causes, arising after his admission to practice :

1st—Upon his being convicted of felony, or of a misdemeanor involving moral turpitude, in either of which cases the record of his conviction is conclusive evidence.

2d—For a willful disobedience, or violation of the order of a court, requiring him to do, or forbear an act connected with, or in the course of his profession.

3d—For a willful violation of any of the provisions of section five.

SEC. 16. The proceedings to remove or suspend an attorney and counsellor, as provided in the last section, must be taken by the court of its own motion for matter within its knowledge, or may be taken

upon the information of another, and in either case the party shall have the privilege of making his defense.

SEC. 17. Such proceedings shall be by motion and answer, and evidence may be examined on either side.

SEC. 18. No person shall practice in any court of record except a party or his regularly authorized attorney and counsellor at law; *Provided*, That nothing herein contained shall be so construed as to prevent a party from employing any person to assist him in the preparation of his papers in the case before the time of trial, nor so as to prevent any person from trying any particular cause in court; leave of court being first had and obtained, and entered of record.

PASSED, January 24th, 1863.

AN ACT

IN RELATION TO PROSECUTING ATTORNEYS.

- SECTION 1. Prosecuting attorney to be elected in each judicial district.
His qualifications, and term of office.
- “ 2. Clerks of county commissioners to transmit to secretary of territory abstract of votes for prosecuting attorney.
Votes to be canvassed.
Certificate to issue.
Governor to commission.
- “ 3. Oath and bond of prosecuting attorney.
Duty of prosecuting attorneys.
Attorney for second district to appear in supreme court, on behalf of territory and districts, in all appeals, &c.
- “ 4. To report annually to secretary of territory.
- “ 5. In case attorney fails, from sickness, &c., or is unable to attend at term, district to appoint.
Fees of person appointed to act.
- “ 6. Vacancy to be filled by Governor until ensuing election.
Qualification and emoluments of person so appointed.
- “ 7. Not to receive fee or reward, or practice as attorney in certain cases
- “ 8. To receive a salary.
Salary to whom and how paid.
- “ 9. Fees of prosecuting attorney.
- “ 10. Fees of attorney for second district, for attending to appeals, &c., on behalf of other districts.
Ib., how paid.
- “ 11. Fees to be paid by county for which service rendered.
Prosecuting attorney to tax his fees.
Bill of fees to be submitted to judge.

- SECTION 11. Auditor to draw warrant for amount.
- “ 12. Fees to be taxed by clerk in criminal cases, when.
To be applied to court fund.
- “ 13. Justices of the peace who commit or hold to bail in criminal cases,
to forward transcript, &c., to prosecuting attorney.
- “ 14. To be but three districts.
Where court held under special act, county where held to compose
part of district.
- “ 15. Conflicting acts repealed.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That at the general election in 1864, and every two years thereafter, there shall be elected by the qualified voters of the several counties in each judicial district of this territory, one prosecuting attorney, who shall be a practicing attorney at law, and have the qualifications of an elector, and shall reside in and be an inhabitant of the district for which he is elected, who shall continue in office for the term of two years, and until his successor is elected and qualified.

SEC. 2. The clerks of the boards of county commissioners of the several counties shall make out an abstract of the votes given in their respective counties for prosecuting attorney, and transmit the same to the secretary of the territory, and said votes shall be canvassed, and a certificate issue to the person receiving the highest number of votes in such judicial district, and the person receiving the highest number of votes shall be duly elected and commissioned by the governor.

SEC. 3. Every prosecuting attorney, before entering upon the duties of his office, shall take and subscribe an oath, faithfully to discharge the duties of his office as prosecuting attorney for the district for which he was elected; such oath shall be indorsed on the back of the certificate, and a copy thereof, certified to by the officer before whom the oath shall have been taken, and shall by him be forwarded to the secretary of the territory; and moreover, shall give to the territory of Washington a bond in the sum of one thousand dollars, with good and sufficient surety, 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 with the clerk of the district court of such district.

SEC. 4. Each prosecuting attorney shall prosecute all criminal and civil actions in which the territory or any county within their respective districts may be a party; defend all suits brought against the territory, or any county composing their respective districts, and prosecute all forfeited recognizances, and actions for the recovery of debts, fines, penal-

ties and forfeitures accruing to the territory or any county within the district; and it is hereby made the duty of the prosecuting attorney of the second judicial district to appear on behalf of the territory and the several districts, in the supreme court in all appeals, or writs of error, taken from any district in the territory.

SEC. 5. Every prosecuting attorney shall, in the month of January in each year, make to the secretary of the territory a report, setting forth the amount and the nature of business transacted by them in the preceding year, with such other statements and suggestions as he may deem useful.

SEC. 6. When the prosecuting attorney fails, from sickness or other cause, to attend at a term of the district court of the district for which he was elected, or is unable to attend or to perform his duties at such term, the court may appoint some qualified person to discharge the duties for such term, and the person so appointed shall receive the same fees as the regular prosecuting attorney would be entitled to for the same and similar services.

SEC. 7. When a vacancy occurs in the office of prosecuting attorney, in any district in the territory, it shall be the duty of the governor to appoint some qualified person to discharge the duties of the office until the next annual election: *Provided*, such person so appointed shall be an inhabitant and a resident of the district for which he was appointed, and shall qualify in all respects the same as one duly elected by the people, and the person so appointed shall receive the salary and fees of the office for such time as he may serve.

SEC. 8. The prosecuting attorney shall receive no fee or reward from or on behalf of any prosecution for any of his official services, nor shall he be engaged as counsel for either party in any civil action depending upon the same facts as a criminal prosecution.

SEC. 9. Each prosecuting attorney shall receive a salary in semi-annual payments, at the rate of two hundred dollars per annum, which salary shall be paid by the territorial treasurer, upon the presentation of proper vouchers therefor.

SEC. 10. The fees of prosecuting attorney shall be as follows: In all prosecutions, when the punishment is death or imprisonment for life, when the prisoner is so convicted, fifty dollars; and when acquitted, twenty dollars; in all criminal prosecutions, when the punishment is imprisonment in the penitentiary for any less term than for life, when the prisoner is convicted, thirty dollars, and when acquitted twelve dollars. In all other criminal prosecutions, when the prisoner is convicted,

twenty-five dollars, and when acquitted, five dollars. For prosecuting all forfeited recognizances, debts, fines and forfeitures accruing to the territory, or any county therein, upon the amount recovered, twenty per centum on all sums under one hundred dollars. For each days' attendance upon the district court during the session of the grand jury, five dollars. In case of failure to attend to by the attorney of the first and second districts, the prosecuting attorney of the third judicial district shall receive the following fees for services rendered in the supreme court on behalf of the several districts in the territory: For the prosecuting each case upon appeal or writ of errors, fifteen dollars, to be taxed to the district in which the case arises, to be paid out of the court fund of such district, upon the certificate of the judge of such district.

SEC. 11. The fees of prosecuting attorney provided for in section ten (10) of this act, shall be paid by the county for which such services are rendered, and it shall be the duty of the prosecuting attorney to tax his fees at the close of each term of the district court, specifying how much, and for what the service is chargeable to each county, which account of fees must be approved by the judge of the district court, which account shall be submitted to the judge of the district, and upon the presentation of such account or bill of fees to the county auditor, it shall be the duty of such auditor to draw a warrant upon the county treasurer for the amount of said bill in favor of the prosecuting attorney.

SEC. 12. It shall be the duty of the clerks of the several district courts in this territory, in all criminal prosecutions, when the prisoner is convicted, to tax and collect as costs against such prisoner, an amount in each case equal to the fees allowed the prosecuting attorney by the tenth section of this act, which cost, when so collected, shall be applied to the court fund.

SEC. 13. It shall be the duty of every justice of the peace, before whom a criminal examination is held, when the defendant is committed or held to bail, to make out and forward to the prosecuting attorney a transcript of the proceedings had before such justice, together with a copy of all such pleadings and testimony in the case.

SEC. 14. For the purposes of this act, there shall be but three districts, and in all cases where a district court is held under special acts in counties within a district, said counties shall compose a part of the district to which it belongs for judicial purposes.

SEC. 15. All acts and parts of acts in conflict with this act, be and the same are hereby repealed.

PASSED, January 19, 1863.

AN ACT

IN RELATION TO JUDGES OF THE DISTRICT AND PROBATE COURTS PRACTISING AS ATTORNEYS AT LAW.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a district or probate judge shall not act as attorney or counsel in a court in which he is judge, or in an action or proceeding removed therefrom to another court for review, or in any action or proceeding from which an appeal may lie to his own court.

SEC. 2. A judge or justice of the peace shall not have a partner acting as attorney or counsel in any court in this territory.

SEC. 3. This act shall take effect and be in force from and after its passage.

PASSED, Jan. 29th, 1863.

AN ACT

AUTHORIZING DISTRICT COURTS TO CHANGE THE NAMES OF PERSONS.

- SECTION 1. District courts may change the names of persons.
- “ 2. Application to be made in the county where person resides.
 - “ 3. Notice to be given by applicant, how, and how long.
 - “ 4. Proof of publication, how to be made; proceedings of the court thereon.
 - “ 5. A copy of the decree to be sufficient evidence of such change.
 - “ 6. When to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the district courts in the several counties of this territory may change the names of persons on application by petition.

SEC. 2. The application of a person may be made to the district court of the county in which such person resides.

SEC. 3. Upon petition being filed for such change the applicant shall give notice thereof by three weekly publications in some newspaper of general circulation printed and published in the proper county, or if no newspaper be printed therein, in a newspaper printed and published nearest thereto, thirty days prior to the first day of the term at which such petition shall be heard.

SEC. 4. Proof of the publication required in this act shall be made by filing a copy of such published notice verified by the affidavit of a disinterested person, and when such proof of such publication is made, the court shall proceed and determine such petition and make such order and decree therein as such court shall deem just and reasonable.

SEC. 5. A copy of the decree of such court changing the name of any person certified under the seal of such court by the clerk thereof, shall be sufficient evidence of the name of such person, and of such change having been made in any court of this territory.

SEC. 6. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

TO PREVENT FRAUDULENT CONVEYANCES.

- SECTION 1. Certain conveyances void as against existing or subsequent creditors.
- “ 2. Certain contracts void, unless some note or memorandum thereof be in writing.
- “ 3. Sale of goods, &c., to the value of fifty dollars or more when valid.
- “ 4. When bill of sale invalid.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods chattels or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors, of such person.

SEC. 2. In the following cases specified in this section, any agreement, contract and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized; that is to say:

1st. Every agreement that by its terms is not to be performed in one year from the making thereof;

2d. Every special promise to answer for the debt, default, or misdoings of another person;

3d. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

4th. Every special promise made by an executor or administrator, to answer damages out of his own estate.

SEC. 3. No contract for the sale of any goods, wares, or merchandise, for the price of fifty dollars or more, shall be good and valid, unless the purchaser shall accept and receive part of the goods so sold, or shall give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

SEC. 4. No bill of sale for the transfer of personal property, shall be valid as against existing creditors or innocent purchasers, where the property is left in the possession of the vendor, unless the said bill of sale be recorded in the auditor's office of the county in which the property is situated, within ten days after such sale shall be made.

All laws heretofore enacted in relation to any subject matter treated of in the provisions of this act, are hereby repealed.

PASSED, January 19th, 1863.

AN ACT

TO REGULATE SUITS FOR DIVORCE AND ALIMONY.

- SECTION 1. Causes for which district court may grant divorce.
- “ 2. Decree of nullity of marriage may be obtained by either party, when.
- “ 3. A resident for one year may file complaint.
What proceedings to be had.
- “ 4. When court to require proof before granting.
- “ 5. Cross complaint may be filed, and divorce in favor of either party.
- “ 6. When both parties to be considered as applying.
- “ 7. Disposition of property, &c., pending petition.
Husband may be required to pay expenses of wife in prosecution.
- “ 8. Upon granting a divorce, duty of court as to disposition of property and provision for minor children.
- “ 9. An order of divorce dissolves the marriage.
Court may change name of female.
- “ 10. Prosecuting attorney to resist petition, when.
- “ 11. When cause may be heard and divorce granted, without notice to defendant.
This act not to apply to certain cases, &c.
- “ 12. Divorces shall be for causes distinctly stated, proved, &c.
Court to state facts.
Either party may appeal from orders.
Supreme court not to reverse final order of divorce.
- “ 13. Civil practice, except as to jury trial, to govern proceedings in such trials.

- SECTION 14. Causes to be removed to supreme court by writ of error.
 Errors of fact and law may be corrected.
- “ 15. Repealing clause.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That divorces may be granted by the district court on application of the party injured, for the following causes :

1st—When the consent to the marriage of the party applying for the divorce was obtained by force or fraud, and there has been no subsequent voluntary co-habitation ;

2d—For adultery on the part of the wife, or of the husband, when unforgiven, and application is made within one year after it shall come to his or her knowledge ;

3d—Impotency ;

4th—Abandonment for one year ;

5th—Cruel treatment of either party by the other ;

6th—Habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provisions for his family ;

7th—The imprisonment of either party in the penitentiary, if complaint is filed during the term of such imprisonment. And divorce may be granted upon application of either party, for any other cause deemed by the court sufficient, and the court shall be satisfied that the parties can no longer live together.

SEC. 2. When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof obtain, a decree of nullity of marriage.

SEC. 3. Any person who has been a resident of the territory for one year may file his or her complaint for a divorce or decree of nullity of marriage under oath in the district court of the county where he or she may reside, and like proceedings shall be had thereon as in civil cases.

SEC. 4. When the defendant does not answer, or answering, admits the allegations in the complaint, the court shall require proof before granting a divorce or a decree of nullity.

SEC. 5. The defendant may, in addition to his or her answer, file a cross complaint for divorce, and the court may in such case grant a divorce, if any, in favor of either party or as an application of both.

SEC. 6. Both parties shall be considered as applying for a divorce, when the complaints of both are filed at the same term of the district court, and when the defendant by his or her cross complaint, also applies for a divorce.

SEC. 7. Pending a petition for divorce, the court or the judge thereof, in vacation, may make, and by attachment, enforce such orders for the disposition of the persons, property and children of the parties as may be deemed right and proper, and such orders relative to the expenses of such suit as will insure to the wife an efficient preparation of her case, and a fair and impartial trial thereof; and on decreeing or refusing to decree a divorce, the court may, in its discretion, require the husband to pay all reasonable expenses of the wife in the prosecution or defense of the petition, when such divorce has been so granted or refused, and give judgment therefor.

SEC. 8. In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody, and support and education of the minor children of such marriage.

SEC. 9. Whenever an order of divorce from the bonds of matrimony is granted in this territory by a court of competent authority, such order shall fully and completely dissolve the marriage as to both parties. And in all suits for a divorce, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court shall in its order or decree appoint.

SEC. 10. Whenever a petition for divorce remains undefended, it shall be the duty of the prosecuting attorney to resist such petition.

SEC. 11. That in all applications to the district courts of this territory for a divorce where the complaint alleges the continued absence of the defendant for a period of five years or more, the court shall hear the cause without requiring notice to be given to the absent party by publication or otherwise. And if, upon the hearing of the cause, it shall be proven to the satisfaction of the court that the continued absence set forth in the complaint amounts to willful abandonment of the complainant, the court shall thereupon grant an order of divorce as in other cases: *Provided*, That none of the provisions of this section shall apply to cases where both parties are known to be residents of this territory, or where the complainant shall not have resided two years in this territory.

SEC. 12. In all instances where a district court shall grant a divorce, it shall be for cause distinctly stated in the complaint, and proved

and found by the court, and the court shall state the facts found, upon which the decree is rendered; and when either party shall signify a desire to appeal from any of the orders of the court, in the disposition of the property, or of the children, the court shall certify the evidence adduced on the trial, and the supreme court shall be possessed of the whole case as fully as the district court was, and may reverse, modify, or affirm said judgment according to the real merits of the case: *Provided*, The supreme court shall not reverse any final order divorcing any parties divorced by the district court having jurisdiction of the cause.

SEC. 13. The practice in civil actions shall govern all proceedings in the trial of divorces except the trial by jury is dispensed with, and as may be otherwise modified by this act.

SEC. 14. Writs of error shall be the proper mode of removing causes mentioned in this act from the district to the supreme court, but errors of fact as well as errors of law may be corrected.

SEC. 15. All acts or parts of acts conflicting with the provisions of this act are hereby repealed.

PASSED, January 19th, 1863.

AN ACT

IN REGARD TO CLERK OF THE SUPREME AND DISTRICT COURTS, AND PRESCRIBING CERTAIN DUTIES FOR SUCH CLERKS.

- SECTION 1. The supreme court to appoint a clerk.
- “ 2. Clerk to take oath and give bond.
- “ 3. Clerk to keep his office at the seat of government.
- “ 4. Clerk of the district court to be appointed.
Term of office and bond.
- “ 5. County commissioners to provide an office.
- “ 6. Books to be kept by the clerk, and his duties.
- “ 7. Clerk to fill all papers.
- “ 8. Responsible for the custody and delivery of all books and papers.
- “ 9. Shall have power to administer oaths.
- “ 10. Shall not practice as an attorney.
- “ 11. Clerk authorized to take acknowledgements.
- “ 12. To fill duplicate copies of their appointments.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the supreme court or the judges thereof, shall appoint a clerk, who shall hold his office during the pleasure of such court.

SEC. 2. Before entering upon the duties of his office, he shall take an oath of office and give bond in such a sum, with surty and condition, as the said court or judges thereof shall require, which bond shall be deposited with the secretary of the territory. The bond shall be to the territory of Washington, and any party aggrieved by the official acts or omissions of said clerk may have his action thereon.

SEC. 3. The clerk shall keep his office at the seat of government, and shall keep it open at all seasonable hours, and shall keep such records and books as are prescribed by law and the supreme court.

SEC. 4. There shall be appointed by the district court, or the judge thereof, in each county in this territory, in which a term of the district court is appointed to be held, a clerk, who shall also be register in chancery, who shall take an oath of office, and shall give bond in such a sum as shall be prescribed by law and the court or judge appointing him. He shall hold his office during the pleasure of the court appointing him. His bond shall be filed with the auditor of the county, and any person aggrieved by his official actions or omissions may sue thereon.

SEC. 5. The county commissioners of each county, shall provide an office at the county seat of the county, or make reasonable allowance therefor until suitable county buildings are erected, where said clerk in person, or by his deputy, shall attend at all times during the session of the court, and at reasonable times and on seasonable notice, shall be present during vacation.

SEC. 6. He shall, at the expense of the county, provide and keep a book, in which he shall enter all appearances and the time of filing all pleadings in any cause pending in said court. He shall also keep a docket, in which he shall enter, before every term, the titles of all causes pending before said court at such term, in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys—the character of the action—the pleadings upon which it stands at the commencement of the term, leaving a margin opposite each case for the court to enter a short minute of the orders of the term. One copy of this docket he shall furnish for the use of the court, and another for the use of the members of the bar. He shall also provide and keep at each term, a minute book, in which he shall enter the names of witnesses and jurors, with time of attendance, distance of travel, and whatever else is necessary to enable him to make out a complete cost bill. He shall also provide and keep a well bound book, to be called the order book or journal, in which he shall record the daily proceedings of the court, and enter all verdicts, orders, judgments and decisions thereof, from which every morning shall be read in open court.

the proceedings of the previous day, which shall be signed by the judge; but the court shall have full control of all entries in said journal at any time during the same term in which they were made. He shall also provide and keep well bound books, one for an execution docket, one for a book of levies, and one for a final record, in which he shall make a full and perfect record, of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is any way affected, and such other final judgments, orders or decisions as either party may require, and may pay him for recording. He shall also provide and keep such other books as are prescribed by law, and required in the discharge of the duties of his office.

SEC. 7. He shall file all papers that may be legally lodged with him for that purpose, noting the day, month and year, when so filed.

SEC. 8. He shall be responsible for the safe custody and delivery to his successor of all books and papers belonging to his office.

SEC. 9. He shall have power to administer oaths in every case where an oath is authorized by law.

SEC. 10. He shall not practice as an attorney or counsellor within the county where he resides, and for which he is clerk, nor shall he be surety or bail in any case in the court of which he is clerk.

SEC. 11. The clerks of the district or supreme courts of this territory, are authorized to take acknowledgments of deeds and instruments of writing under the seals of their office.

SEC. 12. The clerks of the district courts of the territory of Washington and their deputies, shall file a duplicate copy of their appointment with the secretary of the territory, within sixty days from and after their appointment.

PASSED, January 17th, 1863.

AN ACT

RELATING TO LIENS OF MECHANICS AND OTHERS, FOR LABOR AND MATERIALS.

- SECTION 1. Labor done or materials furnished, a lien on the property.
 " 2. Notice of lien to be filed and recorded in auditor's office within sixty days.

- SECTION 3. Sub-contractor or journeyman may have a lien.
- “ 4. How a lien may be enforced.
- “ 5. Trial of liens.
Judgment and sale of the property.
When property may be removed by purchase.
Several actions may be consolidated.
- “ 6. Pro rata division of the proceeds may be made.
- “ 7. Bond may be filed to release property, by defendant.
- “ 8. Satisfaction of demand to be entered.
Penalty for failure.
- “ 9. Sub-contractor's lien may be set off.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington* That mechanics, and all persons performing labor, or furnishing materials for the construction or repair of any building, may have a lien, separately or jointly, upon the building which they may have constructed or repaired, or upon any building, mill or other manufactory for which they may have furnished materials of any description, and on the interest of the owner in the lot or land on which it stands, to the extent of the value of any labor done or materials furnished, or for both. That all persons furnishing labor, materials or supplies to any ship, vessel or boat, shall have and be entitled to a lien on such ship, vessel or boat, to take effect immediately after such labor has been performed, or such materials or supplies have been furnished.

SEC. 2. Any person wishing to acquire such lien, whether his claim be due or not, shall file in the recorder's office of the county in which such building is situated, at any time within sixty days after the completion of such building or repairs, a notice of his intention to hold a lien upon such building, for the amount due, or to become due, specifically setting forth such amount, and containing a description of the building upon which the labor was performed, or for which the materials were furnished, which notice shall be recorded by the auditor in a book kept for that purpose.

SEC. 3. Any sub-contractor, journeyman or laborer employed in the construction, or repair, or furnishing materials for any building, may give to the owner thereof notice in writing, particularly setting forth the amount of his claim and services rendered, for which his employer is indebted to him, and that he holds the owner responsible for the same; and the owner shall be liable for such claim, but not to exceed the amount due from him to the employer at the time of notice, which may be recovered in an action.

SEC. 4. Any person having such lien, may enforce the same by filing his complaint in the district court of the county where the work

was done, or materials furnished, at any time within one year from the completion of the work, or furnishing materials; or, if a credit be given, from the expiration of the credit.

SEC. 5. In such actions, all persons whose liens are recorded, as herein provided, may be made parties, and all, or any number, may join in one action, stating their claims distinctly, and issues shall be made up and trials had, as in other cases; and the court may, by the judgment, direct a sale of the defendant's interest in the lot or land (if he have any such saleable interest,) and building for the satisfaction of the lien or liens, and costs; such sale to be under and by virtue of an execution, and without prejudice to the rights of any prior incumbrance, owner, or other persons, not parties to the action. If the defendant or defendants in such action be not entitled to such interest in the lot or land on which such building is erected, as is liable to sale under execution, then the purchaser, at the sale herein provided for, shall be entitled to remove from the premises such property, so sold by execution and purchased. If several such actions be brought by different claimants, and be pending at the same time, the court may order them to be consolidated.

SEC. 6. If the proceeds of the sale be insufficient to pay all the claimants, then the court shall order them to be paid in proportion to the amount due each, and any other property of the owner of the building may be taken and sold on execution to satisfy the same.

SEC. 7. In all proceedings to enforce liens, the defendant may file a bond with surety, to be approved by the court, to the effect that he will pay the judgments that may be recovered, and costs, and thereby release his property from the liens hereby created.

SEC. 8. Whenever any person, having a lien by virtue of the provisions of this act, shall have received satisfaction for his claim, and the costs of his proceedings thereon, he shall, upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction, within six days after such payment or tender, enter satisfaction of his demand in the office where the same is recorded; and upon failure to do so, he shall forfeit fifty dollars to the party aggrieved, and all damages which he may have sustained in consequence of such failure or neglect. Whenever any sub-contractor, journeyman, or laborer, shall recover any such claim from the owner of the building, the same may be set off by such owner in any action brought against him by the person who otherwise would be entitled to recover the same under the contract.

LIENS ON PERSONAL PROPERTY.

- SECTION 10.** How lien on personal property is acquired.
 Claimant may hold possession.
- “ 11. Lien of a carrier, or one who feeds animals.
 Claimant may hold possession.
- “ 12. Sale of property under lien.
 Notice to be given.
- “ 13. Proceedings where property is of a perishable nature.
- “ 14. Disposition of the proceeds of such sale.
- “ 15. Proof of notice to be filed and kept.
- “ 16. Repealing clause.

SEC. 10. Any person who shall make, alter, repair, or bestow labor on any article of personal property, at the request of the owner or lawful possessor thereof, shall have a lien on such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed and the materials he has furnished; and such person may hold and retain possession of the same until such just and reasonable charges shall be paid.

SEC. 11. Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey or transport the same from one place to another, and any person who shall safely keep or store any personal property, at the request of the owner or lawful possessor thereof, and any person who shall depasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care or attention upon the same, at the request of the owner or lawful possessor thereof, shall have a lien upon such property for his just and reasonable charges for the labor, care and attention he has bestowed, and the food he has furnished, and he may retain the possession of such property until such charges be paid.

SEC. 12. If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell, at public auction, the property mentioned in the last two sections, or a part thereof, sufficient to pay such just and reasonable charges. He shall, before such sale, give public notice of the time and place thereof, by posting a written notice for at least ten days, in three public places in the county, precinct, town, or city where he resides, one of which shall be in some conspicuous part of his shop or place of business; or if the value of the article be fifty dollars or more, then by publishing the same three weeks successively in a newspaper in the county, if any, in addition to the notices herein required to be posted.

SEC. 13. If the property be horses, cattle, hogs, or other live stock, and in all cases embraced in this act, where the property is of a perishable nature, and will be greatly injured by delay, the person to whom such charges may be due, may, after the expiration of twenty days from the time when such charges shall have become due, proceed to dispose of so much of such property as may be necessary, as hereinbefore provided.

SEC. 14. The proceeds of such sales, after the payment of the lien, all charges for keeping and selling such property, shall, if the owner be absent, be deposited with the treasurer of the proper county by the person making such sale, he taking the treasurer's receipt therefor, and shall be subject to the order of the person legally entitled thereto.

SEC. 15. Attested copies of the notices required by this act, and proof of the publication thereof, and an affidavit of the person claiming the lien, or some competent witness on his behalf, setting forth his claims, shall be filed and kept in the recorder's office of the proper county, and the same, or copies thereof, attested and sealed by such clerk, shall be received as testimony, and shall be presumptive evidence of the matter therein contained.

SEC. 16. All acts and parts of acts in conflict with this act, be and the same are hereby repealed.

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

PASSED, January 19, 1868.

AN ACT

TO ESTABLISH THE AMOUNT, AND PROVIDE FOR THE PAYMENT OF COSTS IN CERTAIN CASES.

- SECTION 1. Persons making complaints, when liable for costs.
Costs imposed if complaint be frivolous or malicious.
- “ 2. In felony, when complainant is liable for costs.
- “ 3. Conviction carries costs of all proceedings had.
Jury fee, amount of, and how collected.
Application of said jury fee by clerk.
- “ 4. Costs in conviction for felony.
Bill of costs, how made and approved.
How credited by territorial treasurer.
County auditor to notify county treasurer, and duty of said county treasurer.
Court fund, duty of county treasurer in regard thereto.

- SECTION 5. Compensation of sheriff for conveyance of prisoner out of county.
- “ 6. Pay of juror or witness for attending court out of his county.
- “ 7. Jury fee in civil cases, when and by whom payable, and how taxed.
- “ 8. Duty of clerk in compensation of jurors.
Certificate to be given by clerk of amount unpaid each juror.
Clerk to certify account of sheriff.
Clerk to certify amount due witnesses.
Witnesses to be paid by county where the case belongs.
- “ 9. Assessment and collection of taxes to be applied to maintaining prisoners, &c.
Provisions for raising a court fund.
- “ 10. Liability of county for expenses of prisoners, jurors and sheriff.
Costs to be approved by court, before county rendered liable.
- “ 11. When counties not liable for costs.
County to furnish court house, jail, and expenses of courts.
- “ 12. Costs incident to conviction and forfeited recognizances to go to court fund.
- “ 13. When to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That every person making a complaint against another for a threatened breach of the peace or for a misdemeanor shall, in case the complaint is not sustained, or the defendant be finally acquitted, be liable for all costs of the prosecution: *Provided,* That nothing in this section contained, shall be so construed as to impose costs upon any person making complaint, unless it shall clearly appear that the complaint is without foundation and frivolous or malicious.

SEC. 2. Every person making complaint against another for a felony, where the defendant is discharged or acquitted, shall be liable for the costs in case the court and jury, where the case is submitted to a jury, shall decide that the complaint is frivolous or malicious, as well as without foundation.

SEC. 3. Every person convicted of a crime or held to bail to keep the peace, shall be liable to all the costs of the proceedings against him, including, when tried by a jury in the district court, twelve dollars for a jury fee, and when tried by a jury before a magistrate or before the probate court, six dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines; and the jury fee, when collected for a case tried by the district court, shall be paid to the clerk, to be by him applied as the jury fee in civil cases is applied.

SEC. 4. In all convictions for felony, forthwith after final sentence to the penitentiary, the clerk of the district court shall make out a cost bill in the case, which, after being approved by the judge, he shall certify under the seal of the court and transmit to the auditor of the county from which the defendant came; said cost bill shall be by the county au-

ditor transmitted to the territorial treasurer, who shall credit the county with the amount as so much paid on account of the territorial tax, and charge the same to the "penitentiary labor fund," and he shall transmit to the auditor of the county his receipt for the same. The auditor of the county shall notify the treasurer of the county of the amount of the cost bills by him transmitted, as above provided, from time to time, whereupon the treasurer shall transfer the amount from the amount of territorial tax in his hands, or hereafter to be collected, and credit the same to the court fund.

SEC. 5. Whenever the sheriff shall be required to convey a prisoner out of the limits of his own county, he shall be entitled to receive his actual and necessary expenses in transporting and maintaining said prisoner, in addition to his own mileage, or such other compensation as is provided in lieu thereof.

SEC. 6. Whenever a juror, witness or officer is required to attend a court, or travel on official business out of the limits of his own county, and entitled to mileage, in lieu thereof, he may, at his option receive his actual and necessary traveling expenses by the usually traveled route in going to, and returning from the place where the court is held, or where the business is discharged.

SEC. 7. In every civil case before the district in which a jury shall render a verdict, the party in whose favor the verdict shall be, shall, before the same is recorded, pay to the clerk the sum of twelve dollars as a jury fee, which may be taxed against the opposite party as a part of the costs, and no other jury fee shall be taxed in the case.

SEC. 8. At the close of each term of the district court, the clerk shall ascertain the amount due each juror for his mileage and per diem, and if there is any money in his hands belonging to the jury fund, he shall pay the same to the jurors in proportion to the amount due each juror, and shall give a certificate for the balance due each juror, which shall be a charge upon the county to which the juror belongs. And he shall also certify the amount of fees that may be due to the sheriff of any other county than that in which the court is held, who may have attended the term, having a prisoner in custody, charged with, or convicted of a crime, or for the purpose of conveying such prisoner to or from the county, which, when approved by the court or judge, shall be a charge upon the county to which the prisoner belongs; and he shall also certify the amount which may be due witnesses attending from another county, in a criminal case for their fees, which, when approved by the court or judge, shall be a charge upon the county to which the case belongs, all of which shall be paid out of the "court fund."

SEC. 9. The county commissioners of each county shall, at their June session in each year, set apart a certain portion of the tax assessed for county purposes, which shall be sufficient to cover the expenses of the sheriff in maintaining prisoners charged with crimes, and conveying them out of the county, also his mileage or other compensation in lieu thereof, when required to travel out of the limits of his county, so far as the same is chargeable against the county; also, all the expenses of the district court, which may devolve upon the county to pay, which portion shall be particularly specified on the assessment roll, and shall be collected in money, and called the "court fund," and shall be applied solely to the purposes for which it was raised.

SEC. 10. Each county shall be liable to pay the per diem and mileage, or other compensation, in lieu thereof, to jurors of the county attending the district court; the fees of the sheriff for maintaining prisoners, charged with crimes, and his costs in conveying them to and from the district court, as well as their board while there; the per diem and mileage, or such other compensation as is allowed in lieu thereof, of the sheriff of the county, when in criminal cases he is required to attend or travel to the district court, out of the limits of his own county; the cost in criminal cases taken from the county to the district court; all of which shall be paid out of the "court fund;" *Provided*, That none shall be so paid by the treasurer unless the particular items shall be approved by the judge, and certified by the clerk under the seal of the court: and, *provided further*, that, for the time or travel which may be paid by the parties, or United States, no payment from the county fund shall be allowed, and no officer, juror, or witness shall receive from the county double pay as a per diem for the same time, or as traveling expenses or mileage for the same travel, in however many different capacities, or in however many different causes they may be summoned, notified, or called upon to testify or attend in.

SEC. 11. The county in which the court is held, shall furnish the court house, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance, and other incidental expenses of the court house and court which are not paid by the United States, which shall be paid out of the "court fund" of that county.

SEC. 12. All costs collected against any person convicted for crime, and all sums collected on recognizances of persons accused, or of witnesses in criminal cases for fines and forfeitures, shall belong to the "court fund" of the county from which the case came.

SEC. 13. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

IN RELATION TO MORTGAGES AND BILLS OF SALE OF PERSONAL PROPERTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That every mortgage, or conveyance intended to operate as a mortgage of goods and chattels, hereafter made, which shall not be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void, as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage shall be forthwith deposited as directed in the succeeding section of this act.

SEC. 2. The instruments mentioned in the preceding section, shall be deposited with the auditor of the county where the mortgagor therein, if a resident of this territory, shall reside at the time of the execution thereof; and if not a resident, then with the auditor of the county where the property so mortgaged shall be at the time of the execution of such instrument.

SEC. 3. Upon receipt of any such instrument, the auditor receiving it shall file the same, and indorse thereon the time of receiving it, and shall record the same in his office for the inspection of all persons interested.

SEC. 4. A copy of any such original instrument so filed as aforesaid, including any statement made in pursuance of this act, certified by the auditor in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument or such statement was received and filed according to the indorsement of the auditor thereon, and no other fact; and in all other cases the original indorsement by the auditor, made in pursuance of this act, upon such instrument, shall be received in evidence only of the facts stated in such indorsement.

SEC. 5. For services under this act the auditor shall be entitled to receive the following fees: For filing each instrument, twenty-five cents; and the like fees for certified copies of such instruments as are allowed by law for copies and certificates of other records kept by them.

SEC. 6. No mortgage or conveyance intended to operate as a mortgage of goods and chattels shall be so construed as to vest the absolute property in the mortgagee, and the mortgagor shall have a right of re-

demption in the property mortgaged, until such right shall be barred by a judgment of foreclosure in a court of competent jurisdiction.

SEC. 7. All provisions of the civil practice act in relation to the foreclosure of mortgages of real estate which are in their nature applicable to the foreclosure of mortgages upon goods and chattels, shall apply to and govern proceedings to foreclose mortgages and conveyances intended as mortgages of personal property.

SEC. 8. All acts or parts of acts conflicting herewith, be, and the same are hereby repealed.

SEC. 9. This act shall take effect and be in force from and after its passage.

PASSED, January 27th, 1863.

AN ACT

AN ACT IN RELATION TO BILLS OF EXCHANGE AND PROMISSORY NOTES.

- SECTION 1. All promissory notes to have the same effect as inland bills of exchange.
- “ 2. Note signed by agent to bind principal.
- “ 3. Construction of word “person.”
- “ 4. Who may maintain actions on such notes.
In what manner.
- “ 5. Notes payable to the maker thereof, or to a fictitious person.
- “ 6. Days of grace.
- “ 7. What days considered as Sunday.
- “ 8. Acceptance to be in writing.
- “ 9. Acceptance written on a paper other than a bill.
When binding.
- “ 10. When a promise to accept made before the bill is drawn, deemed an acceptance.
- “ 11. Holder may require the acceptance to be written on the bill.
- “ 12. Last four sections not to be construed to impair the right of the party to whom promise to accept was made to recover damages.
- “ 13. Drawee destroying a bill or refusing to deliver it, deemed to have accepted it.
- “ 14. Rate of damages upon protest.
- “ 15. What such damages in lieu of.
What additional damages holder may recover.
- “ 16. This act not to apply to bills, &c, drawn or made before its passage.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all notes in writing made and signed by any

person whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange according to the custom of merchants.

SEC. 2. Every note signed by the agent of any person, under a general or special authority, shall bind such person and have the same effect, and be negotiable as provided in the preceding section.

SEC. 3. For the purposes of this act, the word person shall be construed to extend to every corporation capable by law of making contracts.

SEC. 4. The payees and indorsees of every such note payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and indorsers of the same respectively, in like manner as in cases of inland bills of exchange and not otherwise.

SEC. 5. Such notes made payable to the maker thereof, or the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to the bearer.

SEC. 6. On all bills of exchange payable at sight, or at a future day certain within this territory; and on all negotiable promissory notes, orders, and drafts payable at a future day certain within this territory, in which there is not an express stipulation to the contrary, three days' grace shall be allowed by the custom of merchants on foreign bills of exchange, payable at the expiration of a certain period after date, or at sight.

SEC. 7. The fourth day of July, and the twenty-fifth day of December, shall, for all purposes whatsoever as regards the presenting for payment or acceptance and of the protesting and giving notice of the dishonor of bills of exchange, promissory notes, drafts and checks, be treated and considered as Sunday.

SEC. 8. No person within this territory shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

SEC. 9. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

SEC. 10. An unconditional promise in writing to accept a bill be-

fore it is drawn, shall be deemed an actual acceptance in favor of every person who, upon the faith thereof, shall have received the bill for a valuable consideration.

SEC. 11. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill; a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

SEC. 12. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, or his refusal to accept such bill.

SEC. 13. Every person, upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted, or non-accepted, to the holder, shall be deemed to have accepted the same.

SEC. 14. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange drawn or indorsed within this territory, if payable without the limits of the United States, shall be ten per cent. upon the contents thereof; and if such bill be payable out of this territory, but within some state or territory of the United States, such rate of damages shall be five per cent. upon the contents thereof.

SEC. 15. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of giving notice of non-payment, but the holder of such bill shall be entitled to demand and receive lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given, and payment demanded.

SEC. 16. Nothing in this act shall apply to bills of exchange, promissory notes, or other negotiable instruments made or drawn before the passage of this act.

All laws and parts of laws in conflict herewith, be, and the same are hereby repealed.

PASSED, January 19th, 1863.

AN ACT

RELATING TO DEEDS.

- SECTION 1. All conveyances, &c., of real estate, or interest therein, to be by deed.
- “ 2. Requisites of a deed.
- “ 3. To bind a married woman, she must join in conveyance.
Her acknowledgement, how taken.
- “ 4. Deeds to be recorded.
Valid from date of record.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all conveyances of real estate, or of any interest therein, and all contracts creating or evidencing any incumbrance upon real estate shall be by deed.

SEC. 2. A deed shall be in writing, signed and sealed by the party bound thereby, witnessed by two witnesses, and acknowledged by the party making it before a judge of the supreme court, a judge of the probate court, a justice of the peace, or a notary public, or county auditor.

SEC. 3. A married woman shall not be bound by any deed affecting her own real estate, or releasing dower, unless she shall be joined in the conveyance by her husband; and shall, upon an examination by the officer taking the acknowledgment, separate and apart from her husband, acknowledge that she did voluntarily, of her own free will and without the fear of, or coercion from her husband, execute the deed; and the officer shall make known to her the contents of the deed, and shall certify that he has made known to her its contents, and examined her separate and apart from her husband as is above required.

SEC. 4. All deeds and mortgages shall be recorded in the office of the county auditor of the county where the land is situated, and shall be valid as against bona fide purchases from the date of their filing or recording in said office; and when so filed or recorded shall be notice to all the world.

PASSED, January 19th, 1863.

AN ACT

IN RELATION TO THE RECORDING OF TOWN PLATS.

- SECTION 1. Persons laying off towns shall record a plat, &c.
- “ 2. Any donation to societies, &c., in such plat, shall be considered as quit claim deed, &c.
- “ 3. Lots laid off in addition, shall be recorded, &c.
- “ 4. Persons offering such plat for record, to acknowledge the same, &c.
- “ 5. Streets, lanes and alleys, considered as highways.
Fines to be imposed for refusing to comply with requisition, &c.
- “ 6. When to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person or persons who may hereafter lay off any town within this territory, shall previous to the sale of any lots within such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a plat of said town, with the public grounds, (if any there be,) streets, lanes and alleys, with their respective widths properly marked, and the lots regularly numbered, and the size stated on said plat.

SEC. 2. Every donation or grant to the public, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town, or wherein such donation or grant may have been made, shall be considered, to all intents and purposes, as a quit claim deed to the said donee or donees, grantee or grantees, for his her or their use, for the purposes intended by the donor or donors, grantor or grantors, as aforesaid.

SEC. 3. Every person hereafter laying off any lots in addition to any town, shall, previous to the sale of such lots, have the same recorded under the like regulations as are provided for recording the original plat of said town, and thereafter the same shall be considered an addition thereto.

SEC. 4. Every person whose duty it may be to comply with the foregoing regulations, shall, at or before the time of offering such plat for record, acknowledge the same before the recorder, of the proper county, or any other officer who is authorized by law to take the acknowledgement of deeds, a certificate of which acknowledgment shall be by the officer taking the same, endorsed on or annexed to such plat and recorded therewith.

SEC. 5. All streets, lanes and alleys, laid off and recorded in accordance with the foregoing provisions, shall be considered, to all intents and purposes, public highways, and any person who may lay off

any town or any addition to any town in this territory, and neglect or refuse to comply with the requisitions aforesaid, shall forfeit and pay for the use of said town, for every month he may delay a compliance with the provisions of this act, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered by civil action, in the name of the treasurer of the county.

SEC. 6. This act shall take effect and be in force from and after its passage.

PASSED, Jan. 24th, 1863.

AN ACT

RELATIVE TO THE VACATION OF TOWN PLATS.

SECTION 1. Persons vacating lots, streets, alleys, &c., to petition county commissioners, &c.

Notice descriptive of property to be given, &c.

- " 2. Discretion with court, &c.
- " 3. Lots, &c., vacated, shall attach to adjoining lots, &c.
- " 4. Vacating lots, streets, &c., in incorporated towns.
Persons may petition trustees, &c.
- " 5. When laid off do not improve, may be vacated, &c.
- " 6. When to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person or body corporate interested in any town in this territory not incorporated, who may desire to vacate any lot, street, alley, common, or any part thereof, or may desire to vacate any public square, or part thereof, in any such town, it shall be lawful for any such person or corporation to petition the board of county commissioners for the proper county, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated, which petition shall be filed with the county auditor twenty days previous to the sitting of said court and notice of the pendency of said petition shall be given for the same space of time by written or printed notices set up in three of the most public places in said town, containing a description of the property to be vacated.

SEC. 2. Said court, if satisfied that the aforesaid notice has been given, may, in their discretion, vacate the same, with such conditions and restrictions as they may deem reasonable, and for the public good.

SEC. 3. The part so vacated, if it be a lot or lots, shall vest in the rightful owner, who may have the title thereof according to law; and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley; and all right or title thereto, shall vest in the person or persons owning the property on each side thereof, in equal proportions; *Provided*, The lots or grounds so bordering on such street or alley, have been sold by the original owner or owners of the soil; if, however, said original owner or owners possess such title to the lots or ground bordering said street or alley on one side only, the title to the same shall vest in the said owner or owners if the said court shall judge the same to be just and proper.

SEC. 4. In cases where any person interested in any incorporated town in this territory may desire to vacate any street, alley, lot or common, or any part thereof, it shall be lawful for such person to petition the trustees in like manner as persons interested in towns not incorporated are authorized to petition the board of county commissioners: and the same proceedings shall be had thereon before such trustees, or other body corporate having jurisdiction, as are authorized to be had before the board of county commissioners; and such trustees or other corporate body may determine on such application under the same restrictions and limitations as are contained in the foregoing provisions.

SEC. 5. In all cases where any person or persons have laid out, or shall hereafter lay out a town, or any addition to any town, and such town or addition does not improve, and such person or persons shall be the legal owner or owners of all the lots contained in such town or addition, such person or persons, or any other party or parties, who shall become the legal owner or owners thereof, may have such town or addition, or any part thereof, vacated in like manner as is hereinbefore provided for the vacation of lots, streets and alleys.

SEC. 6. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

TO REGULATE THE INTEREST OF MONEY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Ter-*

ritory of Washington, That the legal rate of interest shall be ten per centum per annum.

SEC. 2. Any rate of interest agreed upon by parties to a contract, specifying the same in writing, shall be valid and legal.

PASSED, January 19th, 1863.

AN ACT

TO FIX THE AGE OF MAJORITY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That males shall be deemed and taken to be of full age for all purposes at the age of twenty-one years and upwards; females shall be deemed and taken to be of full age at the age of eighteen years and upwards.

SEC. 2. All females married to a person of full age shall be deemed and taken to be of full age.

PASSED, January 19th, 1863.

AN ACT

RELATIVE TO ESTRAYS.

- SECTION 1. Person taking up stray animal, to notify owner.
- “ 2. When estray may be taken up.
- “ 3. If owner unknown, notice how given.
- “ 4. Appraisal of estray, when and how made.
It. to be returned to county auditor.
 County auditor to record, &c.
- “ 5. Owner may have stray restored within one year, on paying charges.
- “ 6. If owner and taker-up cannot agree upon amount of charges, a justice shall settle same.
 Appeal from justice.
- “ 7. Sale of estray.
 Notice of sale.
 Taker-up may bid thereat.
 Fees of constable selling.
 One-half of remaining proceeds to go to school fund.
 The other to taker-up.

- SECTION 8. Penalty for taking stray without consent of, or paying, taker-up.
 “ 9. Penalty for removing stray out of county where taken up, and for neglect to perform duties required by this act.
 “ 10. Conflicting acts repealed.
 “ 11. Act, when to take effect.
 “ 12. Penalties.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person taking up any stray animal shall, within ten days thereafter, notify the owner thereof, if to him known, and request such owner to pay all reasonable charges and take such stray away.

SEC. 2. Any person finding an animal, known to be an estray, upon the lands owned or occupied by such person, may, after three months, take up such animal as an estray, or any animal in such a condition as to require feed to preserve its life, may be taken up at any time.

SEC. 3. If the owner of any stray be unknown, the taker-up shall, within ten days after the taking up of the same, post up written notices, (giving a description of the same, describing the marks and brands, natural or artificial, as near as practicable, the name and residence of the taker-up, and the time at which the same was taken up,) in three of the most public places in the county, one of which shall be posted at the door of the court house or auditor's office in said county.

SEC. 4. Every taker-up of a stray or strays, shall, within one month after taking up the same, procure an appraisal thereof, by having two disinterested persons, householders and residents in the county where such stray or strays are taken up, to value and appraise the same, and make return of such valuation, together with the kind and description, marks and brands, natural or artificial, of such stray or strays, to the auditor of the county in which the same may be, which return must be sworn to by at least one of said appraisers, before some person legally authorized to administer an oath, and subscribed to by both, and a certificate of such oath be attached to said return and filed with the same; and the auditor of said county shall enter in a book for that purpose, the name of the taker-up of such stray or strays, together with the description given of the same, the appraisers' value, and the time when taken up, which shall be kept for the inspection of the public.

SEC. 5. If the owner or any person entitled to the possession of any stray, shall appear at any time within one year after the notice is filed with the clerk as aforesaid, and make out his right thereto, he shall

be entitled to the possession and ownership of such stray, upon paying all lawful charges which have been incurred in relation to the same.

SEC. 6. If the owner and the taker-up of any stray cannot agree upon the amount of such charges, or for the use of any such stray, either party may make application to any justice of the peace of the county where such stray was taken up, to settle the same, and the party making such application shall give notice thereof to the other party, and if any amount be found due to the taker-up by the said justice, over the value of the use of such stray, the same shall be a lien on said stray until paid by the owner, together with the cost of such adjudication, which if not paid, said justice may enter up judgment and issue execution for, commanding the sale of such stray to meet such debt and cost, as in any other judgments for debt: *Provided*, That only such stray can be made liable for such debt and costs. *Provided*, That either party shall have the same right to appeal to the district court as in other cases.

SEC. 7. If the owner or any person entitled to the possession of any stray, shall not appear and make out his title thereto, and pay the charges thereon, within one year from the time when the notice is filed with the county auditor, as provided for in the fourth section of this act, such stray shall be sold at the request of the taker-up, by any constable of the county, at public auction, upon first giving public notice thereof in writing, by posting up the same in three of the most public places in the precinct where such stray may have been taken up, at least ten days before such sale; and the taker-up may bid therefor at such sale, and after deducting all the lawful charges of the taker-up, as aforesaid, and the fees of the constable, which shall be the same as a sale on an execution, one-half of the remaining proceeds of such sale shall be deposited in the treasury of the county, to be applied to the common school fund of said county, the other half shall belong to the taker-up.

SEC. 8. If any person shall, without the consent of the taker-up, take away any stray taken up pursuant to the provisions of this act, without first paying all the lawful charges incurred in relation to the same, he shall be liable to the taker-up for the value of such stray.

SEC. 9. If any taker-up of a stray shall neglect to cause the same to be advertised, or a notice thereof to be posted up, or if he shall neglect to procure the appraisal of any stray which shall be of the value of five dollars or more, or if he shall move or cause the same to be moved beyond the bounds of the county where taken up, or if he shall neglect to perform any of the duties required of him by this act, he shall be precluded from acquiring any right of property in such stray by the

provisions of this act, or receiving any damages or charges for keeping the same, and shall forfeit and pay into the county treasury a sum equal to the value of the stray, to be sued for and recovered by the county treasurer in the name of the county.

SEC. 10. All acts and parts of acts conflicting with this act, be and the same are hereby repealed.

SEC. 11. This act to take effect and be in force from and after its passage.

PENALTIES.

SEC. 12. If the taker-up of estray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and willfully violate any of the provisions of the law regulating the taking up of estrays, such person, so offending, shall be fined in any sum not exceeding five hundred dollars, and not less than double the value of such estray property.

PASSED, January 19th, 1863.

AN ACT

RELATIVE TO UNCLAIMED PROPERTY, AND LOST MONEY OR GOODS.

- SECTION 1. Consignee to keep a description of property consigned.
- “ 2. Owner to be notified when property is not consigned.
- “ 3. Property not taken away in twelve months may be sold.
- “ 4. Notice to be given before sale of property.
- “ 5. Duty of person in possession, when property is not taken by the owner within sixty days.
- “ 6. Duty of the justice upon certificate, as above, being filed with him.
- “ 7. Constable to sell such property.
- “ 8. Constable's return of sale of such property.
- “ 9. Disposition of the proceeds of such sale.
- “ 10. County treasurer to make entry of amount received, and file the justice's statement.
- “ 11. Restitution to be made within five years.
- “ 12. Moneys not claimed within five years belong to the county.
- “ 13. Disposition of property of a perishable kind.
- “ 14. Fees of justices and constables under the provisions of this act.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That whenever any personal property shall be con-

signed to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of reception thereof.

SEC. 2. If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded or disposed of according to directions received of such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him, and deposited in a post office, of the reception of such property.

SEC. 3. If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell, the same, in the manner provided in this chapter.

SEC. 4. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence, or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the territory; the last publication of such notice shall be at least eighteen days previous to the time of sale.

SEC. 5. If the owner or person entitled to such property shall not take the same away, and pay the charges thereon, after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown.

SEC. 6. Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order, under his hand, that the property therein described be

sold by any constable of the precinct where the same shall be, at public auction.

SEC. 7. It shall be the duty of such constable receiving such inventory and order, to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction, to the highest bidder, in the same manner as provided by law for sales under execution from justice's courts.

SEC. 8. Upon completing the sale, the constable making the same shall endorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of sale, after deducting his fees.

SEC. 9. From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a rateable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person.

SEC. 10. The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement, so delivered to him by the justice.

SEC. 11. If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him.

SEC. 12. If the amount so deposited with any county treasurer shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and shall be applied to the common school fund of said county.

SEC. 13. Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, the sale to be conducted, and the proceeds of the same to be applied in the manner before provided in this chapter: *Provided*, That any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section six of this chapter.

SEC. 14. The fees allowed to any justice of the peace, under the provisions of this chapter, shall be three dollars for each day's service; and to any constable the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property.

LOST MONEY AND GOODS.

SEC. 15. If any person shall find any money or goods, of the value of five dollars or more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice thereof, in writing, to the clerk of the board of county commissioners, of the county in which such property was found, and shall, also, within said five days, cause a notice thereof to be posted up in two public places in said county.

SEC. 16. Every finder of lost goods of the value of ten dollars or more, shall, in addition to the requirements in the preceding section, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein, and if there be none, then such notice shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same, who may be entitled thereto, he shall, within two months after finding such goods, and before using the same to their injury, procure an appraisal thereof, by a justice of the peace of his county, which appraisal shall be certified to by such justice, and filed in the office of the clerk of the board of the county commissioners of such county.

SEC. 17. If the owner of such lost money or goods appear within one year after notice given to the clerk as aforesaid, and shall make out his right thereto, he shall have restitution of the same, or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble.

SEC. 18. If no owner shall appear within one year, then the finder of such lost money or goods shall pay one-half the value thereof, after deducting all legal charges, to the treasurer of the county, for school purposes; and in case such finder shall neglect to pay the same, on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer, in the name of the county for school purposes.

SEC. 19. If any finder of lost money or goods, of the value of five dollars or upwards, shall neglect to give notice of the same, and otherwise to comply with the provisions of this chapter, he shall be liable for

the full value of such money or goods, one-half to the use of the county for school purposes, and the other half to the person who shall sue for the same, and shall also be responsible to the owner for such lost money or goods.

PASSED, January 19th, 1863.

AN ACT

TO REGULATE PEDDLING BOATS.

- SECTION 1. No boat or scow for trade, &c., to be located or moored, without consent of proper authorities.
- “ 2. Owners of banks of rivers, &c., to have right of action.
- “ 3. Not to be construed to extend to Puget Sound or sea coast.
- “ 4. Suit how instituted.
- “ 5. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall not be lawful for any boat, scow, or other floating craft, to locate, in any of the harbors or banks of the rivers of this territory, for the purpose of trade or keeping a grocery or eating house, or for the transaction of any other business than that of navigation and transportation of goods and passengers, without the consent of the proper authorities of harbors in which they may be moored, or to the owners of the land to which they may be attached: *Provided*, Nothing in this act shall be construed to extend to any sea-going vessel.

SEC. 2. All owners of banks of rivers, bays, ports and sounds within this territory, in absence of corporations, shall have the same actions at law to protect his banks against the above named boats and other water crafts, that are given to protect his possession and enjoyment of other portions of his land.

SEC. 3. That nothing in this act shall be so construed as to prohibit the trade now pursued upon Puget Sound, or the sea coast of the territory.

SEC. 4. Suits may be brought against the owners of said boats without stating their names, if unknown to the plaintiff, and service shall be made upon the owners or persons in charge of such boats, and writs of attachment may issue as in civil cases.

SEC. 5. This act shall take effect and be in force from and after its passage.

PASSED, January 19th, 1863.

AN ACT.

IN RELATION TO SCOWS, BOATS, SKIFFS, CANOES AND OTHER WATER
CRAFTS FOUND ADRIFT.

- SECTION 1. Owner of boats found adrift to be notified.
- “ 2. How notice to be given, and what it shall contain.
- “ 3. Where notice is not given personally.
Proceeding when taker-up is traveling.
- “ 4. Compensation to person taking up.
When forfeited.
- “ 5. Disagreement of parties, how settled.
Owner to have possession on giving bond.
- “ 6. Taker-up liable for use of boat, &c.
- “ 7. When craft is not claimed, to be sold; how.
- “ 8. This act not to apply to property of Indians.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington* That any person taking up any scow, boat, skiffs canoe, or other water craft, found adrift, and out of the custody of the owner, in any stream or body of water, within, or bordering upon this territory, shall forthwith notify the owner thereof, if to him known, or if upon reasonable inquiry he can ascertain the name and residence of the owner, and request such owner to pay all reasonable charges, and take such water craft away.

SEC. 2. Such notice shall be given personally, or in writing; if in writing, it shall be served upon the owner, or may be sent by mail to the post office where such owner usually receives his letters. Such notice shall inform the party where the scow, boat, skiff, canoe, or other water craft was taken up, and where it may be found, and what amount the taker-up or finder demands for his charges.

SEC. 3. In all cases where notice is not given personally, it shall be the duty of the taker-up to post up at the post office nearest the place where such scow, boat, skiff, canoe, or other water craft may be taken up, a written notice of the taking up of such water craft, which shall contain a description of the same, with the name, if any is painted thereon, also the place where taken up, the place where the property may be found, and the charge for taking the same up. If the taker-up is traveling upon such stream or body of water, such notice shall be posted up at the first post office he shall pass after the taking up; and in all cases, he shall at the time when, and place where, he posts up such notice, also mail a copy of such notice, directed to the post master of each post office on said stream or body of water, and within fifty miles of the place where such water craft is taken up.

SEC. 4. Every person taking up any scow, boat, skiff, canoe, or other water craft, so found adrift, and giving the notice herein required, shall be entitled to receive from the owner claiming the property, a reasonable compensation for his time, services, expenses, and risk in taking up said property, and taking care of the same, to be settled by agreement between the parties. In case he has not, within ten days after the taking up, substantially complied with the provisions of this act, in giving the notice, he shall be entitled to no compensation, but shall be liable to all damages the owner may have suffered, and be also liable to the owner for the value of the use of said water craft, from the time of taking it up until the same is delivered to the owner.

SEC. 5. In case the parties cannot agree on the amount to be paid the taker-up, or the ownership, and the sum claimed is less than one hundred dollars, the owner may file a complaint, setting out the facts, and the justice, on hearing, shall decide the same with a jury, or not, and in the same manner as is provided in ordinary civil actions before a justice of the peace. If the amount claimed by the taker-up is more than one hundred dollars, the owner shall file his complaint in the district court of the county where the property is, and trial shall be had as in other civil actions; but if the taker-up claims more than one hundred dollars, and a less amount is awarded him, he shall be liable to all the costs in the district court; and in all cases where the taker-up shall recover a less amount than has been tendered him by the owner or claimant, previous to filing his complaint, he shall pay the costs before the justice or in the district court: *Provided*, That in all cases the owner, after filing his complaint before a justice of the peace, shall be entitled to the possession of such water craft, upon giving bond, with security to the satisfaction of the justice, in double the amount claimed by the taker-up. When the complaint is filed in the district court, the clerk thereof shall approve the security of the bond. The bond shall be conditioned to pay such costs as shall be awarded to the finder or taker-up of such scow, boat, skiff, canoe, or other water craft.

SEC. 6. In case the taker-up shall use the scow, boat, skiff, canoe or other water craft, more than is necessary to put it into a place of safety, he shall be liable to the owner for such use, and for all damage; and in case it shall suffer injury from his neglect to take suitable care of it, he shall be liable to the owner for all damage.

SEC. 7. In case such water craft is of less value than one hundred dollars, and is not claimed within three months, the taker-up may apply to a justice of the peace of the precinct where the property is, who,

upon being satisfied that due notice has been given, and that the owner cannot, with reasonable diligence be found, shall order the scow, boat, skiff, canoe, or other water craft to be sold, and after paying the taker-up such sum as he shall be entitled to, and the costs, the balance shall be paid the county treasurer as is provided in the case of the sale of estrays. In case the scow, boat, skiff, canoe, or other water craft, exceeds one hundred dollars, and is not claimed within six months, application shall be made to the district court of the county, and the same proceeding shall be thereupon had. All sales made under this section shall be conducted as sales of personal property on execution.

SEC. 8. No part of this act shall be construed as applying to Indians, or to the property of Indians.

PASSED, January 19th, 1863.

AN ACT

RELATIVE TO THE TAKING UP OF DRIFT SAW-LOGS, AND OTHER TIMBER OF VALUE.

- SECTION 1. Person taking up saw logs, &c., found adrift, to what part, &c., thereof entitled.
- Owner when not liable to pay for taking up.
- “ 2. Estray saw logs, &c., found lodged on a bar, when not to be taken up.
- “ 3. Saw logs, &c., taken up, not to be disposed of within a certain time.
- “ 4. Owner, upon certain conditions, entitled to his property.
- “ 5. Penalty for violation of this act.
- “ 6. Act when to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person taking up any saw logs, hewn, or other timbers of value, found adrift, and estrayed from the boom or fastening of the owner; and the said logs or timbers shall be found upon any sound, bay, or river, within this territory, shall be entitled to one-fourth part or value thereof: *Provided,* That nothing herein shall be so construed as to make any person liable to pay for the taking up of any logs or timber, which he may have marked and turned loose for the purpose of driving; and notice of the same hath been duly given to the settlers in the vicinity, or on the river below.

SEC. 2. It shall not be lawful for any person in this territory to take up any estray saw logs, hewn, or other timbers of value, (as provided for in the foregoing section,) which may be found lodged on a bar, bank, or in a drift, or dam, so as the same be stationery: *Provided*, The same has not been so lodged for fifteen or more days.

SEC. 3. Any person taking up logs or timber of value under the provisions of this act, shall not be at liberty to dispose thereof for the space of twenty-five days from the time the same be so taken up; and there being no owner found claiming said logs or timber, during said time.

SEC. 4. The owner of any estray logs or timbers that shall be taken up under the provisions of this act shall, upon proof of the same being his, and paying one-fourth of the value thereof to the taker-up, shall be entitled to his property.

SEC. 5. Any person violating the provisions of this act, shall, upon proof thereof before any acting justice of the peace for this territory, be subject to a fine of not less than ten, nor over one hundred dollars; the same to be collected in the name of the territory and for the use of the county thereof.

SEC. 6. This act to take effect and be in force from and after it, passage.

PASSED, Jan. 24th, 1863.

AN ACT

TO PREVENT THE DEPRECIATION OF UNITED STATES LEGAL TENDER NOTES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall be unlawful for any person, or persons, by agent or otherwise, to buy from, sell to, or exchange with any person or persons, United States legal tender notes for less sums of money than those expressed in said notes.

SEC. 2. It shall be unlawful for any person or persons in business or trade, by agent or otherwise, to refuse to receive United States legal tender notes for any goods, chattels, or articles of merchandise exposed for sale, or which may be offered for sale in the course of business, or to

receive them in the course of business, for a less amount than the sums of money expressed in said notes.

SEC. 3. Every person convicted of a violation of any of the provisions of this act, shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail for a term not exceeding six months, at the discretion of the court.

SEC. 4. This act shall take effect and be in force from and after its passage.

PASSED, January 6th, 1863.

AN ACT

TO PREVENT THE SALE OF ADULTERATED LIQUORS.

- SECTION 1. County commissioners to appoint inspectors of liquors, when.
 Duty of inspectors.
- " 2. Inspectors to be sworn.
 Penalty for passing and approving liquors obviously adulterated, &c.
- " 3. Qualifications and bond of inspectors.
- " 4. Penalty for selling liquors in quantities less than one gallon, without having them inspected, &c.
- " 5. Compensation of inspectors to be paid by owners.
- " 6. Wines, champagnes and cider comprehended within the term liquors.
- " 7. Act, when to take effect.

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 each county to appoint at least one suitable person for each village or neighborhood, where spirituous liquors are sold in less quantities than a gallon, whose duty it shall be to inspect all liquors to be sold in less quantities than a gallon. Said inspector shall mark and approve all such liquors submitted to him, if he shall find them pure and free from adulteration; but if he shall believe that any liquors so submitted to him have been adulterated in any manner, he shall retain possession of them, and may, at the request of the owner, submit it to chemical proof, and if found impure or adulterated, said liquor shall be destroyed by said inspector.

SEC. 2. All inspectors under this act shall be duly sworn to a true and faithful performance of their duty, and should any inspector pass and approve any liquors that are obviously impure and adulterated, he shall be deemed guilty of a misdemeanor, and on conviction thereof.

shall be fined in any sum not exceeding fifty dollars, for each offense, and shall forfeit his appointment as inspector.

SEC. 3. No person shall be appointed inspector unless he shall be possessed of sufficient property over and above such as is exempt from execution, to pay all fines under this act, or shall give bond to the commissioners in the sum of five hundred dollars, for the faithful performance of all the requirements of this act.

SEC. 4. If any person in this territory shall sell, in quantities less than one gallon, any spirituous liquors, without first having them inspected and approved by the inspector referred to in the first section of this act, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned in the county jail not more than six months, and may be fined not more than five hundred dollars, according to the verdict of the jury.

SEC. 5. The inspector shall be entitled to fifty cents per barrel for all liquors inspected in barrels, and twelve and a half cents per dozen for all liquors bottled, to be paid by the owners of the liquors.

SEC. 6. All wines, champagnes and cider, shall be comprehended within the term liquors for the purposes of this act.

SEC. 7. This act to be in force from and after its passage.

PASSED, January 19th, 1863.

AN ACT

TO PROVIDE AGAINST DANGEROUS AND VICIOUS CATTLE.

- SECTION 1. Owners of dangerous cattle liable; when.
 " 2. Person killing such cattle not liable; when.
 " 3. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person or persons who own or are owners of dangerous or vicious cattle, which animal or animals are known to endanger the safety of persons traveling through neighborhoods, by their dangerous and vicious disposition, such person or persons having twelve hours' notice of the dangerous disposition of such animal or animals, and shall neglect or refuse effectually to prevent such cattle from disturbing the peace and safety of the neighborhood where such animals

may range, such owner or owners shall be liable to a fine of not less than five (5) dollars, nor more than fifty (50) dollars, which may be recovered before any justice of the peace of the county, with costs of suit, for the use of the school fund.

SEC. 2. That any person who should, in defense of himself or others, kill one or more such animals, he shall not be liable to any damage for any such act.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED, January 19th, 1863.

AN ACT

TO PREVENT PERSONS FROM ENTICING SEAMEN TO DESERT.

SECTION 1. Penalty for enticing seamen to desert.

“ 2. Penalty for harboring or secreting a seaman, with a view to persuade, &c., his desertion.

“ 3. When to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* If any person or persons shall entice any seaman to desert from any vessel belonging to any citizen or citizens of the United States or any foreign country, while lying within the waters of this territory, and on board of which said seaman shall have shipped for a term or voyage unexpired at the time of such enticement, such person or persons shall be deemed guilty of a misdemeanor, and on conviction by any court of competent jurisdiction, shall be sentenced for the first offense, to imprisonment in the county jail not less than two months, nor more than six months, or to a fine not less than fifty dollars nor more than five hundred dollars; and for each subsequent offense, to imprisonment not less than six months, nor more than two years, or a fine of not less than five hundred dollars, nor more than one thousand.

SEC. 2. Any person or persons who shall harbor or secrete any seaman shipped as aforesaid, knowing him to be so shipped, and with a view to persuade or enable said seaman to desert, shall be deemed guilty of a misdemeanor, and punished as provided in the first section of this act.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

FOR THE SUPPRESSION OF HOUSES OF ILL-FAME.

- SECTION 1. Penalty for keeping houses of ill-fame.
- “ 2. Remedy of lessor against a lessee convicted of keeping such house.
- “ 3. Power of justice of the peace, upon complaint made.
- “ 4. Costs of prosecution, when to be paid by person prosecuted.
Penalty for failure to do so.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That every person who shall keep a house of ill-fame in this territory, resorted to for the purposes of prostitution or lewdness, or who shall reside in such house for the purposes aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in a common jail for a term not exceeding six months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment, at the discretion of the court.

SEC. 2. Whenever the lessee of any house shall be convicted of the offense of keeping such house of ill-fame as aforesaid, the lease or contract for letting such house shall, at the option of the lessor, become void, and such lessor shall thereupon have the like remedy to recover the possession of such house, as is provided against a tenant holding over after the termination of his lease.

SEC. 3. Every justice of the peace may, on the complaint of any citizen of the county, require sureties of the peace and good behaviour for any person who shall be guilty of keeping or maintaining houses reputed to be houses of bawdry and ill-fame: and every person being so ordered to find sureties of the peace and good behaviour, who shall neglect or refuse to comply with such order, may, by said justice, be committed to the common jail in the county where the offense was committed for a term not exceeding thirty days; and the bond required, as aforesaid, shall be filed with the county auditor of the county where the offense was committed, and from said order the accused shall have the right to appeal to the next district court in the county within which the offense was committed.

SEC. 4. When any person, prosecuted under the next preceding section of this act, shall be required to procure sureties of the peace and good behaviour, such person shall pay costs of prosecution; and on failure so to do, shall be imprisoned in the county jail, at the discretion of the court, having cognizance thereof, until such costs be paid and satisfied.

PASSED, January 23, 1863.

AN ACT

TO PROVIDE FOR THE COLLECTION OF TERRITORIAL AND COUNTY REVENUE.

ARTICLE I.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That, in the counties of Boise, Idaho, Nez Perce, Shoshone, Missoula, Stevens and Walla Walla, there shall be levied and collected a quarterly yearly license tax as follows:*

1st—From each proprietor or keeper of a billiard table, not kept for the exclusive use of the owner or his family, for each table, fifteen dollars per quarter. For a nine or ten pin or bowling alley, five dollars for each alley; license to be granted for a term not less than three months: *Provided*, That this section shall not apply to any license issued by any incorporated city.

2d—All tavern or inn keepers, or keepers of saloons, and all persons who may sell or dispose of any spirituous, malt, or fermented liquors, or wines, in less quantities than one quart, shall, before the transaction of any such business, take out a license or licenses, from the county auditor as prescribed in this act, and make payment therefor as follows:

Those whose average monthly sales amount to one thousand dollars or more shall constitute the first class. Five hundred dollars and not over one thousand dollars, the second class. One hundred dollars, and not exceeding five hundred dollars, the third class; and all monthly sales less than one hundred dollars, the fourth class. The license to be paid for the first class shall be fifty dollars per month: for the second class, thirty-five dollars per month, and for the third class, twenty dollars per month, and for the fourth class, ten dollars per month, and all licenses granted by this act, shall be granted for three, six or twelve months, at the option of the party applying for such licenses.

SEC. 2. On the party paying to the county treasurer the amount of money for license in proportion to the amount of business as specified in this article, the treasurer shall thereupon execute and deliver to such party a receipt therefor, in which he shall specify the amount of money paid, by whom paid, and the town, city, or particular locality of the business establishment; and upon the presentation of said receipt to the county auditor, he shall issue a license to the party under the seal of his office, in which license shall be stated the kind of business authorized

to be transacted; and the town, city, or locality of such business establishment. The auditor shall thereupon charge the county treasurer with the amount of money specified in said receipt, in a book kept for that purpose, and shall file said receipt as a voucher in his office. The auditor shall be entitled to demand and receive one dollar for each license issued by him under this act, to be collected from the person receiving such license, and in no case shall any other fee be allowed to auditors for any service connected with the issuance of licenses, as provided in this act.

SEC. 3. All moneys received and paid into the county treasury for licenses, as prescribed in this act, shall be used and appropriated as other county funds for county purposes.

SEC. 4. The sheriffs or tax collectors of the several counties specified in this act, shall receive ten per cent. on all moneys collected and paid over by them according to law. The assessor and his deputies, each, shall be allowed not more than six dollars per diem for his services, whilst actually engaged in the assessment of the property of his county: the per diem to be regulated by the board of county commissioners of his county: *Provided*, The assessor shall not receive a per diem while engaged in the collection of poll taxes. The county treasurer shall be allowed four per cent. on all moneys received and disbursed by him: *Provided*, That nothing in this act shall be so construed as to allow any officer a percentage for both receiving and disbursing. The county treasurers of each county shall also be allowed the reasonable cost of conveying moneys from the county treasury to the territorial treasury and shall so forward moneys at the time prescribed by law by such conveyance as the territorial treasurer shall designate, and it shall be the duty of the territorial treasurer so to designate the manner of forwarding by responsible "express" conveyance, at least one month before the period prescribed by law for making settlement with the territorial auditor and treasurer.

SEC. 5. The amount allowed and paid to the sheriffs or tax collectors, assessors, and auditors, while engaged in collecting territorial and county revenue in the counties herein named, shall be apportioned by the county auditor in proportion to the amount received into the county treasury for territorial purposes, and charged to the territory and county ratably in said proportions: and the county auditor shall forward to the territorial auditor a certified statement of the amount so apportioned against the territory, and the territorial auditor shall credit the county treasurer therewith.

SEC. 6. Any person or persons, who shall keep a billiard table, bowling alley, or who shall sell spirituous, malt or fermented liquors in less quantities than one quart without first obtaining a license as provided by law, shall be declared guilty of a misdemeanor, and shall be fined in any sum not less than ten nor more than fifty dollars, for each and every offense; and upon complaint by any person, being made before a justice of the peace of the county, or before any court having jurisdiction, of any violation of the provisions of this act, the county commissioners, by attorney, shall prosecute the case in an action at law, in the name of the county, and upon conviction of the party or parties defendant, he or they shall pay, in addition to the fine imposed by this section, all costs and expenses of the suit.

SEC. 7. Each county or territorial auditor shall, whenever they issue any warrants, scrip, or other evidence of indebtedness, against the territory, or any county in the territory, number each separate piece issued, and shall date and register the same according to priority, and shall keep a correct account of all warrants and scrip issued by them.

SEC. 8. No territorial or county treasurer shall pay any warrant or scrip drawn on the treasury, except in the regular order of the number, and issue of said warrant or scrip, and no money shall be paid out of the territorial or county treasury, upon any warrant or scrip, in advance of any other issued, which is prior in date, number and registration.

SEC. 9. Any territorial or county auditor or treasurer, who shall issue or pay any warrant or scrip contrary to the provisions of this act, shall, upon conviction thereof, forfeit for each offense, a sum double the amount of the warrant so issued or paid, with all the costs of suit, one half of which sum shall be paid to the owner or holder of the warrant or scrip, and one half to the county for county purposes: *Provided*, That sections five, six, seven, eight and nine, of article first in this act, shall apply to all the counties in this territory.

ARTICLE II.

SEC. 1. Each male inhabitant of this territory over twenty-one years of age, and under fifty years of age, and not by law exempt from poll tax, shall pay a poll tax for the use of the territory and county, of two dollars: *Provided*, The same is paid between the first Monday in March and the first Monday in August; one half of the net proceeds of the poll tax shall be paid into the county treasury for county purposes,

and the other half of the net proceeds to be paid into the county treasury, as other territorial revenue, for territorial purposes; and as such, be paid into the territorial treasury in the manner prescribed by law. But if said poll tax is not paid prior to the first Monday in August, it shall be three dollars; seventy-five cents of the extra dollar, shall be paid to the county treasurer for county purposes, and twenty-five cents be retained by the assessor as fees, in addition to his ten per cent. on the first two dollars: *Provided*, The assessor shall not receive more than ten per cent. on the amount of poll tax collected by him between the first Monday in March and the first Monday in August, and the collection of all poll taxes shall be enforced by the assessor, whether the name of the party be listed or not.

SEC. 2. No person shall be deemed or held to have paid his poll tax, unless he is able to exhibit a receipt therefor, issued by the territorial auditor, or otherwise prove the payment of the same.

SEC. 3. The territorial auditor shall immediately, after the passage of this act, for the present year, (and thereafter before the first day of March in each year,) cause proper blank receipts for poll taxes to be printed, of a uniform appearance, (change the style each year,) and shall cause a number thereof equal to the probable number of inhabitants in each county liable to poll tax, to be forwarded to the county treasurer of each county, who shall sign and number them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose, and shall thereupon deliver them to the clerk of the board of equalization, who shall in turn likewise sign them, and make an entry thereof in a book to be kept by him for that purpose; whereupon the clerk of the board of equalization shall issue to the assessor so many of such executed receipts for poll tax as may be needed.

SEC. 4. No receipts for poll tax other than those mentioned in the third section of article two, of this act, shall be used or given for the payment of any such tax, and any assessor who shall receive any poll tax without delivering the proper receipt required by law, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, and by fine not less than one hundred nor more than one thousand dollars for each offense.

SEC. 5. Upon receiving such executed receipts from the clerk of the board of equalization, the officer authorized to collect the poll tax for the time being, shall give a receipt to said clerk for the same, and the said clerk shall immediately charge the same to the officers so receiving them. All such receipts delivered shall be filled out with the sum

of two dollars, and two dollars shall be charged to him for each one so delivered, and all such receipts delivered to the assessor after the first Monday in August, in each year, shall be filled out with the sum of three dollars, and said sum be charged to the assessor for each receipt so delivered.

SEC. 6. On the first Wednesday after the first Monday in August in each year, the treasurer, the assessor, and the clerk of the board of equalization of each county, shall attend at the office of the auditor, and make a settlement with the assessor for all such receipts received by him, and the assessor shall thereupon pay over to the county treasurer all moneys received by him for poll tax, less the amount of his per centage for collecting, and the amount already paid by him to the county treasurer, for which latter amount he shall exhibit proper vouchers; and the assessor shall deliver the receipts of the treasurer, or duplicates thereof, to the county auditor, and the clerk of the board of equalization shall also render to the auditor a statement of the amount of poll tax receipts charged against the assessor; the assessor and his bondsmen shall be held responsible for the payment to the county treasurer of all money received for poll tax and not paid over in the manner as prescribed in this act, and in default of any such payments required of the assessor, the board of county commissioners, by attorney, shall cause suit to be instituted against such defaulter and his sureties in like manner, and with the same penalties as provided for in suits against the sheriff, or tax collector and his sureties.

SEC. 7. On the last Saturday in each month the assessor and his deputies shall pay over to the county treasurer all moneys received by him or them for poll taxes for the territory and county, (deducting therefrom ten per cent. as his legal fees,) for which moneys the treasurer shall issue to the assessor duplicate receipts, one of which shall be filed with the auditor and the other retained by the assessor, and the board of equalization shall exact an additional bond from the assessor, with approved sureties, in such sums as the said board shall deem necessary to insure the faithful and prompt payment to the county treasurer of all moneys so received by such assessor, under the provisions of this act.

SEC. 8. To enforce the collection of poll taxes as provided in this act, the assessor may seize so much of any and every species of property, right, claim, or possession, whatever, claimed by any person liable to, and refusing or neglecting to pay his poll tax, or in the possession of, or due from any other person, and belonging to such person so refusing to pay such poll tax, as will be sufficient to pay such poll tax and costs of

seizure, and shall sell the same at any time or place, upon giving a verbal notice, one hour previous to such sale; and any person indebted to another, liable to poll tax, who shall neglect or refuse to pay the same, may pay the same for such other person, and deduct the amount thereof from such indebtedness; the assessor, after having deducted the poll tax for which such property was sold, and the necessary fees and costs of the sale, shall return the surplus of the proceeds to the owner of the property; a delivery of the property by the assessor to the purchaser at any such sale, shall be a sufficient title in the purchaser without the execution of a deed thereof by the assessor.

SEC. 9. On the Monday next preceding the first Monday in March, in each year, the assessor, the treasurer and the clerk of the board of equalization shall meet at the office of the county auditor, and then and there settle with the auditor for all poll tax receipts signed by the treasurer and delivered to the clerk; and the said clerk and his sureties shall be responsible for all such poll tax receipts delivered to him, which he shall not then return or be able to account for with receipts or vouchers from the assessor, and the assessor shall then pay over the amount not before accounted for, of all poll tax receipts by him received during the year, and not then and there returned, and all the poll tax receipts returned by the assessor and the clerk of the board of equalization, shall be transmitted by the county auditor with his annexed annual statement, to the territorial auditor, and no such poll tax receipts shall be valid for the coming year, after the first Monday in March.

SEC. 10. The county auditor shall, on the first Monday in each month, transmit to the territorial auditor a certified statement of the amount of poll taxes paid over to the county treasurer of his county, for Territorial and county purposes, during the preceding month, and he shall deliver a duplicate of such statement to the county treasurer; and on the final settlement in the last Monday in February, the county auditor shall, immediately after the conclusion thereof, transmit a certified statement to the territorial auditor, stating therein the number of all receipts for poll tax issued by the county treasurer to the clerk of the board of equalization, and also, the number of such receipts issued by the said clerk to the assessor, and also the number of receipts returned by the assessor, and also the number of receipts then transmitted to the territorial auditor.

SEC. 11. Of the moneys collected for poll taxes under this act, one and one half per cent. shall be paid to the county auditor, and one and one half per cent. to the clerk of the board of equalization: *Pro-*

vided, No other fees shall be allowed to either the said auditor or clerk for any services connected therewith.

SEC. 12. Any person or persons who shall pass, sell, or transfer, or who shall forge or fraudulently issue any receipt or receipts for poll tax, contrary to the spirit and intention of this act, shall be deemed guilty of a fraud, and on conviction thereof, shall be punished by imprisonment in the penitentiary for any period not less than one nor more than two years.

SEC. 13. The act entitled an act relative to the collection of a poll tax, passed January 29, 1862, is hereby repealed; and all acts and parts of acts, so far as the same are in conflict with the provisions of this act, when applied to the counties herein named, are hereby repealed.

PASSED, January 28th, 1863.

AN ACT

ESTABLISHING A COMMON SCHOOL SYSTEM FOR THE TERRITORY OF WASHINGTON.

CHAPTER I.

SCHOOL FUND.

- SECTION 1. School fund, how provided.
Annual division of interest.
- “ 2. Duty of county commissioners to levy annual tax for school purposes.
Appropriation thereof.
- “ 3. Fines, &c., to be added, to be appropriated to school fund.
- “ 4. County auditor to report yearly tax, and clerk of district court, and justice of the peace, to report fines imposed, &c.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the principal of all moneys accruing to this territory from the sale of any land heretofore given, or which may hereafter be given by the congress of the United States for school purposes, shall constitute an irreducible fund; the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of children or youth in each between the

ages of four, and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

SEC. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to lay an annual tax of two mills on a dollar, on all taxable property of the county, as shown by the assessment rolls made by the county assessor for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect the said tax in the same manner as the other county tax is collected, and the said money so collected shall be paid over to the county treasurer, to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed; neither shall it be lawful for any county treasurer to receive county orders in payment for county school tax, nor to pay out any school money on county orders.

SEC. 3. For the further support of common schools, there shall be set apart by the county treasurer, all moneys paid into the county treasury, arising from all fines for a breach of any law regulating license for the sale of intoxicating liquors, or for the keeping of bowling alleys or billiard saloons, or of any penal laws of this territory. Such moneys shall be paid into the county treasury, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

SEC. 4. That it shall be the duty of the county auditor of each county, to report to the county superintendent of common schools, at least twenty days' before the first Friday in November of each year, the amount of school tax levied in their respective counties for that year, and that it be the duty of the clerk of the district court, at the close of every term thereof, to report to the superintendent the amount of fines imposed during said term of court; and that it be the duty of all justices of the peace to report to the superintendent, at least twenty days' before the first Friday in November of each year, the amount of fines imposed and collected by them for the past year.

CHAPTER II.

COUNTY SUPERINTENDENTS.

- SECTION 1. Election, and term of office of county superintendents.
 " 2. To qualify.
 Oath to be filed.
 " 3. To divide county into districts.

- SECTION 3. Keep a map, and lay off new and divide old districts.
- “ 4. Notice of formation of district and proceedings thereon.
- “ 5. Superintendent, when to be at county seat to examine teachers, &c.
To give notice.
His compensation.
- “ 6. Examination of teachers.
Certificates to be given, and may be revoked, when.
- “ 7. Superintendent to visit schools, yearly.
His duty as a visitor.
- “ 8. Annual report of superintendent.
- “ 9. Annual apportionment of school fund to be made, when.
Notice thereof to be given.
- “ 10. Distribution of school fund, how made.
- “ 11. Superintendent to collect fines, take care of lands, and prosecute for trespass thereon.
- “ 12. Trespass on school lands indictable.
Penalty.
- “ 13. Compensation of superintendent.

SEC. 1. There shall be elected by the legal voters of the respective counties, at the annual election, a county superintendent of common schools for each county, who shall hold his office for the term of three years; and in case of a vacancy occurring in said office by removal, death, or otherwise, the county commissioners of each county, be, and they are hereby authorized and directed to appoint a county school superintendent in all cases of vacancies in their respective counties, who shall hold his office, and perform the duties of county school superintendent until his successor is elected and qualified according to law. The superintendent so appointed is hereby authorized and directed to receive district reports of scholars, &c, as by law required, and make the district apportionment of funds for the present year, and the county treasurer is hereby directed to pay the funds so apportioned, upon the order of said superintendent.

SEC. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath faithfully to discharge the duties of his office, and to the best of his ability promote the interest of education within his county; which oath shall be in writing, and placed on file in the county clerk's office.

SEC. 3. It shall be the duty of the superintendent to district the whole county, so that every resident of the county shall be included in some district; and to divide such portion of his county as shall be inhabited into convenient school districts; to define the boundaries and numbers; and to prepare and keep in his office a map of the districts of the county, upon which the lines and boundaries of each district shall

be clearly defined; he shall lay off new districts, or divide old ones, when the public good shall require it.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district, who shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants fail to attend in sufficient number to do business as hereafter directed, notice may be renewed at such times as may be thought proper.

SEC. 5. It shall be the duty of the county superintendent to be at the county seat on the third Friday and Saturday of May and November of each year, for the purpose of examining teachers; and said superintendent shall give ten days' public notice of the same, by posting up hand bills or otherwise. And any district applying on different days for the transaction of such business, shall pay the superintendent a reasonable compensation for his trouble, not exceeding the sum of two dollars, and all teachers examined on different days shall pay to the superintendent the sum of one dollar.

SEC. 6. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county; he shall examine them in orthography, reading, writing, arithmetic, English grammar and geography; and if he be of the opinion that the person examined is competent to teach said branches, and that he or she is of good moral character, he shall give such person a certificate, certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only, and may be revoked sooner by the superintendent for good cause.

SEC. 7. The superintendent shall visit all the schools taught in his county by a qualified teacher, at least once a year; he shall give such information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county.

SEC. 8. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office; and he shall, on or before the first day of December of each year, make out from the district reports a statement of the number of

scholars in the county, the number of school libraries, the number of school houses, the number of districts; in how many districts a school has been kept in the past year; what school books are principally used; what proportion of all the scholars in the county have attended school for the past year, and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper in this territory.

SEC. 9. It shall be the duty of the superintendent at the same time to make an apportionment of the school fund in the county treasury among the several school districts in their respective counties, in proportion to the number of persons in the district over the age of four, and under twenty-one years, and certify the amount due to each district, which shall be drawn as hereafter directed; and shall forthwith notify the clerks of the school districts of the amount due their respective districts.

SEC. 10. When the districts shall have complied with the law, as hereafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts for the amount of the school funds appropriated to each; on the presentation of which order the treasurer of the county shall pay over to the clerks of the districts all moneys due the respective districts, and the clerks shall endorse on said order a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt, which shall be deposited with the superintendent, who shall credit the treasury of the county therewith, and charge the same to the proper district.

SEC. 11. The superintendent shall, in the name of the county, collect, or cause to be collected, all moneys due the school fund from fines, or from any other source, in his county; and until the legislature shall make some provision for the disposal of the school lands given by congress to the territory for school purposes, it shall be the duty of the superintendent to preserve said lands from injury and trespass; and when it shall come to his knowledge that any trespass has been committed on such lands, he shall make complaint of the same before the grand jury of the proper county, at the first regular term of court after he has obtained a knowledge of such trespass; and all fines and other moneys thus collected, shall be paid over to the treasurer of the county for the use of common schools, and divided in said county, in the same manner as other school funds.

SEC. 12. Any person trespassing upon or injuring the school lands

as mentioned in the preceding section, shall be liable to be indicted for the same, and upon conviction shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

SEC. 13. The said suprintendent shall be allowed out of the county treasury, in compensation for his services, the sum of twenty-five dollars a year. The county commissioners may, in their discretion, if they think the services rendered demand it, increase his salary to any sum not exceeding five hundred dollars a year; but in all cases where the salary exceeds the sum of twenty-five dollars, one-half of the excess shall be paid out of the school fund; *provided also*, that a proper allowance shall be made in addition thereto for necessary books and stationery, and for the preparing of the map required by section three; and in each county where there are not less than ten organized districts capable of supporting a school as required by law, a reasonable allowance shall be made out of the county treasury for office rent, but no rent shall in any case be allowed until the map required by section three shall be placed in said office.

CHAPTER III.

- SECTION 1. School meeting to organize new districts may be called.
What shall constitute a quorum.
- " 2. Powers of such meeting.
- " 3. Organization of meeting.
Election of directors and their term of office.
- " 4. Further as to term of office of directors.
- " 5. Directors to qualify.
Oath to be filed.
- " 6. Duty of directors.
- " 7. Two directors a quorum.
- " 8. Further duties of directors.
To prescribe punishment of disorderly scholars.
- " 9. Election of district clerk.
His term of office.
- " 10. His duties.
- " 11. Annual report of clerk.
What to contain.
- " 12. Annual account of clerk.
To be read to meeting.
To pay over funds to successor.
Upon failure to do so, suit to be brought.
- " 13. Duty of clerk, where directors examine teachers.
- " 14. Clerk to be treasurer of district.

SECTION 15. To retain money coming into his hands, subject alone to order of directors.

“ 16. Teachers to procure certificate.
Further duties.

SEC. 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, under the title of county superintendent. No number less than five legal voters shall constitute a quorum to do business in any district meeting.

SEC. 2. Such school meeting shall have power to do all necessary business the same as the regular annual school meeting would have.

SEC. 3. Such meeting when assembled, shall organize by the appointment of a chairman and secretary. It shall then proceed by ballot to elect three directors. Of those so elected, the person having the highest number of votes, shall hold his office for the term of three years, and the person having the next highest number shall hold his office for two years, and the person next highest one year, and each shall continue in office un'til his successor is elected and qualified. In case two or more persons of those so elected receive an equal number of votes, the duration of their term of office shall be determined by lot, in presence of the chairman and secretary.

SEC. 4. The term of office of a director not elected at the regular annual meeting, shall continue for the term of one, two or three years, as he may have been elected, from the next annual school meeting, unless such director shall be elected to fill vacancy, in which case he shall continue in office for the unexpired term. So that at every annual school meeting after the first, there shall be elected one school director for the term of three years.

SEC. 5. The directors shall qualify within ten days after their election, by taking an oath or affirmation faithfully to discharge the duties of the office, to the best of their abilities, and to promote the interest of education within their district. This oath shall be in writing and filed with the clerk of the district.

SEC. 6. It shall be the duty of the directors of every school district:

1st—To call special meetings of the district whenever they shall deem it necessary, and when a vacancy occurs by death, resignation or otherwise, the directors shall call a special meeting of the district to fill such vacancy.

2d—To make out a tax list of every district tax, containing the names of the taxable inhabitants in the district, and the amount of tax payable by each inhabitant set opposite his name.

3d—To annex to such tax list a warrant directed to the clerk of the district for the collection of the sums in such list mentioned, including such per centage for fees of clerk as they may deem just, not exceeding five per cent.

4th—To purchase or lease a site for the district school house as designated by a meeting of the district, and to build, hire or purchasé, keep in repair, and furnish such school house with necessary fuel and appendages, out of the funds collected and paid to the clerk for such purpose, and to have the custody and safe keeping of the district school house.

5th—To contract with and employ teachers; and they may be judges of the qualifications of teachers in their districts, but may require a teacher to get a certificate from under the hand of the county superintendent, as provided for in section 6, chapter II. And in case the directors choose to be the judges of the qualifications of these teachers, they shall examine them in the various branches specified in said section 6, chapter II, and shall give certificate to that effect, stating the branches upon which said teacher has been so examined by them, and that he or she is of good moral character, and is qualified to teach a common school; such certificate to be signed by each of the directors, and shall be for the term of three mouths only. No engagement with a teacher shall be valid so as to entitle any district to draw their apportionment of public money, unless such examination has been previously made, either by the directors or county superintendent.

6th—To give orders to the teachers on the district clerk for their wages.

7th—To discharge any school teacher for neglect of duty, or any cause that in their opinion renders his or her services unprofitable as a teacher, by first paying him or her for what time he or she may have been teaching.

SEC. 7. Any two of said directors shall constitute a quorum to do business.

SEC. 8. It shall be the duty of the directors to visit and examine the school or schools of their respective districts, at least twice in each term; they shall endeavor, in connection with the county superintendent, to procure the introduction of a good uniform system of school books in their district; and when the teacher experiences difficulty in the government of the school, it shall be his or her duty to refer the cases of disorderly scholars to the directors, who shall decide how such scholars shall be punished, or whether they shall be dismissed from school.

CLERKS.

SEC. 9. The first annual school meeting shall also elect a district clerk, who shall continue in office for the term of three years. He shall qualify within ten days after his election, in the same manner as the directors, and give bond to the district directors in such sum as they may require, that he shall well and truly perform the duties of his office, and pay over all moneys coming into his hands by virtue of his office, as by law directed. If a clerk be elected to fill a vacancy, he shall continue in office for the unexpired term; and if elected at the first meeting, not being the regular annual meeting, he shall continue in office three years from the next annual meeting.

SEC. 10. It shall be the duty of the clerk of the district:

1st—To record the proceedings of his district in a book to be provided for that purpose by the district.

2d—To give notice of annual or special meetings.

3d—To procure a list of all persons in the district between the ages of four and twenty-one years.

4th—To give due notice, at least ten days before any tax that may be assessed shall be collected, by written or printed notices in three of the most public places in the district.

5th—To collect all district taxes which he shall be required by the warrant from the directors to collect within the time limited in each warrant for its return; and he shall have the same authority to enforce the collection of such tax, and he shall be allowed for collecting such percentage as the directors may deem proper.

6th—To retain a copy of all reports made to the county superintendent relating to the affairs of the district.

SEC. 11. It shall be the duty of the clerk to furnish the county superintendent, within fifteen days after the first Friday of November of each year, a report containing the number and names of scholars in his district, over four and under twenty-one years of age; how long a school has been kept in his district the past year; what school books are principally used; what proportion of the scholars in the district have attended school; and the amount of money paid to teachers, or otherwise expended.

SEC. 12. The clerk of each district shall, at the close of each year of his office, make out in writing a just and true account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual district meeting. The clerk shall pay over all moneys remaining in

his hands belonging to the district to his successor, when his successor has legally qualified, and upon a refusal or neglect so to do, the directors shall forthwith bring suit upon his bond.

SEC. 13. In all cases where the directors elect to examine their own teachers, it shall be the duty of the clerk to furnish the county superintendent with a copy of the certificate given by said directors within ten days thereafter.

SEC. 14. District clerks shall be treasurers of their respective districts.

SEC. 15. All money coming into the hands of the district clerks, shall remain in the hands of such clerk or clerks, subject to the order of the directors, and shall not be paid out in any other way.

TEACHERS.

SEC. 16. It shall be the duty of every teacher of a common school to procure a certificate of qualification and good moral character, before entering on the duties of a teacher. It shall be his duty to keep a register of the children attending school, their age, and the time when they begin, the time they continue, and of their daily attendance, which register shall be filed with the clerk of the district at the close of every term.

CHAPTER IV.

MISCELLANEOUS PROVISIONS.

- SECTION 1. Minutes of first meeting by whom to be signed, and by whom and where kept.
- “ 2. Who to be chairman and secretary of meetings.
- “ 3. Meetings may alter, repeal, &c., their proceedings.
- “ 4. District meetings may levy tax.
- “ 5. New districts failing to organize or report, not entitled to school funds.
Proviso.
- “ 6. Funds to be apportioned to organized districts only.
- “ 7. When a district shall be allowed to draw the fund.
- “ 8. When superintendent to issue order for funds of a district in favor of clerk thereof.
- “ 9. District to forfeit its apportionment; when.
Disposition thereof in such case.
- “ 10. Provision where district has less than sixteen scholars between ages of four and twenty-one, and is not able to support a school.
- “ 11. An organized district shall be a body corporate; its powers.
Duty of directors to prosecute and defend.
- “ 12. Scholars not in district may attend school, with or without charge; when.

- SECTION 13.** Provision in case of person wishing to send a child to school out of their own district.
- “ 14. *Ib.*
- “ 15. Teacher at end of each term to make a certificate relative to attendance of scholars not belonging to district.
- “ 16. Clerk of district where scholars reside, upon presentation of certificates, to pay the parents of such scholars the apportionment due them.
- “ 17. When certificate to be presented to superintendent.
- “ 18. Scholar thus receiving his portion, not entitled to further benefit until after next annual apportionment.
- “ 19. When parents, &c., may be assessed for their portion of necessary expenses of school.
- “ 20. For what purposes and when districts may levy a tax.
- “ 21. Notices of meeting to state purpose of tax.
- “ 22. Assessment of property of non-resident holders.
- “ 23. Directors may add a per centum to remunerate the clerk as collector. Per centage when to be deducted.
- “ 24. Scholars not in district may attend school.
- “ 25. Meetings to be held annually.
Notice thereof, what to state, &c.
- “ 26. Who shall be allowed to vote at meeting.
- “ 27. Meeting may adjourn.
- “ 28. By a majority vote, meeting may levy tax.
- “ 29. Taxes for erection of school houses may be paid in labor.
- “ 30. Holding other office not to disqualify superintendent, director or clerk.
- “ 31. A librarian to be appointed, by whom and when.
- “ 32. Certain persons authorized to administer oaths under this act.
- “ 33. Miscellaneous provisions as to fines and penalties.
- “ 34. Repealing clause.

SEC. 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

SEC. 2. In all school meetings, the director, whose term of office shall first expire, shall act as chairman, and the clerk of the district shall act as secretary.

SEC. 3. Districts shall have power to repeal, alter or modify their proceedings from time to time, as occasion may require.

SEC. 4. District meetings legally called shall have power to levy a tax upon the property of the district for any purpose whatever, connected with and for the benefit of schools, and the promotion of education in the district, subject to the restrictions hereinafter provided.

SEC. 5. Any new district failing to organize and report to the county superintendent the number of children over four and under twenty-one years of age in said district, at least ten days after the first Friday in November, or any district having been organized for the term of one

year or more, failing to report to the county superintendent, as is required in section eleven, of the chapter entitled "school meetings," in this act, shall not be entitled to any portion of the county school fund for the year: *Provided*, That if the clerk of any school district shall fail to make such report, any inhabitant of such district may make such report, verified on oath, and the county superintendent shall receive it, the same as if made by the clerk.

SEC. 6. The county superintendent shall apportion all the county school fund for that year among those districts only which have organized and reported according to law.

SEC. 7. No district shall be allowed to draw its apportioned county school fund from the treasury, until it shall satisfy the county superintendent that a school has been kept in the district by a qualified teacher for at least three months, except as hereinafter provided.

SEC. 8. When the clerk of any school district shall satisfy the county superintendent that any amount has been raised in his district for the support of teachers, or building school houses, and that a school has actually been kept by a qualified teacher, as provided for in the preceding section, the superintendent shall issue an order to the county treasurer in favor of the clerk of such district, for its apportionment of county school funds in the treasury to the credit of such district.

SEC. 9. Any district failing to comply with the provisions of the two preceding sections for the term of one year after any apportionment, shall forfeit its apportionment, and the amount thereof shall be again added to the county school fund, and divided again among all the districts.

SEC. 10. Districts having less than sixteen scholars between the ages of four and twenty-one years, and which, in the opinion of the directors are not able to support a school, shall be excepted from the requirements of the three preceding sections, and may, by organizing and reporting to the superintendent according to law, draw their proportion of school money without being required to comply with the provisions of the school law, any further than the said organization and report is concerned. And in such districts three legal voters shall constitute a quorum to do business; and it shall be the duty of the clerk of such district to let out all county school funds so received at interest, for the use of the district, on good security, until such time as it may be required for school purposes in said district. The clerk of the district and his securities shall be responsible for such money: *Provided*, That if the term of three years shall elapse before such weak district shall have at least three month's school, such district shall not be entitled to any apportionment of the county school funds after the expiration of the said

three years, until they shall have complied with the law in the same manner as regularly organized districts are required to do.

SEC. 11. When a district is organized, it shall be to all intents and purposes a body corporate, capable of suing and being sued, and fully competent to transact all business appertaining to schools or school houses in their own districts; and it shall be the duty of the directors to prosecute or defend any demands for or against their district, and notice shall be served upon one of the directors of any suit brought against a district.

SEC. 12. The directors of any district may permit scholars living out of the district to attend school, with or without charge, as they may deem proper.

SEC. 13. Any person or persons that shall be desirous of sending the child or children under their care to any other district school, may do so, by first getting a permit in writing from the directors of the district in which they reside, provided there be no school in their own district, and such scholar or scholars so sent to school out of their district, shall be entitled to their equal proportion of the public school fund belonging to their district, the same as if they had gone to school in their own district; *and provided still further*, That the sending of such scholar or scholars out of their own district does not operate to prevent the said district from having a school kept therein. Should the directors refuse to grant the permit, the person or persons applying may appeal to the county superintendent, who shall forthwith notify the directors of said district in writing, giving them at least six days' notice, to appear before him and show cause, if any, why the application should be refused.

SEC. 14. The county superintendent, upon the day set, shall hear the parties and such testimony as may be required, or if either of the parties fail to appear, having been duly notified, he may proceed as if they were all present, and shall decide according to the equity of the case; and if in his judgment no injury is done to the district thereby, he may grant the requisite permit in his own name as county superintendent, which action shall be binding on the district as if granted by the directors thereof. In either case his decision shall be final.

SEC. 15. It shall be the duty of every teacher of a district school, in addition to what is required by section sixteen, chapter three, to make out at the end of every term a certificate in reference to the attendance of each and every scholar not belonging to the district, showing the time they began and continued, as well as the number of days in attendance;

which certificate shall be given to the parents or guardian of said scholar or scholars.

SEC. 16. Upon the presentation of such certificate to the clerk of the district in which such scholar or scholars reside, the clerk shall pay to said parents or guardian the apportionment due them, out of the fund belonging to said district, taking their receipt for the same, which receipt shall be endorsed on said certificate, showing the amount actually received, and signed by the party receiving the money; and said certificate so endorsed shall be a sufficient voucher to the credit of the clerk in making his settlement with the directors, or in paying over to his successor the funds belonging to said district.

SEC. 17. When the clerk of any such school district shall have failed to draw from the county treasury the apportionment for said district, either by reason of not complying with the requirements of section seven of this chapter, or otherwise, then the certificate shall be presented to the county superintendent, who shall issue an order on the county treasurer in favor of the person or persons entitled to receive the same, and receipt in due form shall be given to the treasurer for the amount paid, the duplicate of which shall be endorsed on the certificate in the hands of the superintendent, who shall credit the treasury of the county therewith, and charge the same to the proper district, in the same manner as when paid to the clerk, according to section ten, chapter two.

SEC. 18. Any scholar having thus received his or her portion of school money, cannot be entitled to any further benefit out of the fund of said district in case of a school being taught therein, until after the next annual apportionment is made.

SEC. 19. It shall be competent for the directors in any district, where it may be required, to assess upon the parents or guardians of the children attending the school, their portion of the necessary expenses of sustaining the school, in the way of tuition, fuel, &c., in proportion to the number of scholars sent by each; but in all cases the directors shall first endeavor to raise the amount required by voluntary subscription.

SEC. 20. Any district may levy a tax for any of the following purposes: To purchase a suitable site for the erection of a school house, the building or repairing of the same, the purchase or increase of a district library, or maps, globes or other apparatus, for the use of said district or school; but no district shall levy any tax for any of these purposes until the directors shall have sought to obtain the amount required by voluntary subscriptions, and no money shall be expended by the directors or clerk for any other purpose than that for which it was raised.

SEC. 21. In all cases when a tax is to be levied, it shall be stated

in the notices given of the meeting, for what purpose or purposes the tax is to be levied.

SEC. 22. The directors may assess for any of the objects named in section twenty, the property of non-resident holders in any amount they may deem necessary, without calling a meeting of the district for that purpose, where the inhabitants thereof agree by voluntary subscription to raise the amount required; said assessment not to exceed the average per centum of the subscriptions made by the inhabitants of the district; but if a district meeting be held to levy a tax on all the taxable property in the district, the property of non-residents shall be assessed in equal proportion with the rest, and in neither case shall any tax exceed twenty-five cents on the one hundred dollars valuation on taxable property, according to the valuation made for the assessment of county taxes.

SEC. 23. The directors may add such a per centum, not exceeding five, as they may deem requisite to remunerate the clerk for his services as collector, but the amount shall be specified and added as a separate item in the schedule or account of taxes so levied or assessed, and where any person shall pay the same within ten days after the notice of such tax is made public by the clerk, in accordance with the fourth clause of section ten, of chapter three, the per centage shall be deducted, but all other cases it shall be collected.

SEC. 24. The directors of any district may permit scholars living out of the district to attend school with or without charge, as they may deem proper.

SEC. 25. There shall be an annual school meeting held in each district upon the first Friday in November; and notices of all annual or special meetings shall be in writing, signed by the directors or the clerk of the district, and shall state the object for which the meeting is called; and shall be posted up in three public places in the district at least six days previous to the holding of such meeting.

SEC. 26. Every white male inhabitant over the age of twenty-one years, who shall have resided in any school district for three months immediately preceding any district meeting, or who shall have paid, or be liable to pay any tax except road tax in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote.

SEC. 27. Any school meeting shall have power to adjourn from time to time as occasion may require.

SEC. 28. A school meeting legally called, shall have power by the vote of a majority present, to levy a tax on all taxable property in the district.

SEC. 29. That tax payers may, with the consent of the directors of their district, perform by labor their portion of taxation for the erection of school houses, and shall be so returned by the clerk of said district.

SEC. 30. No person shall be disqualified to hold the office of county superintendent, district director or clerk, on account of holding any other office within the territory at the same time.

SEC. 31. It shall be the duty of the directors to appoint a suitable person for librarian, when the district shall have procured a library.

SEC. 32. School superintendents, directors and clerks, shall be competent to administer oaths or affirmations in any case occurring under the provisions of this act.

MISCELLANEOUS PROVISIONS, AS TO MONEYS ARISING FROM FINES
AND PENALTIES, BELONGING TO SCHOOL FUND.

SEC. 33. All fines imposed on any person or persons by the provisions of an act entitled "an act relative to crimes and punishments," passed January twenty-first, eighteen hundred and sixty, when the same shall be collected, shall be paid, by the officer collecting the same, to the county treasurer as school funds of the county where such conviction shall have been had, who shall give duplicate receipts therefor, one of which shall be filed with the county auditor; and all officers refusing or neglecting to pay over any fines within one month after they shall have been received, shall, upon conviction thereof, be fined in four-fold the amount of such fines so received, which said fine may be collected in any court having jurisdiction.

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 the 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.

If the owner or person entitled to the possession of any stray, shall

not appear and make out his title thereto, and pay the charges thereon, within one year from the time when the notice is filed with the county clerk, as is provided in the fourth section of "an act relative to estrays," passed February first, eighteen hundred and sixty, such stray shall be sold at the request of the finder, by any constable of the precinct, at public auction, upon first giving public notice thereof, in writing, by posting up the same in three of the most public places in said precinct, at least ten days before such sale, and the finder may bid therefor at such sale; and, after deducting all the lawful charges of the finder as aforesaid, and the fees of the constable, which shall be the same as upon a sale on an execution, one-half of the remaining proceeds of such sale shall be deposited in the treasury of the county, to be applied to the common school fund of said county, the other half shall belong to the finder.

Any money that shall be deposited with any county treasurer under the provisions of an act entitled "an act relative to unclaimed property," which shall not be claimed by the owner thereof, or his legal representative within five years, the same shall belong to the county, and shall be applied to the common school fund of said county.

If the owner of any lost money or goods shall fail to appear within one year and make out his right thereto, then the finder of such lost money or goods shall pay one half the value thereof, after deducting all legal charges, to the treasurer of the county, for school purposes; and in case such finder shall neglect to pay the same, on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer, in the name of the county, for school purposes.

If any finder of lost money or goods, of the value of five dollars or upwards, shall neglect to give notice of the same, and otherwise to comply with the provisions of "an act in relation to lost money or goods," he shall be liable for the full value of such money or goods, one-half to the use of the county, for school purposes, and the other half to the person who shall sue for the same, and shall also be responsible to the owner for such lost money or goods.

That any person or persons who own or are the owners of dangerous or vicious cattle, which animal or animals are known to endanger the safety of persons travelling through neighborhoods, by their dangerous and vicious disposition, such person or persons having twelve hours' notice of the dangerous disposition of such animal or animals, and shall neglect or refuse effectually to prevent such cattle from disturbing the peace and safety of the neighborhood where such animals may range, such owner or owners shall be liable to a fine of not less than five

dollars, nor more fifty dollars, which may be recovered before any justice of the peace of the county, with costs of suit, for the use of the school fund.

SEC. 34. All acts or parts of acts conflicting with the provisions of this act are hereby repealed.

PASSED, January 27th, 1863.

AN ACT

RELATIVE TO THE SALE OF SCHOOL LANDS.

SECTION 1. County commissioners may make sale of school lands within their respective counties.

- “ 2. Thirty days' notice of sale to be given.
- “ 3. Lands to be sold to the highest bidder, in legal subdivisions.
Minimum price per acre.
- “ 4. Deeds to be executed, when.
Moneys to be loaned.
Rate of interest.
Principal to be a perpetual fund.
- “ 5. Powers of commissioners relative to removal of timber and cultivation of lands.
Interest on the amount of sale for one year.
Costs of sale.
Proviso.
- “ 6. Commissioners responsible for moneys.
- “ 7. Payment of expenses incurred.
Compensation of commissioners.
Record to be kept.
- “ 8. Powers of voters of townships to appropriate money in certain cases.
Consent of two-thirds of householders required.
Proviso.
- “ 9. Act when to take effect, and repealing clause.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners of any county, when they think the interest of common schools demands, may, in accordance with the provisions hereinafter described, proceed to sell the lands within their limits, donated by congress to the territory for the use of common schools, viz: Sections (16) sixteen and (36) thirty-six, or (where any part of these has been taken by settlers and is claimed un-

der the donation or pre-emption laws,) that which has or may be selected in lieu thereof.

SEC. 2. The commissioner shall give at least thirty days' notice of such sale, in some newspaper, if any is published in the county where such sale is to be made, or if no paper is published in the county, they shall cause at least one notice to be posted up at the usual place of voting in each precinct in the county, stating the time and place of such sale, and also the terms of sale.

SEC. 3. The land shall be sold to the highest bidder, in legal subdivisions of not more than 160 acres in a lot, the minimum price being \$1 25 per acre.

SEC. 4. The commissioners shall execute a good and lawful deed to the purchaser when the sum total is paid, and the money so paid shall be let at the lawful rate of interest, which interest shall be added to the principal annually, or paid into the treasury for the use of schools in the township where such land is situated, but the principal shall not be diminished; it shall be a perpetual fund for school purposes only.

SEC. 5. When, in the opinion of the commissioners, the land is so situated that it is not liable to be diminished in value by the removal of timber, or by cultivation, or by use in any way, but rather on the other hand, its value would in any way be increased, they shall not require the purchaser to pay, at the time of sale, more than the lawful interest on the amount bid for one year from the time of such sale, together with the cost necessarily arising from such sale: *Provided*, He gives a good and proper mortgage by which the land be forfeited by failure to pay at the end of each year the interest of another year in advance.

SEC. 6. The commissioners shall give bonds jointly and severally in the penal sum of two thousand dollars, with two or more good and sufficient sureties to be approved by the county auditor, for the safe keeping and faithful disbursement of all moneys which may come into their hands from the sales of lands under this act.

SEC. 7. The expenses necessarily incurred in carrying into execution the provisions of this act in accordance with sections 2, 3, 4 and 5, including the services of the commissioners, at the rate of three dollars for each day actually employed, shall be paid out of the first money received for the sale of the land as above mentioned, and also a suitable book in which shall be kept a full account of all lots sold and moneys paid in accordance with this act.

SEC. 8. The legal voters in any township having land thus sold, may, if there is no school district within its limits, appropriate the

money received according to the provisions of sections 4 and 5 of this act, for the support of schools that may be kept in the district or districts most convenient to them, but no money shall thus be used without the consent of at least two-thirds of the householders in such township: *Provided*, That no part of this act shall be so construed as to apply to the counties of Whatcom, Clickatat, Skamania, Pierce and Chehalis.

SEC. 9. This act shall take effect and be in force from and after its passage. All acts or parts of acts in conflict with this act are hereby repealed.

PASSED, January 19th, 1863.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT RELATIVE TO THE SALE OF SCHOOL LANDS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section 8 of the act to which this is an amendment, be amended by striking out the word "Walla Walla," where it occurs in said act.

SEC. 2. This act to be in force from and after its passage.

PASSED, January 12th, 1863.

AN ACT

TO AMEND AN ACT ENTITLED, "AN ACT RELATIVE TO THE SALE OF SCHOOL LANDS," PASSED JANUARY 24th, 1861.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section eight of an act entitled, "an act relative to the sale of school lands," passed January 24th, 1861, be amended by striking out the word "Clarke," where it occurs after the word "Chehalis," and before the word "and," in the last line of said section.

SEC. 2. This act to take effect and be in force from and after its passage

PASSED, January 15th, 1863.

AN ACT

TO AUTHORIZE COUNTY COMMISSIONERS IN CERTAIN CASES TO SELL
AND CONVEY SCHOOL LANDS AT PRIVATE SALE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the county commissioners of any county may sell at private sale such portions of the 16th and 36th sections as shall at the time of the passage of this act be in the possession of any person who may have made a settlement on the same, prior to the time of its public survey, under the provisions either of the donation or pre-emption act, or to any other person holding the same by purchase, descent or gift from the original settler.

SEC. 2. Any persons residing upon, or holding such possessory interest in either the 16th or 36th sections, shall file their application for purchase before the board of county commissioners of the county wherein such lands lie, at any regular term of said board, such application being accompanied with a certificate from the register of the proper land office, showing the reasons of the failure to secure the title under the provisions of the acts of congress; first giving public notice of the intention of such application, at least three months before hand, by posting up written or printed advertisements in three of the most public places in the county, one of which shall be in the township in which the land so held is situated.

SEC. 3. Upon proof of such notice having been duly given, the commissioners shall proceed to hear the application, and shall require proof of the nature of the claim, the date of original settlement, the amount of improvements, and of such other matters as they in the exercise of their judgment, may deem necessary.

SEC. 4. Whenever the board of commissioners, or a majority of them, are of the opinion that the proof thus submitted is satisfactory, and that all the transactions pertaining to the same were *bona fide*, they shall order the same to be sold to the proper holder thereof at the rate

of \$1 50 per acre, upon the payment of which they shall execute a deed to the purchaser, conveying all the right, title and interest of the territory in and to the same: *Provided*, That all necessary expenses incurred in the prosecution of the application, shall be met by the applicant.

SEC. 6. This act to take effect and be in force from and after its passage.

PASSED, Jan. 23d, 1863.

AN ACT

TO INCORPORATE THE UNIVERSITY OF THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Daniel Bagley, Paul K. Hubbs, J. P. Keller, John Webster, E. Carr, Frank Clark, G. A. Meigs, Columbia Lancaster and C. H. Hale, their associates and successors in office, are hereby constituted a board of regents, a body corporate and politic, with perpetual succession, under the name of the University of the territory of Washington, by which they may sue and be sued, plead and be impleaded, in all courts of law and equity.

SEC. 2. The university shall provide the inhabitants of this territory with the means of acquiring a thorough knowledge of the various branches of the literature, science and arts.

SEC. 3. The government of the University is vested in the board of regents.

SEC. 4. Three regents of the university shall be elected by the legislature each year, after the first year. The regents at their first meeting, shall determine by lot, whose term shall expire the first year, the second, &c., until the term of office of the above board shall expire. In case of a vacancy, when the legislature is not in session, the governor may appoint.

SEC. 5. The board of regents shall have a corporate seal, and the same alter or break at pleasure; may hold all kinds of estate, real, personal or mixed, which they may acquire by purchase, donation, devise, or otherwise, necessary to accomplish the object of the corporation.

SEC. 6. The regents shall have power to enact ordinances, by-laws and regulations, for the government of the university; to elect a presi-

dent; to fix, increase and reduce the regular number of professors and tutors, and to appoint the same, and to determine the amount of their salaries.

SEC. 7. They shall have power to remove the president and any professor or tutors, when the interest of the university shall require it.

SEC. 8. They shall have power to appoint a secretary, librarian, treasurer, steward, and such other officers as the interests of the institution may require, who shall hold their offices at the pleasure of the board, and receive such compensation as the board may prescribe: *Provided*, That the treasurer shall not in any case, be a member of the board of regents, nor of the board of university commissioners.

SEC. 9. The university shall consist of at least four departments:

1st—A department of literature, science and arts.

2d—A department of law.

3d—A department of medicine.

4th—A military department.

These departments may be organized, and such others added as the regents shall deem necessary, and the state of the university fund shall allow.

SEC. 10. The regents shall provide for the arrangements and selection of a course or courses of study in the university, for such students as may not desire to pursue the usual collegiate course in the department of literature, science, and the arts, embracing the ancient languages, and to provide for the admission of such students, without previous examination as to their attainments in said languages, and for granting such certificates at the expiration of such course or term, of such students as may be appropriate to their respective attainments.

SEC. 11. The immediate government of the several departments shall be entrusted to the president, and the respective faculties, but the regents shall have power to regulate the course of instruction, and prescribe under the advice of the professors, the books and authorities to be used in the several departments, and also to confer such degrees, and grant such diplomas as are usually conferred and granted by other similar institutions.

PASSED, January 23d, 1863.

AN ACT

IN RELATION TO THE MANAGEMENT AND SAFE KEEPING OF THE
MONEYS ARISING FROM THE SALE OF UNIVERSITY LANDS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington* That the board of university commissioners shall make a full and complete report and statement to the board of regents at their first meeting, of all moneys received and disbursed by the said commissioners in their official capacity; the number and character of all contracts let and unfinished; the accounts, if any, due to and from the university fund; and giving a general and minute detail of all matters and things pertaining to the financial operations and condition of the university, so as to effect a complete settlement by, and on the part of said commissioners with the said board of regents.

SEC. 2. That for the safe keeping, management and control of the university fund, the board of commissioners, the president of the board of regents, and the treasurer of the university fund, shall constitute a board of directors, and shall have authority to loan said fund, or any portion thereof, at interest for any period of time not less than twelve months, nor more than ten years, in the discretion of the directors; said loan to be secured by deed or mortgage, on real estate; which real estate must be of at least double the value of the amount of money so loaned, and of sufficient value to secure at any and all times, the payment of said loan: *Provided*, That the rate of interest on said loan shall not in any case be less than twelve per cent. per annum, which interest shall be payable semi-annually.

SEC. 3. The interest arising from the loan of the said fund, as set forth in the preceding section of this act, shall be set apart and used in support of the territorial university, and be under the direction and control of the board of regents: *Provided*, That two thousand dollars of the principal shall be appropriated to the purchase of a library and philosophical apparatus; *And provided further*, That the balance of the principal shall in all cases remain an irreducible fund.

SEC. 4. The treasurer of the university fund, shall make an annual report to the legislative assembly, on or before the fifteenth day of December in each year, of all moneys received and disbursed by him, or by order of the board of directors.

SEC. 5. This act shall take effect and be in force from and after its passage.

PASSED, January 19th, 1863.

AN ACT

IN RELATION TO FENCES AND FENCE VIEWERS.

- SECTION 1. What shall be a legal fence ; proviso.
- “ 2. When lawful fence is broken into, the owner of the animal doing the damage responsible therefor.
- “ 3. Fence viewers to be appointed, when, how, and for what purpose. Judgment how rendered. Appeal may be taken.
- “ 4. Fees and compensation of fence viewer.
- “ 5. When this act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all fences of rails called worm fences, shall have not less than four feet worm to rails of ten feet in length, (and if greater length, in that proportion,) shall be four feet high, well staked and ridged upon that, according to practice. Below the third rail from the ground, no crack or space of more than five inches shall intervene, and below two feet in height, there shall be no crack or intervening space of more than seven inches, and the whole height of said fence shall not be less than five feet. Such a fence or any other equivalent thereto, made of any other material or form shall be deemed legal and sufficient fence: *Provided,* That where damage is done by animals too large to go through the space or cracks specified in this section the failure to have built such fence as close as herein required, shall not be pleaded in justification or set-off of such damage.

SEC. 2. If any domestic animal or animals break into an inclosure the persons so injured thereby, shall recover of the owner of said animal or animals, the amount of damage, if it shall appear that the fence through which said animal or animals broke, was lawful; but not otherwise.

SEC. 3. That if any person may have sustained damage by reason of the failure of any person to erect a legal fence, he may make complaint to the nearest disinterested justice of the peace within the county, who shall, upon filing such complaint, appoint a disinterested householder who shall be duly sworn to view said fence impartially, report thereon the condition of the fence, and the damages sustained, if any; and the justice of the peace shall enter judgment according to such fence viewer's report. If the amount of the judgment exceeds twenty dollars, appeals to the district court may be taken as in other cases.

SEC. 4. The fee for services performed as fence viewer in accord-

ance with section third shall be two dollars for every day actually employed in the view of said fence and mileage and attendance as a witness, and such costs and charges shall be paid by the party against whom the judgment is rendered.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED, January 23d, 1863.

AN ACT

FOR THE RELIEF OF COMMISSION MERCHANTS, CARRIERS, WHARF-
INGERS AND WAREHOUSEMEN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That whenever property upon which, charges for advances, freight, transportation, wharfage, or storage, due and unpaid, and a lien shall remain and be held in store by the person, or persons in whose favor such lien exists uncalled for, it shall be lawful for such person or persons to cause such property to be sold as is herein provided.

SEC. 2. If said property consists of live stock, the maintenance of which at the place when kept is wasteful and expensive in proportion to the value of the animals, or of other perishable property liable if kept, to destruction, waste or great depreciation, the person or persons having such lien, may sell the same upon giving ten days' notice.

SEC. 3. All other property upon which such charges may be unpaid, due, and a lien after the same shall have remained in store uncalled for, for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice; *Provided,* That where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale.

SEC. 4. The moneys arising from sales made under the provisions of this act, shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transporta-

tion, wharfage or storage, for whose benefit the sale shall have been made; the surplus, if any, shall be retained subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owners still remaining in store uncalled for, if any there be, and to the demand of the owner of the property, who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimant thereof.

SEC. 5. Nothing in this act contained shall be so construed as to alter or affect the terms of any especial contract in writing, made by the parties as to the advances, affreightment, wharfage or storage; but when any such special contract shall have been made, its terms shall govern irrespective of this act.

SEC. 6. All notices required under this act, shall be given as is or may be by law provided in case of sales of personal property upon execution.

PASSED, January 26th, 1863.

AN ACT

FOR THE ESTABLISHING OF A PILOTAGE ON THE COLUMBIA RIVER AND SHOALWATER BAY.

- SECTION 1. Names of commissioners.
Powers and duties of such commissioners.
- “ 2. Pilots to give bond for \$5,000.
- “ 3. Pilots may take charge of vessels, except such as are under one hundred tons burthen, and shall be paid for his services.
- “ 4. Pilots to keep boats.
- “ 5. Commissioners authorized to fix the fees of pilots, and make other regulations.
- “ 6. When pilot to be held responsible for damages.
- “ 7. Master of a vessel not compelled to take a pilot.
- “ 8. Commissioners authorized to hear complaints against pilots, and determine thereon.
- “ 9. Penalties under this act to be tried in a court of record.
- “ 10. When master refuses, vessel liable to double pilotage.
- “ 11. Pilots carried away on vessels bound out, to be paid.
- “ 12. Compensation of commissioners.
- “ 13. Commissioners not to act as pilots.
- “ 14. Pilots of Shoalwater Bay.
- “ 15. When this act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That James Johnson, William Strong, and D. K. Weldon shall constitute a board of commissioners, for the purpose of examining candidates for the pilotage of the Columbia river bar and Shoalwater bay, and may appoint one or more suitable persons, if they deem it necessary, to be pilots on the bar of the Columbia river and at Shoalwater bay, giving each of said 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 the said board of commissioners: *Provided also*, That whenever there shall occur a vacancy in said board of commissioners, such vacancy shall be filled by an appointment made by a majority of their own body.

SEC. 2. Every such pilot or deputy shall, before entering upon the duty of his or their office, give bond, with sufficient security, to the said board of commissioners, in the sum of five thousand dollars, for the faithful performance of his or their duties in office.

SEC. 3. Every such branch pilot is authorized and directed, by himself or his deputy, to take charge of any vessel requiring his services, bound into or out of the Columbia river or Shoalwater bay, but shall first show the master his warrant; but no vessel under one hundred tons burthen, engaged in the coasting trade of Washington or Oregon territory, shall be compelled to pay pilotage, unless the services of a pilot are required; and in all cases when the services of a pilot are required by the master of any vessel, said vessel shall be liable to pay the pilot his fees as specified in his warrant.

SEC. 4. The pilot or pilots shall always keep such boat or boats, to cruise outside the bar, of not less than fifty tons burthen, carpenters measurement, as may be approved as suitable by the power granting such branch warrant; and also, that such boat or boats, shall have always on hand a sufficient quantity of provisions to relieve vessels in distress.

SEC. 5. The said board of commissioners are authorized to determine the fees of pilotage, of the pilot or pilots by them appointed, and to specify the same in their respective warrants, and to direct and authorize all arrangements and operations that may be necessary to facilitate the navigation of the Columbia river and Shoalwater bay.

SEC. 6. If any vessel, while under the charge of a branch or warrant pilot, or his deputy, shall be lost or run aground, or sustain any damage through the negligence or unskillfulness of such pilot or deputy, such pilot shall be liable, both for himself and his deputy, to pay all

damages sustained by any person interested in said vessel, or her cargo, and may, moreover, be removed from his office.

SEC. 7. No master of any vessel bound into or out of Columbia river or Shoalwater bay, shall be compelled to take a pilot, but the vessel over one hundred tons burthen shall be liable to pay half pilotage, in and out, to the pilot first offering his services, but when the services of any pilot are required by the master of any vessel, bound into or out of Shoalwater bay or Columbia river, said pilot shall take charge of such vessel, first exhibiting his authority, and shall be entitled to charge and receive the fees as allowed by his warrant.

SEC. 8. The board of commissioners are authorized to hear and determine all complaint exhibited against the pilots appointed by them as aforesaid, and their deputies, and to suspend or remove them, and appoint others in their place.

SEC. 9. That all penalties, forfeitures, and complaints, incurred under this act, shall be tried and determined in any court of record having cognizance of the same.

SEC. 10. Should any ship master omit or refuse to pay the pilotage fees in any instance, when by this law he has become liable, then the vessel, or owners of such vessel, shall be liable to pay double the amount of such pilotage.

SEC. 11. That if a pilot, acting under the provisions of this act, shall have boarded any vessel outward bound, and shall be detained on board said vessel and carried out to sea, or to any foreign port, the officers of said vessel so detaining said pilot, shall be liable to pay the pilot so detained, a compensation equal to the pay of the highest officer on board of said vessel, for all the time he shall be so detained from his proper port.

SEC. 12. The said board of commissioners, hereby created, shall be entitled to receive three dollars per day for their services, spent in the performance of the duties assigned them by this act, to be paid out of the treasury of this territory, upon a warrant of the auditor, who is hereby required to audit and allow the same.

SEC. 13. No member of said board of commissioners shall be allowed to act as pilot over the bar of the Columbia river or Shoalwater bay.

SEC. 14. The pilot or pilots of Shoalwater bay shall always keep such boat or boats to cruise outside the bar, of not less than thirty tons, carpenter's measurement, as may be approved as suitable by the power granting such branch warrant.

SEC. 15. This act to take effect and be in force from and after its passage.

PASSED, January 26, 1863.

AN ACT

TO REGULATE THE DRAINING OF MARSH AND SWAMP LANDS.

SECTION 1. Persons owning swamp lands may drain them through lands claimed by other persons.

Shall apply to board of county commissioners.

Commissioners shall appoint persons to assess damages.

“ 2. Persons closing or obstructing ditches or dykes to be fined, &c.

“ 3. Persons willfully opening dyke, levee, &c., liable to arrest.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person owning swamp or marsh lands, and desiring to drain the same through any other person or persons' lands, may make application to the board of county commissioners of his county at any regular term of their court; and it shall be the duty of such commissioners to appoint three disinterested persons, who shall go to the land designated by the person making such application, and carefully surveys the lands and assess damages, if there should be any, which damages shall be paid to the person or persons so damaged when the work of ditching commenced.

SEC. 2. Any person who shall close or obstruct, or cause to be closed or obstructed any ditch, made under the provisions of this act, shall be liable to an action in law, which action may be brought before any justice of the peace of the proper county; and if found guilty may be paid in any sum not less than twenty-five dollars nor more than one hundred dollars, and shall be liable for all damages done by reasons of such obstruction: *Provided however,* That any person may commence an action in the district court. All actions commenced under the provisions of this act shall be subject to appeal, as provided by law in other cases.

SEC. 3. Any person who shall willfully open any dyke, levee or closed estuary, made under the provisions of this act, so as to let in the sea or any other waters on any persons' land, shall be liable to arrest, fine, and damages, as provided in the second section of this act.

SEC. 4. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

TO ENCOURAGE THE CULTIVATION OF OYSTERS.

- SECTION 1. Who may plant, and where.
 Conditions.
 Area each person may occupy.
- “ 2. Locality claimed to be plainly marked.
 Affidavit, and for what.
 Claims with their description to be recorded in the county where situated.
- “ 3. Time elaims may be held.
- “ 4. One or more claims may be held.
 Proviso.
- “ 5. Persons may transfer their rights.
 Transfers must be recorded, witnessed and acknowledged.
- “ 6. Duty of the recorder.
 Fees.
- “ 7. Act when to be in force.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person, being a citizen of this territory, who has planted, or who may hereafter plant oysters in any bay or arm of the sea, where there are no natural beds of oysters, within or bordering upon this territory, may acquire, by conforming to the requirements of this act, an exclusive right for such a purpose, to that portion of such bay or arm of the sea as he shall so occupy, not exceeding for any one person an area of ten acres.

SEC. 2. The person desiring the benefits of the preceding section, shall cause the place or portion he desires to claim, to be marked so far as is practicable with stakes or other artificial marks at the corners, with bearings to adjacent natural objects, and shall make, before some officer qualified to administer oaths, an affidavit that he has taken the premises so described, for the purpose of planting oysters, and that he has planted, or is about to plant oysters thereon, that said premises are not upon and do not include any natural bed of oysters, and that the same are unoccupied except by himself, and if said premises shall have heretofore been taken and oysters planted thereon, then within three months after the passage of this act, and if they shall hereafter be taken, then within one month after taking the same, the person having taken or taking the premises, shall cause his claim, with a description thereof, and affidavit as above required, to be recorded by the county recorder of the county in which they may be situated.

SEC. 3. The premises so taken shall, for the purposes aforesaid, belong to the person taking them, his heirs and assigns, so long as he or they shall so occupy them and no longer.

SEC. 4. The same person may claim and occupy more than one place, provided the premises so claimed by him do not in all occupy an area greater than ten acres; *and provided further*, That in those places used and occupied for the purpose of bedding marketable oysters, no one person shall occupy an area greater than one hundred by two hundred feet, or twenty thousand feet of superficial area.

SEC. 5. Any person may transfer his right to any other person qualified to hold, by signing the transfer upon record, in the presence of the auditor, or by a written transfer, witnessed and acknowledged in the same manner as is or may be required for deeds.

SEC. 6. It shall be the duty of the county recorder of any county where claims and transfers, made under the provisions of this act, are presented to him for record or entry, to receive and record the same in a separate book provided for this purpose, upon being paid the same fees as are allowed in similar cases.

SEC. 7. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

FOR THE PRESERVATION OF CLAMS, OYSTERS, AND OTHER SHELL FISH.

- SECTION 1. Persons not residents not allowed to take clams, oysters, or other shell fish.
 Penalty, how recovered.
- “ 2. Person instituting suit entitled to half amount recovered.
- “ 3. County auditor may grant license.
 Form of license.
- “ 4. License to be recorded.
 Amount paid to county treasurer.

SECTION 1. * *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall not be lawful for any person, who is

not at the time an inhabitant or resident of this territory, and who shall not have been for one month next preceding, an inhabitant or resident aforesaid, to take, rake, or gather oysters, clams, or other shell fish, for sale or transportation, in any of the rivers, bays, or waters of this territory, under a penalty not exceeding one thousand dollars, nor less than three hundred dollars, for each offense, to be recovered from the person so offending by action of debt, brought by any person competent to sue, in the district court for the county in which the offense was committed.

SEC. 2. The person instituting such suit shall be entitled to half the amount recovered, the other half to go to the territory.

SEC. 3. The county auditor may grant permits to any master or owner of a vessel, who has not been one month a resident of the territory, to take, rake, and gather oysters, clams, or other shell fish, in sufficient quantity to load such vessel, on flats unoccupied by residents, for oyster beds, within their county, on the payment of two dollars per ton measurement of the vessel taking such oysters or other shell fish, and such auditor shall, on the application of any such master or owner of a vessel, and the payment of three dollars, make out and deliver to such applicant a permit in the following form :

No.——. Date, —— county. A. B., master (or owner, as the case may be,) of the ——, (naming her,) is hereby permitted to load the said —— with oysters, clams, or other shell fish, to be taken from flats not occupied as oyster beds by residents of the territory.

Signed,

C. D.,
County Auditor.

Such license shall not be construed to give authority to load such vessel for more than one time.

SEC. 4. The county auditor shall enter each and every such permit in a book, to be provided for that purpose, and pay over to the county treasurer the amount received therefor, retaining the sum of three dollars as his fee for issuing such permit.

PASSED, January 19th, 1863.

AN ACT

TO REGULATE THE MEASUREMENT AND SURVEYING OF LUMBER IN
THE LOG.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the next general election and annually thereafter, it shall be the duty of the electors of the several precincts in each county where it may be necessary, to elect some person of suitable qualifications, whose duty it shall be when notified or called upon, to ascertain by actual measurement and survey, the amount of lumber contained in each and every saw log offered for sale in the precinct wherein he is elected.

SEC. 2. And for the purpose of uniformity and equality throughout the territory, the rule and scale of measurement known and determined as the "Bangor scale," shall be used by the surveyor to measure, scale and ascertain the amount of lumber contained in each and every log as aforesaid, and the surveyor shall have the right to exclude from measurement and survey, all such logs as he may deem unmerchantable.

SEC. 3. It shall be the duty of the surveyor when he has ascertained by survey as aforesaid, the quantity of lumber contained in each parcel or boom of logs, so measured by him, to make and deliver to each of the contracting parties a certificate under his hand and seal, stating the quantity of lumber contained therein, and he shall record the same in a book to be kept by him for that purpose for future reference.

SEC. 4. Before entering upon the duties of his office, the surveyor shall take and subscribe an oath before some officer legally qualified to administer oaths, to faithfully and impartially discharge the duties of surveyor according to the best of his ability, which oath shall be filed in the office of the county auditor of the proper county.

SEC. 5. And as a compensation for his services it shall be lawful for the surveyor to charge and receive the following fees, to wit :

Six cents per thousand feet contained in each raft or boom of logs by him surveyed or measured, the same to be paid by the parties selling, if not otherwise agreed upon.

SEC. 6. Any person or persons selling, buying, or dealing in saw logs, or lumber in the log, and using any other rule or scale for the purpose of measuring and ascertaining the quantity thereof, other than the one prescribed in the second section of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof before any court having competent jurisdiction, may be fined in any sum not exceeding

one thousand dollars, nor less than one hundred dollars, and costs of suit, and such fines when collected shall be paid into the county treasury by the officer so collecting, and placed to the credit of the common school fund.

SEC. 7. In case of vacancy by death, removal, resignation, or other disability of the surveyor, it shall be the duty of the county auditor to appoint some suitable person to fill said vacancy until the next annual election, who shall conform to all of the provisions of this act, and be subject to all its penalties and forfeitures.

SEC. 8. Any surveyor who shall wilfully make a false statement or certificate of more or less lumber to either of the contracting parties, than the logs by him measured actually contain, shall be deemed guilty of malfeasance in office, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars, or less than one hundred dollars, the same to be recovered and disposed of according to the sixth section of this act, with costs of suit, and shall forfeit his office.

SEC. 9. And until the first meeting of the county commissioners, the county auditors may, on application, appoint some suitable person who shall be well recommended to act as surveyor, who shall be subject to all the provisions of this act.

SEC. 10. *Be it enacted*, That section five of this act, which provides for the payment of six cents per thousand feet, to pay the surveyor of logs, shall not apply to the precincts of Tekalet and Seabeek, in Kitsap county.

SEC. 11. This act to take effect and be in force from and after its passage.

PASSED, January 26th, 1863.

AN ACT

IN RELATION TO QUARTZ MINING CLAIMS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the extent of a quartz mining claim shall not exceed two hundred feet of the lead, including all the dips, spurs and angles embraced within said two hundred feet.

SEC. 2. Any person who shall discover a vein of mineral bearing

quartz, shall be entitled to two claims, of the dimensions specified in the preceding section.

SEC. 3. No person shall be entitled to hold a quartz mining claim, unless within six days from the time of taking up said claim, he shall have posted up a written notice, specifying the time when he located said claim, and the interest he claims to hold therein, and shall cause a copy of said notice to be recorded in the office of the recorder of the county in which the claim is located.

SEC. 4. No person shall be entitled to hold a quartz mining claim, unless he shall do or cause to be done one hundred dollars' worth of work on said claim, within the year in which he locates said claim, one half of said work to be performed at the time of locating said claim, and the other half at any time during the year.

SEC. 5. Individuals associated together as companies, may, by working upon any portion of their claims, which are held, claimed, or owned by them as a company, perform the labor required by this act of individuals locating and holding claims, and such labor shall entitle them to hold their claims under this act.

SEC. 6. All persons who do not labor, or cause labor to be done on their claims, continuously, shall renew the notices prescribed by this act, every three months, and in default thereof, shall forfeit all rights they may have acquired in said claims, but it shall not be necessary to record such renewed notices.

SEC. 7. This act to take effect and be in force from and after its passage.

PASSED, Jan. 29th, 1863.

AN ACT

RELATIVE TO WEIGHTS AND MEASURES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the weights and measures, together with the scales and beams, and those made in conformity therewith, which are now or may be hereafter deposited in the treasury of this territory, shall be preserved by the treasurer, and be the public standard in this territory.

SEC. 2. The treasurer of the territory shall be the sealer of weights and measures, and he shall have and keep a seal, which shall be so formed as to impress the letters W. T. upon the weights and measures, scales and beams, to be sealed by him, with which he shall seal all such authorized public standards of weights and measures, and all the weights and measures, scales and beams, to be provided by the several counties, when examined by said treasurer, and found to be in conformity with the standard weights and measures, scales and beams aforesaid, and the treasurer of each county shall be the sealer of weights and measures for said county, and he shall provide a suitable seal and seal all weights and measures brought to him for that purpose, when the same are found to be in conformity with the legal standards.

SEC. 3. When any commodity shall be sold by the hundred weight, it shall be understood to mean the nett weight of one hundred pounds avoirdupois, and all contracts concerning goods and commodities, sold by weight, shall be construed accordingly, unless such construction would be manifestly inconsistent with the special agreement of the parties contracting.

SEC. 4. Whenever wheat, rye, indian corn, oats, barley, clover seed, buckwheat, dried apples, dried peaches, potatoes or onions, shall be sold by the bushel, and no special agreement as to the measure or weight thereof shall be made by the parties, the measure thereof shall be ascertained by weight, and shall be computed as follows:

Sixty pounds for a bushel of wheat or clover seed;

Fifty-six pounds for a bushel of rye or indian corn;

Thirty-five pounds for a bushel of oats;

Sixty pounds for a bushel of peas;

Sixty pounds for a bushel of beans;

Forty pounds for a bushel of timothy seed;

Forty-five pounds for a bushel of apples or pears;

Forty-five pounds for a bushel of barley;

Forty-two pounds for a bushel of buckwheat;

Twenty eight pounds for a bushel of dried apples or dried peaches;

Sixty pounds for a bushel of potatoes;

Fifty pounds for a bushel of onions, turnips, beets and other vegetable roots.

SEC. 5. Two thousand one hundred and fifty, and forty-two one hundredths cubic inches, shall be the contents of the legal bushel within the meaning of this act, and the half bushel and parts thereof, shall be the standard measure for charcoal, fruits, and other commodities customarily sold by the heaped measure, and in measuring such commodities,

the half bushel or other smaller measure shall be heaped as high as may be, without special effort or design.

SEC. 6. An act passed January 21st, 1858, in regard to weights and measures, and all acts conflicting with this act, are hereby repealed.

SEC. 7. This act to take effect and be in force from and after its passage.

PASSED, January 29th, 1863.

AN ACT

REGULATING THE RATES OF TOLL FOR GRINDING GRAIN.

SECTION 1. One eighth allowed as toll.

Proviso.

- " 2. Duties of owners and occupiers of mills.
- " 3. Owner of mill not chargeable with unavoidable loss.
- " 4. Penalty for disobedience to this act.
- " 5. Owner to assist in carrying grists.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington* That the owners or occupiers of all mills in this territory, moved by water or other power, shall be entitled to one eighth part of all wheat, rye or other grain, ground and bolted, or ground and not bolted, and no more: *Provided however*, said owner or occupier shall not be permitted to grind his own grain to the exclusion of other grists, when said mill is used and occupied as a grist mill.

SEC. 2. The owner or occupier of any grist mill, shall well and sufficiently grind the grain brought to his mill for that purpose in due time, and in the order in which it shall be received, and shall be accountable for the safe keeping of all grain received in such mill, for the purpose of being ground therein, and shall deliver, when ground, or ground and bolted, as the case may be, with the bag or cask in which it was brought, when demanded, but every owner or occupant of a mill may grind his own grain at any time; and nothing in this section contained, shall be construed to compel the owners or occupants of mills to grind for sale or merchant work.

SEC. 3. Nothing contained in the preceding section shall be so construed as to charge the owner or occupant of any mill, for the loss of

any grain, bag or cask, which shall happen by robbery, fire or inevitable accident, without the fault of such owner or occupant, his agents or servants.

Sec. 4. Every miller, or owner or occupant of a grist mill, who shall not well and sufficiently grind any grain as aforesaid, or not in due turn, as the same shall be brought, or who shall exact or take more toll than is herein allowed, shall, in every such case, be liable to a fine of not less than three nor more than twenty dollars, and shall also be liable to the party injured in double the actual damages sustained by him.

Sec. 5. That every owner or occupier of such grist mill shall assist in carrying grists in and out of said mill, when the owner of such grist is unable to do the same.

PASSED, January 19th, 1863.

AN ACT

OFFERING A BOUNTY FOR KILLING WILD ANIMALS.

SECTION 1. Commissioners of each county may offer a bounty for killing wild animals.

- " 2. Scalp of the animal to be proven.
- " 3. Justice of the peace to give a certificate and destroy the scalp.
- " 4. Certificate to pay taxes in the county in which the animal was killed.
- " 5. When this act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners of each and every county may, if they think proper, offer a bounty for killing wild animals.

Sec. 2. That before any person shall be entitled to receive any bounty offered by any commissioners' court of the proper county, the person claiming to have killed the said animal or animals, shall go before a justice of the peace of the county where said animal or animals was killed, and make oath that the scalp, with two ears thereto, is the scalp of the animal or animals killed by him, within the limits of the said county, and the time when killed.

Sec. 3. It shall be the duty of the justice of the peace before whom any person shall appear with a scalp of any of the animals allowed by the commissioners' court, after administering to said person the oath

above specified, and upon the said justice being satisfied that the said person is the person who killed said animal, to give said person a certificate as follows :

This certifies that A. B., (here name the person who killed the animal,) on or about (here state the date of killing the animals,) killed, (here describe or name the animal,) in the county of (here name the county,) for which he is entitled to the sum of — dollars, or cents, out of any money in the county treasury not otherwise appropriated.

Given under my hand this date -----.

J. A., justice of the peace.

And the said justice of the peace is requested forthwith to destroy the scalp.

SEC. 4. Said certificate or bounty shall be paid out of any money in the county treasury of the county in which said certificate shall be issued, and shall be a legal tender for the amount specified in said certificate, to the collection of the county revenue, in the payment of county tax, and no certificate shall issue to any person for killing any of the aforesaid animals, only in the county where said animals shall be killed, and shall not be received in payment of taxes, or paid in any other county, but the county in which said certificate shall issue.

SEC. 5. This act to be in force from and after its passage.

PASSED, January 19th, 1863.

AN ACT

IN RELATION TO OFFICIAL SEALS.

SECTION 1. Boards of county commissioners shall furnish seals to courts in respective counties.

“ 2. In the absence of official seal, temporary seal authorized.

“ 3. Device by way of seal, as valid as actual seal.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the board of county commissioners of the several counties of the territory, to provide and furnish seals for such of the several district and probate courts, as are

now unprovided with the same, and with such descriptions and devices, as the said courts shall respectively require.

SEC. 2. When any court of record shall be unprovided with a seal, the judge of said court may authorize the use of any temporary seal, or of any device by way of seal, until the same shall be provided as aforesaid.

SEC. 3. Any instrument to which the person making the same shall affix any device by way of seal, shall be adjudged and held to be of the same force and obligation, as if it were actually sealed.

PASSED, January 19th, 1863.

AN ACT

IN RELATION TO THE SEAL OF THE TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the description in writing, of the great seal of the territory, shall be deposited and recorded in the office of the secretary of the territory, and shall remain a public record, and shall be and continue the great seal of the territory; and the governor of the territory shall have the custody of the said seal, and all such matters and things as issue under the said seal, shall be entered on the record in the office of the secretary of the territory.

PASSED, January 19th, 1863.

AN ACT

AUTHORIZING POSSESSION OF THE TERRITORIAL SEAL TO THE GOVERNOR OF WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the governor shall have the keeping of the

seal of the territory, and shall at all times have the care and custody of the same. And until he is in possession of said seal, it shall be lawful for him to use his private seal to all official documents.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED, January 15th, 1863.

AN ACT

TO PREVENT STUD-HORSES, JACKASSES, RIDGLINGS, FROM RUNNING
AT LARGE.

- SECTION 1. Stud-horse, &c., over eighteen months old not to be allowed to run at large.
- “ 2. Penalty for the same, and how collected.
- “ 3. Person finding such animal to notify owner.
Penalty for neglect or refusal to take care of such animal.
- “ 4. Proceedings when the owner is not known.
- “ 5. Resident of the territory only allowed to take up said animals.
- “ 6. Owner of such animals responsible for any damage that may be done by them.
- “ 7. Moneys accruing under this act to be applied to common school purposes.
- “ 8. Repealing clause. Act not to apply to country east of the Cascades, or to Wahkiakum.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That it shall not be lawful for any person owning or keeping any stud-horse, jackass, or ridgling, to suffer the same to run at large after they are eighteen months old, within the limits of any of the white settlements within this territory.

SEC. 2. Any person or persons keeping any of the animals mentioned in the first section of this act, who shall suffer them to run at large after they are eighteen months old, shall forfeit and pay the sum of five dollars, to be collected in an action of debt, with costs of suit, together with damages, before any justice of the peace living in the county where such animal was found.

SEC. 3. It shall be lawful for any person finding any of the animals described in the first and second sections of this act, to notify the

owner to take such animal up from running at large, if he is known to the finder. If said owner neglect or refuse to take care of said animal, he shall be liable to be prosecuted for such neglect, and shall forfeit and pay the sum of ten dollars for every such neglect, and shall be liable to pay damages on complaint being made before any justice of the peace in the county where the animal was found.

SEC. 4. If any such animal shall be found running at large where the owner is not known, it shall be lawful for any person living in the settlement where said animal was found, to take the same up and alter or gild them; for which they shall be entitled to receive five dollars, and any other reasonable expenses for which the animal shall be held in security until the expenses are paid. If no owner is found to claim said animal within thirty days, said animal shall be sold at public auction to the highest bidder, and the expenses paid to the taker up, and the remainder, if any, shall be paid to the county treasurer for the use of the owner; if no owner appear appears within one year, the money so paid shall be applied to the use of common schools.

SEC. 5. It shall not be lawful for any person who is not a resident of this territory to take up any of the animals described in this act.

SEC. 6. Any person owning any of the animals described in this act shall be held responsible for any damage that may be sustained by them while running at large, and shall be liable to be prosecuted for the same and held responsible for all damages and costs that may accrue on account of said animals.

SEC. 7. This act shall take effect and be in force from and after its passage, and that all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

PASSED, January 24th, 1863.

AN ACT

IN RELATION TO CONVICTS TO THE PENITENTIARY OF THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That until a penitentiary shall be erected or provided for the confinement of persons, now under sentence or hereafter to*

be sentenced to the penitentiary, it shall be competent, and it is hereby made the duty of the judge of the district court trying such person or persons, to designate in the sentence of said convict, the most proper, convenient and secure jail or place of confinement within said territory; *Provided*, That if there be a suitable county jail within the respective judicial district, in which the offense was committed, said convict shall be confined therein.

SEC. 2. The sheriff, jailor or other officer, to whose custody, care or control said convict shall be committed, is hereby required to keep such convict safely and according to law. And said sheriff, jailor or other officer entrusted with the custody of any such convict, is authorized to secure each and every such convict, by means of chains, rings and balls, shackles or handcuffs, or any combination thereof, if the use thereof be deemed necessary.

SEC. 3. The daily sustenance of convicts shall consist of healthy coarse food, with such proportion of meat and vegetables as said keepers shall deem best for the health of said convicts and the interests of the territory. No coffee, tea, sugar, tobacco, spirituous liquors, or other article of indulgence, shall be allowed any convict, without the same be essential for health of the prisoner, and be furnished upon the written permission of the jailor or sheriff of the county, in which such prisoner may be confined.

SEC. 4. Convicts to the penitentiary, shall be employed in labor of some kind under the direction of the keeper, jailor or sheriff in whose custody they may be. If such convict be assigned to work upon a county jail, or the grounds adjacent thereto, the county in which said jail is located, shall be chargeable for such labor, at the rates prescribed by law, or it may be competent for said keeper or officer, to contract with any road supervisor, or town marshal, authorizing the employment of said convict upon any public road, highway or other place. It being the express intent of this act, that the labor of such convict, shall be so applied as to secure a labor fund, by which said convicts shall be kept and maintained.

SEC. 5. Keepers of penitentiary convicts shall be allowed the fees now allowed by law for the custody of prisoners confined in the county jail; and in addition thereto shall receive the sum of one dollar per day, for the board of such convict.

SEC. 6. Each sheriff, jailor or keeper of a penitentiary convict, shall keep a correct account of all funds received from the proceeds of convict labor, and make return thereof under oath to the territorial au-

ditor, semi-annually on the first days of June and December of each year. Should the receipts for labor of any convict be inadequate to pay such officer or jailor, for the custody and board of such convict, the deficiency shall be paid out of the territorial treasury.

SEC. 7. Claims for keeping convicts under the provisions of this act, shall be sworn to before an officer authorized to administer oaths, and be approved by the judge of the district court, of the district where such convict was tried. Such jailor, officer or keeper shall make report semi-annually of all the proceeds of convict labor, also the expenses of the keeping of convicts, to the territorial auditor, who shall, in the event of any sum being found to be due such keeper, draw a warrant upon the territorial treasurer, in favor of such keeper. And any excess in the hands of said keeper shall be paid over semi-annually to the said treasurer. And all warrants heretofore issued against the penitentiary labor fund, now unpaid, issued under and by virtue of heretofore existing laws, relating to the expenses of the custody of persons sentenced to the penitentiary, shall be paid out of the territorial treasury, upon like footing with other claims.

SEC. 8. All acts and parts of acts heretofore passed, designating any particular sheriff of any county, or any particular county jail as the place of confinement for penitentiary convicts, and providing payment of the expense thereof, be and the same are hereby repealed.

SEC. 9. This act to take effect and be in force from and after its passage.

PASSED, January 27th, 1863.

AN ACT

TO PROVIDE FOR THE APPOINTMENT OF COMMISSIONERS OF DEEDS.

SECTION 1. Governor may appoint commissioners of deeds.
Powers of.

" 2. Before entering upon duties, to make oath and file certificate of, in office of secretary.

SECTION 1. *Be it enacted by the Legislative Assembly of the Terri-*

torg of Washington, That the governor may appoint in each of the United States and the territories thereof, one or more commissioners, under the seal of this territory, to continue in office during the pleasure of the governor, for the time being, who shall have power to administer oaths, and to take depositions and affidavits to be used in this territory; and also to take the acknowledgment of any deed or other instrument, to be used or recorded in this territory.

SEC. 2. Before any commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before any justice of the peace, or other officer authorized to administer oaths in the state or territory for which such commissioner is appointed, that he will faithfully discharge all the duties of his office; a certificate of which shall be filed in the office of the secretary of the territory.

PASSED, January 19, 1863.

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 as many notaries public for said territory, as he shall deem expedient, who shall hold their office for the period of three years, and until their successors shall be duly appointed and qualified, and they shall be severally commissioned and engaged thereon according to law.

SEC. 2. Notaries public are hereby authorized within the territory of Washington, to act, transact, do and finish all matters and things relating to protests, and protesting bills of exchange and promissory notes, and all other matters within their office required by law; to take depositions as prescribed by law, and acknowledgments of deeds and other instruments, and to administer oaths, for which they may charge and receive the fees herein enumerated.

For every protest of a bill of exchange or promissory note.....	1 00
Attesting any instrument of writing and seal.....	50
Noting a bill of exchange or promissory note for non-acceptance or non-payment.....	50

Taking acknowledgment of any legal instrument.....	50
Registering protest of bill of exchange or promissory note.....	75
Certifying an affidavit, and all other certificates under seal.....	50
Each oath or affirmation without seal.....	25
Being present at demand, tender, or deposit, and noting the same, besides mileage.....	50
For any instrument of writing drawn by a notary public, for each one hundred words.....	25

SEC. 3. Every notary public, before he enters upon the duties of his office, shall provide an official seal, which shall be approved by the governor, and shall deposit an impression of the same, together with his official oath, in the office of the secretary of the territory.

SEC. 4. The governor may remove any person heretofore, or who may hereafter be appointed a notary public, who has or shall neglect to provide himself with a proper official seal, or who, from any cause, may be incompetent, and on the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the office of the county auditor, for the county in which the said notary public resided. If any notary public on his resignation or removal from office, shall for the space of three months, neglect to deposit his records and official papers with the auditor, he shall forfeit a sum not exceeding five hundred dollars.

SEC. 5. It shall be sufficient for any person acting as notary public, to certify an oath to be used in this territory in any of the courts, or in any manner whatever, to say simply in addition to his name, "Notary Public." and all the courts of this territory shall consider an oath or affidavit properly certified by an acting notary, without the impression of his seal or other or further addition.

SEC. 6. This act to take effect and be in force from and after its passage.

PASSED, January 19th, 1863.

AN ACT

TO PROVIDE FOR THE PUBLIC PRINTING, AND DISTRIBUTION OF THE LAWS AND JOURNALS.

- SECTION 1. Territorial printer to be elected; when.
His term of office.
Bond to be given.
- " 2. Duties of the territorial printer.
- " 3. Compensation.
- " 4. Secretary to have the work examined.
Compensation to the person making examination.
- " 5. Secretary to make an index.
Compensation therefor.
- " 6. Chief clerks to furnish copies of laws and journals.
Compensation therefor.
- " 7. When this act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be elected annually by the legislative assembly, upon joint ballot, a territorial printer, who shall serve for one year from the date of his election, and until his successor shall be elected and qualified; and such printer shall, within ten days after his election, or before entering upon the duties of his office, enter into bond with sufficient security, to be approved by the secretary of the territory, with conditions for the prompt and workmanlike execution of the public printing, and faithful performance of all the duties required of him by law.

SEC. 2. It shall be the duty of the territorial printer, to execute all the incidental printing ordered by the legislative assembly during the sessions thereof, and he shall annually cause seven hundred copies of the laws, one hundred and fifty copies of the journal of the council, and one hundred and fifty copies of the journal of the house of representatives to be printed and disposed of as follows: Two copies of each to the members of the legislative assembly, one copy of each to their officers and clerks; one copy of each to the civil officers of this territory appointed by the United States; sixty copies of each to be placed in the territorial library; one copy of each to be deposited with the county auditor of each county for the inspection of the public. And it shall be the duty of the secretary of the territory to forward to each county auditor in the territory fifteen copies of the laws of each session, for the use of the county officers, and two copies for each member of the legislative assembly, and to each officer of the legislative assembly, one copy of said laws.

SEC. 3. The prices to be paid to such printer are hereby established as follows: For composition per thousand ems, two dollars and fifty cents; figure work per thousand ems, three dollars; rule and figure work, per thousand ems, four dollars; press work per token, common form, two dollars and fifty cents; folding reports and bills, per thousand copies on each signature, three dollars; stitching reports and bills per hundred copies, one dollar and fifty cents; paper for the same, six dollars per ream; and for binding in strong paper or otherwise, a reasonable compensation shall be allowed, to be fixed by the secretary of the territory; and the secretary of the territory shall defray the expenses of the same out of any money in his hands appropriated by congress to pay the expenses of the legislation of this territory, and shall annually report to the legislature the amount of work done and the cost.

SEC. 4. It shall be the duty of the said secretary to procure the services of some practical printer to see that the work furnished by the territorial printer is executed in a workmanlike manner, and to measure and estimate the same, and to give a certificate under affidavit to said secretary to that effect, and the said practical printer shall receive as a compensation for his services, the sum of five dollars per day for the time necessarily employed in said duty.

SEC. 5. It shall be the duty of said secretary to make a complete index of said laws and journals with marginal notes to the volumes of the general laws, and he shall receive for his services under this act, the sum of one thousand dollars to be paid out of any money appropriated by congress to defray the expenses of the legislature of this territory.

SEC. 6. Copies of said laws and journals shall be furnished the said territorial printer by the chief clerks of the two branches of the legislative assembly within twenty days after the adjournment, for which services they shall receive the sum of five dollars per day, to be paid out of any money appropriated by congress to defray the expenses of the legislature of this territory; the clerk of the house to furnish a copy of all the laws originating in the house, and the clerk of the council to furnish a copy of all laws originating in the council.

SEC. 7. This act to take effect from and after its passage.

PASSED, January 19th, 1863.

AN ACT

TO AUTHORIZE THE TERRITORIAL AUDITOR TO DRAW ORDERS UPON THE TREASURER FOR THE PAYMENT OF FREIGHT OR CHARGES ON PACKAGES OR PARCELS ADDRESSED TO THE TERRITORIAL LIBRARIAN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the territorial librarian, upon the receipt of any and all bills for freight or express charges on books, packages or parcels, which may be addressed to said librarian for the use and purposes of the territory, to present such bill or account of expenses to the territorial auditor, who shall, upon being satisfied that such account is just and correct, draw a warrant upon the treasurer for the amount of the demand.

SEC. 2. The territorial treasurer shall pay all orders drawn upon him by the auditor as above provided, out of any moneys belonging to the territory which may be in his hands at the time of their presentation.

SEC. 3. This act to take effect from and after its passage.

PASSED, January 16th, 1863.

AN ACT

TO PROVIDE FOR THE APPOINTMENT OF A LIBRARIAN, AND DEFINING HIS DUTIES.

- SECTION 1. Librarian to be elected, give bond, and take oath.
- “ 2. Librarian to have charge of all things belonging to the library.
- “ 3. To provide a room at the seat of government.
- “ 4. All persons to have access to the library, but not to remove the books.
- “ 5. Assistant librarian may be appointed.
- “ 6. What hours the library to be kept open.
- “ 7. Librarian to report books.
- “ 8. Librarian and secretary may make rules, &c., for the preservation the library.
- “ 9. Librarian to report.
- “ 10. Compensation of librarian.
- “ 11. When this act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a librarian shall be annually elected by the legislative assembly of the territory of Washington, that he shall give bonds to the secretary of the territory, in the sum of one thousand dollars, for the faithful performance of his duties, and he shall take an oath impartially and faithfully to perform the duties of librarian.

SEC. 2. He shall have the custody, charge, safe-keeping, management, and direction of all books, papers, maps, charts, engravings, paintings, and all other things, of whatsoever nature, properly belonging to the library, or directed to be deposited therein.

SEC. 3. He shall provide at the seat of government, and as convenient as possible to the house occupied by the legislative assembly, a proper room for the safe-keeping of the territorial library, and all things belonging or appertaining thereto, which shall be entrusted to his care.

SEC. 4. All officers of the territory, district, territorial and federal, and all attorneys of the supreme and district courts shall be entitled to the use of the library, and all other persons shall have access to the library, but no persons shall be allowed to remove a book from the library but those persons herein enumerated, and they shall not be allowed to keep a book out of the library more than two weeks at a time.

SEC. 5. The librarian shall have authority to appoint an assistant librarian, who may perform the duties assigned the librarian, and for whose acts the librarian shall be responsible.

SEC. 6. The library shall be kept open during the session of the legislative assembly, supreme and district court, from the hours of nine to twelve o'clock in the forenoon, and from two to nine o'clock in the afternoon, and at other times one day during each week.

SEC. 7. It shall be the duty of the territorial librarian to make a new classification of all the books contained in the library, number the shelves in a regular manner, and make a new catalogue in such manner, that a committee can begin at a given point and examine every volume, so that it can be ascertained what works are in the library, and what are missing, at any and all times; likewise report in a condensed manner all the catalogues of books that have been contained in the several annual reports of the librarians that have been in office since the first annual report of the first elected librarian for this territory. Also the number of additional books, as near as may be, that have been added to the library since the winter and spring of 1854—and make his annual report within ten days after the commencement of the session of the legislature.

SEC. 8. The secretary and librarian may adopt such further regulations, consistent with the provisions of this act, as they see fit, for the preservation and management of the library, and may prescribe fines and forfeitures for the breach of those herein provided, and the librarian is hereby authorized to sue, in the name of the territory, for the breach of any such regulation, and for any injuries done to the library, and for any fines and penalties under this act.

SEC. 9. The librarian shall, previous to the close of every session, report to the legislative assembly a true account of all expenses incurred during the session, and since the adjournment of the next preceding session; a list of all books and other property missing from the library, and an account of fines and forfeitures imposed, and those paid, and such other information in relation to the library as he deems expedient.

SEC. 10. The librarian shall receive annually for his services, the sum of three hundred dollars, payable quarterly, by the secretary of the territory, out of the fund appropriated by congress for the expenses of the legislative assembly.

SEC. 11. This act shall be in force from and after its passage.

PASSED, Jan. 27th, 1863.

AN ACT

DEFINING THE TIME OF THE CONVENING OF THE LEGISLATIVE ASSEMBLY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the regular annual session of the legislature shall commence on the first Monday in December, in each year.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

ASSIGNING THE DISTRICT JUDGES OF THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the Hon. J. E. Wyche, associate justice, be and is hereby assigned to the first judicial district, and to reside therein.

SEC. 2. That the Hon. E. P. Oliphant, associate justice, be and is hereby assigned to the second judicial district, and to reside therein.

SEC. 3. That the Hon. C. C. Hewitt, chief justice, be and is hereby assigned to the third judicial district, and to reside therein.

SEC. 4. Either of said district judges may hold court, and perform any other judicial duty in any district other than that to which he was assigned, in case of the absence, sickness or disability of any one of the judges, and to hold the regular term or terms of court.

SEC. 5. This act to take effect from and after the sixteenth day of March, A. D., 1863.

PASSED, January 10th, 1863.

AN ACT

RELATIVE TO THE TERMS OF THE SUPREME COURT.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the supreme court shall assemble at the capital, and a term be held on the first Monday in January, in each year, to continue so long as may be required, and that all laws requiring a term of the supreme court to be held at any other time, be repealed.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

IN RELATION TO THE CONSTRUCTION OF ROADS AND HIGHWAYS, AND
DEFINING THE DUTIES OF SUPERVISORS OF HIGHWAYS.

- SECTION 1. County commissioners to exercise jurisdiction over county roads.
- " 2. At regular term of county court, roads may be established, altered or vacated.
- " 3. Provisions for establishment, alteration or vacation of county roads.
Notice and petition, requisites of.
- " 4. County auditor to keep road book—how kept.
Roads to be entered and recorded before declared.
Road book to be a public record.
- " 5. What road book shall contain.
- " 6. Claims for damages for opening, altering roads, &c.
When complaint against commissioners shall be dismissed.
- " 7. Width of county roads.
- " 8. When supervisor may expend labor on territorial road.
- " 9. Petitioners for roads, liable for work thereupon.
- " 10. Roads located shall be marked but not surveyed; exception.
- " 11. When and how road may be turned by owner of land over which it passes.
Costs of such alteration to be paid by petitioner.
- " 12. Manner of locating private roads.
- " 13. Report of viewers of private roads.
Damages of parties aggrieved and appeal.
- " 14. Assessment of damages caused by location of territorial roads.
Damages to be paid by county where road lies.
- " 15. Territorial road declared public highway, and how and by whom repaired.
- " 16. Duties of road supervisors.
Election of road supervisors—qualification and term of office.
Special elections, when and how to be held.
- " 17. Penalty for supervisor failing or refusing to act.
No supervisor compelled to act two successive years.
- " 18. County auditors may appoint supervisors to fill vacancies.
- " 19. County commissioners at June term to fix road districts.
Road districts to be recorded by auditor.
- " 20. Supervisors to make lists of parties liable for road tax and labor.
Requisites of list, and when to be made.
- " 21. County commissioners to levy and assess road tax at June session.
Amount of road tax.
- " 22. Who shall be liable for road tax.
Supervisor failing to notify, does not exempt party from road tax.
- " 23. Person liable may employ substitute.
- " 24. Persons notified proving delinquent—penalty.
Having worked in other road district for the same year, sufficient excuse for delinquency.

- SECTION 25.** Supervisor to open and keep in repair all roads laid out according to law.
 May purchase necessary tools. &c.
 May enter adjacent land and carry away earth, trees, &c.
 May buy timber, plank and material.
 May commute road tax for materials, etc.
- " 26. May enter upon land adjacent and make ditches, &c.
 Penalty for obstruction of ditches.
- " 27. Collection of damages for supervisor carrying away materials, &c.
- " 28. Obstruction of roads and damages to bridges by falling timber.
 Supervisor to cause removal of obstruction and repair of bridge.
 Person causing such obstruction or damage, liable for expense.
- " 29. Person performing more labor than due, credited next year.
- " 30. Accounts to be kept by supervisor, and mode of settlement.
- " 31. Supervisor to give certificate of performance of labor, or taxes paid.
 Requisites of said certificate.
- " 32. Certificates to be received at par by county treasurer.
 When county treasurer shall add ten per cent, on tax assessed.
- " 33. Supervisor neglecting duty or giving false certificate—penalty.
- " 34. Omission or neglect to place person on list—how corrected and supplied.
- " 35. Guide and finger board to be placed at crossing of roads.
 Supervisor to be allowed expenses thereof.
- " 36. Compensation allowed by county commissioners to road supervisors.
- " 37. County auditor not to add any per cent. to unpaid road tax.
 Sheriff, auditor and treasurer, not allowed any fees out of road fund.
 Levies by sheriff, officer entitled to same fees as in other cases.
- " 38. Commissioners may cancel tax improperly assessed.
 May also exonerate supervisors and sheriff from collection.
- " 39. Road fund to be paid over to county treasurer and subject to order of county commissioners.
 When payable into the county fund.
- " 40. County commissioners at June term to apportion road fund.
- " 41. Form of certificate of discharge by road supervisor.
- " 42. Repealing clause.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of county commissioners of each county, shall have the sole and exclusive jurisdiction over county roads within their respective counties, subject to such appeals to the district court, and such rules and regulations as may be prescribed by law.

SEC. 2. At any regular meeting, said board may establish, alter or vacate county roads, and cause the same to be laid out, marked or surveyed, and worked and opened, as they shall deem most for the public interest.

SEC. 3. They shall not establish, alter or vacate any road unless they shall be satisfied that at least twenty days' public notice has been given of an intention to apply to said board for such alteration, or to

vacate said road, with notice of the time when the application will be made, by posting at least three written or printed notices in three of the most public places in the county, one of which shall be at the county seat, and two in the most public places in the vicinity of the road proposed to be altered or vacated; and at least a majority of the citizens in the district through which said road is located, are in favor of such alteration.

SEC. 4. The board of county commissioners shall cause their clerk to enter in a well bound book, their action upon all roads which they shall establish, alter, or vacate, which book shall be called the "Road Book" of the county; in which book all the records concerning the roads at present established in the county, shall be entered; and no county road hereafter altered or established shall be opened or deemed a legal road until the same shall be fully recorded in said road book. Said road book shall be a public record, and be kept in the office of the clerk of the board of county commissioners, and shall be open to the inspection of the public.

SEC. 5. Said road book shall contain the petition, if any, the report of the viewers, a description of the road, with a copy of the survey, if any has been made, and a copy of all claims for damages on the part of any person claiming to have been affected by the location, vacating, or altering of said road, together with all the orders and proceedings of the board touching the same.

SEC. 6. Any person claiming to have been injured by the action of the board of county commissioners, upon any county road, may, within six months after the action complained of, file his complaint against the board of county commissioners, in the district court having jurisdiction over the county, setting forth a full copy of the record, and specifying in what respect he has been injured, of which complaint similar notice shall be given; and the same shall be verified, tried, and determined as is provided in civil actions: *Provided*, That if it shall appear that the party complaining had actual notice of the intended action of the board upon such road, in time to have appeared and presented his claim to said board, and did not so appear and present his claim, or having appeared, took no exception to the action of the board; or having been tendered a reasonable amount of damages, refused to accept the same, or has acted in any other respect, contrary to good faith, then his complaint shall be dismissed.

SEC. 7. County roads shall be sixty feet in width, unless the county commissioners shall, upon the prayer of the petitioners for the same, determine on a less number of feet in point of width, and their

boundaries wherever they pass over, or through, praries or improved lands, shall be distinctly marked out and defined.

SEC. 8. In any road district embracing a territorial road within the district, the supervisor of roads may, if the public benefit require it, expend a part of the labor due in his district on said territorial road or roads, beyond the bounds of the county or district in which he is appointed: *Provided*, That such portion of territorial road so worked shall not be included in a road district of an adjoining county, or is so situated that there will not be sufficient labor in the adjoining road district to do the necessary work on said territorial road, and any county or territorial road, after the same shall have been located for three years, without being opened and worked, shall be, and is declared vacated.

SEC. 9. Any person signing a petition to the county commissioners of any county, asking to open any new road, or to make any alteration in any established road requiring labor thereon, shall be required to perform or furnish two days' labor on such new road or alteration, if the petition be granted.

SEC. 10. Every territorial and county road hereafter to be located, shall be viewed and plainly marked throughout, but need not be surveyed except the act locating such road shall expressly require it.

SEC. 11. If any person or persons, through whose lands any public highway is or may be established, shall be desirous of turning such road through any other part of his or their lands, such person or persons may, by petition, apply to the commissioners of the proper county, to permit him or them to turn such road through any other part of his or their land, on good ground, and without materialy increasing the distance, to the injury of the public; and on the receipt of such petition, accompanied by a sufficient bond to pay the costs and expenses to be incurred thereby, the commissioners shall appoint three disinterested householders as viewers, and a surveyor, who, or a majority of such viewers, shall proceed to view the ground over which the road is proposed to be turned, and ascertain the distance such road will be increased by the proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility of making such alteration; and if the viewers or a majority of them, shall report to the commissioners that the prayer of the petitioner or petitioners is reasonable, and that the proposed alteration will not place the road on worse ground, or materialy increase the distance, to the injury of the public, they shall order the same to be so altered; and upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road for the conveni-

ence of travelers, the commissioners may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced in the new, and the person or persons petitioning for the alteration, shall pay all the costs and expenses of the view, survey, and return of such alteration.

OF LOCATING PRIVATE WAYS.

SEC. 12. Any person whose land shall be so situated that it has no connection with any public road, may make application in writing, to the board of commissioners of his county, at a regular session, for a private road leading from his premises to some convenient public road, and thereupon the said commissioners shall appoint three disinterested householders of the county as viewers, and shall issue an order directing them to meet on a day named in such order, to view and locate a private road according to the application, and to assess the damages to be sustained thereby; and after being duly sworn, faithfully and impartially to discharge the duties of their appointment, and after at least three days' notice given to all persons through whose land such private road is to be located, such viewers shall proceed to locate and mark out thirty feet in width from some certain point on the premises of the applicant, to some certain point on the public road, so as to do the least damage to the lands through which said private road is located; and they shall also at the same time, assess the damages sustained by the person or persons owning such land.

SEC. 13. The viewers so appointed, or a majority of them, shall make a report to the commissioners, at their next regular session, of the private road so located by them, and also the amount of damages, if any, assessed by them, and the person or persons entitled to such damages; and if the commissioners are satisfied that such report is just, and after payment by the applicant of all costs of locating such road, and the damages assessed by the viewers, they shall order such report to be confirmed, and declare such road to be a private road, and the same shall be recorded as such; and any person aggrieved by the assessment of damages, may appeal, within twenty days after such confirmation of the report, to the district court, and such appeal shall be tried as appeals from the assessment of damages in cases of county roads.

OF THE MANNER OF ASSESSING DAMAGES ON TERRITORIAL ROADS.

SEC. 14. When any person, through whose land any territorial road may be located, shall conceive that he would be injured by the

opening of the same through his premises, he may, within six months after the filing of the report and plat of survey of such road, in the office of the clerk of the board of commissioners of such county, make complaint in writing to such commissioners, setting forth such damage, and thereupon the same proceedings shall be had to assess and determine the damages sustained by such complainant as in case of county roads, and such damages shall be paid out of the treasury of the county in which the lands are situated.

SEC. 15. When any territorial road shall have been located according to the provisions of this act, the same shall be and remain a public highway, and shall be opened and worked by the counties through which it may be laid out, as county roads are; and such roads may be altered or changed in any county in the same manner as county roads are altered.

OF THE DUTIES OF SUPERVISORS AND COMMISSIONERS.

SEC. 16. That the supervisor of each road district in this territory, shall, at least ten days before the first Monday in April of each year, cause three written notices to be posted up in three conspicuous places in his road district, giving notice that there will be an election held in such district on the first Monday in April, at two o'clock in the afternoon, at some convenient place in said district, to be specified in said notice, for the purpose of electing a road supervisor for said district, for the next succeeding year; at which election the old supervisor shall act as chairman of the meeting if present, if not, a chairman shall be elected by the voters present; the meeting shall also elect a secretary, who shall record the proceedings of the meeting, and all persons in the district who are required to labor on the roads, or who have road taxes to pay, may vote at such election, and the person having the highest number of votes shall be considered elected supervisor for that year, and shall act as such until his successor is elected or appointed, and duly qualified: *Provided however*, from any cause there be no election on the first Monday, the supervisor, or any tax payer of the district, may call a special election, by giving notice as provided in this section, which election to be held within one month from the first Monday in April. And it shall be the duty of the chairman and secretary of such meeting called to elect a supervisor, to notify the county auditor in writing, by or before the regular meeting of the board of commissioners of the county, that the district has elected a supervisor, and give his full name.

SEC. 17. Any person having been elected or appointed supervisor and failing to act as such, shall forfeit and pay the sum of ten dollars,

and the county auditor shall collect the same and pay over to the county treasurer, or return such delinquent to the county commissioners, who shall assess the amount against such person on the tax list, to be collected as other road taxes: *Provided*, No person shall be bound to act in the capacity of supervisor two successive years.

SEC. 18. That if any vacancy shall happen in the office of supervisor by death, removal from the district, or disability in the supervisor to act, or when there has been no election of supervisor, the county auditor, on being notified of such vacancy, in writing, shall appoint some suitable person who is liable to perform labor on the roads in said district, and cause him to be notified in writing, whose duty it shall be to attend before some person authorized to administer oaths, within five days from such appointment, and take the oath of office, and enter upon the duties of his office; and he shall remain in office until a successor is elected and qualified.

SEC. 19. The county commissioners shall, as often as they may deem necessary, but not oftener than once in a year, (at their June term) divide their respective counties, or any parts thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records.

SEC. 20. It shall be the duty of every supervisor, on or before the fifteenth day of May of each year, to obtain a correct list of the names, and make out, in alphabetical order, a list of all persons liable to perform labor on the public roads, or that are liable to pay a property tax, designating those over fifty years of age, and those who are too infirm to labor on the roads, and to forward such list to the county auditor, prior to the regular session of the board of county commissioners in June.

SEC. 21. It shall be the duty of the board of county commissioners of the several counties in this territory, at their June session, to levy and assess a road tax of six dollars on every person liable to perform labor on the public roads, and also to assess twenty cents road tax on every one hundred dollars of the valuation as returned by the county assessor, which tax shall be collected with the county and territorial tax, and in the manner hereafter described, which shall constitute a road fund; and the county auditor shall, immediately after the June session, furnish each supervisor of road districts with an abstract or duplicate of the taxes so assessed for road purposes in his road district.

SEC. 22. Every white male inhabitant between the age of twenty-one and fifty years of age, except persons who are a public charge, or

who are too infirm to perform labor, and shall be liable in each and every year to do and perform two days' labor on the public roads, or pay a road tax as provided in this act; the supervisor of every road district shall give every person within his road district, liable to perform labor on the roads, or who are liable to pay a road tax, at least three days' notice of the time and place to appear, which notice may be in writing, or otherwise, and by the supervisor in person, or by his direction, the supervisor shall also notify every person within his road district, the amount of road tax assessed against such person, and such notice shall be given between the first day of June and the first day of August, annually: *Provided*, That if from any cause the supervisor shall fail, or neglect to give notice as required by this section, it shall be lawful to notify such persons as soon as the neglect is discovered.

SEC. 23. Whenever it shall happen, in consequence of sickness, absence from home, or any other good cause, the person liable to perform work or to pay a road tax, does not attend in obedience to the notice of the supervisor at the time and place appointed, such person may tender his services, by himself or a sufficient substitute, to perform the labor required to pay the tax assessed; and in such case the supervisor shall employ such person, or his substitute, at another time.

SEC. 24. Every person notified to labor on the public roads under the provisions of this act, or who are not exempt by the provisions of this act, who does not produce the certificate of the supervisor of some other road district, showing that such person has worked out his road tax for that year in this territory, shall be required to appear at the place appointed by the supervisor, at the hour of seven o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct; and on failure of such person to appear at the time and place as aforesaid, and no good cause being shown for such delinquency, the supervisor shall return such fact: and the treasurer and sheriff shall demand of every person who has not paid his road tax in labor, the additional sum of ten per cent. on such road tax.

SEC. 25. The supervisor shall open, or cause to be opened, all public roads which may have been, or may hereafter be laid out and established according to law, in any part of his road district, and shall keep the same in good repair; and he shall have authority to purchase, with any money which may come into his hands as supervisor, for the use of his district, in the purchase of plows, scrapers, or other implements which he may think proper, and to enter upon any lands adjoining or near the public road, and dig and carry away stone, gravel, or sand, and cut down and carry off any trees or wood necessary for the making

and repairing any public road, and to purchase and pay for any timber or plank, or other materials, necessary for making or repairing any public road in his district; and the supervisor has the authority to commute any labor due on his tax duplicate, for materials or tools necessary for his use on the public road, to the amount of tax against any individual, and shall give such person a certificate showing the transaction, and such certificate shall be received for taxes.

SEC. 26. And the supervisor shall have the right to enter upon any lands near, or adjoining any public road in his district, and to cut, open, or dig, any drains or ditches as he shall deem necessary, for the making or preservation of such road—doing as little injury as may be, to such lands. And any person, stopping or obstructing said drains or ditches so made, shall forfeit and pay the sum of twenty dollars for each offense, to be recovered by the supervisor of the district before any justice having jurisdiction, for the use of the district.

SEC. 27. If any person shall feel aggrieved by the acts of a supervisor cutting or carrying away timber or stone, as aforesaid, he may make complaint in writing to the county commissioners at any regular session, within six months after the cause of such complaint shall exist; and such commissioners shall proceed to determine and assess the damages, which may be paid out of any funds in the treasury, accruing out of penalty for a violation of any provision of this act.

SEC. 28. If, at any time during the year, any public road shall become obstructed by the falling of timber, or from any other cause, or any bridge shall be impaired, or become dangerous for the passage of teams or travelers, the supervisor of the road district, upon being notified thereof, shall forthwith cause such obstructions to be removed, or bridges repaired, for which purpose he shall immediately order out such number of the inhabitants of his district as he may deem necessary, to remove such obstructions, or repair such bridge: *Provided*, That if such obstruction or damages to any road or bridge be caused by any person or persons, clearing land adjacent to said road or bridge, that they shall be liable for the expense of removing such obstruction, and repairing said road or bridge, and the road supervisor shall authorize said person or persons to remove said obstruction, or repair said bridge, or said supervisor shall proceed to have it done at the proper cost of said person or persons, and the cost of such work shall be recoverable before a justice of the peace, or any court having competent jurisdiction, by civil action in the name of said supervisor.

SEC. 29. In all cases where any person shall, under the direction

of the supervisor of roads, perform more labor upon the public roads than may be due from him, the supervisor shall give such person a certificate, specifying the amount of extra labor so performed, and may be received from the holder in satisfaction of labor on the roads in such road district, in any subsequent year, for the amount of labor specified therein.

SEC. 30. Every supervisor shall keep an account of the number of days' work performed on the public roads in his road district, and of the persons performing the same; he shall also keep an account of all moneys received by him from the county commissioners; and, also, on account of his expenditures as supervisor during his term of office; and such supervisor shall present his account to the board of commissioners for settlement, at their June session in each year, and shall pay over to the county treasurer all moneys remaining in his hands as such supervisor, taking his receipt therefor. And if any supervisor shall fail to appear and make a settlement as required by this section, the board of county commissioners may, by an action in the district court of the proper county, against such supervisor, enforce such settlement, and recover any balance remaining in his hands.

SEC. 31. The supervisor shall give every person, who labors on the public roads, under his direction, a certificate, certifying to the amount of labor performed by such person, at the rate of three dollars per day, for every day's work; which certificate shall state the precise amount of labor such person has performed, and such certificate shall be received by the tax collector at par value, to the full amount of road tax charged against such person; but such certificates shall not be assignable, nor shall they be received from any person for a greater amount in any one year, than sufficient to cancel or discharge the road tax or taxes against such person.

SEC. 32. The certificates of the several supervisors, shall be received by the county treasurer at par value, in discharge of any road tax against the person in whose favor such certificate was given, but the treasurer shall add ten per cent. to such road tax if paid in any way except by the certificate of the supervisor.

SEC. 33. If any supervisor of roads, shall neglect or refuse to perform any of the duties enjoined on him by this act, or shall, under any pretence whatever, give or sign any certificate purporting to be a certificate of labor performed, unless such labor has actually been so performed, prior to the giving or signing such certificate, shall forfeit and pay for every such offense, not less than twenty, nor over one hundred

dollars, for the use and benefit of roads in the county, to be recovered before any justice having jurisdiction.

SEC. 34. Whenever the supervisor of any district shall, from any cause, have neglected or omitted to place on his list any person within his district, or when it shall happen, from any cause, that a name or names are omitted, or left off the list, which of right should be on such list, in such case, it is made the duty of such supervisor to place such person, or persons upon such list, at any time within his term of office, and assess the amount which the commissioners would have had the right to have assessed, which assessment shall, in all respects, be as valid, as if made in due time, and furnished to such supervisor by the board of county commissioners, and the supervisor shall receive such labor, and certificate as in other cases.

SEC. 35. Every supervisor shall erect, and keep at the forks of every highway, and every crossing of public roads within his road district, a guide or finger board, containing an inscription, in legible letters, directing the way, and specifying the distance to the next town or public place situated on each road respectively; and the county commissioners shall allow the supervisor the amount expended by him for such purpose out of all moneys belonging to the road fund, as they may deem proper.

SEC. 36. The county commissioners shall allow the supervisors of highways, what may seem to them reasonable and just, for all extra labor performed by them, not exceeding three dollars per day.

SEC. 37. The county auditor, when he receives any tax roll from the county treasurer, shall not add any per cent. to the unpaid road tax; and the county treasurer, county auditor, and sheriff shall not be allowed any fees out of the fund: *Provided however*, The sheriff levies upon and sells property in the collection of the road tax, he may charge and collect of such person the same fees as in other cases, and may demand of those who pay their road tax in money, ten per cent. in addition to the amount assessed by the county commissioners.

SEC. 38. The commissioners shall have power to cancel or strike from the tax roll any road tax which they believe to have been improperly assessed, and they shall exonerate the sheriff or supervisor having the collection of any road tax which, in their opinion, cannot be collected.

SEC. 39. The sheriff or collector of taxes, shall pay over all moneys which he has collected, belonging to the road fund, to the county treasurer, and such treasurer shall hold such road money subject to the

orders of the county commissioners; and that portion of the road tax which may stand charged and unpaid against lands on the first day of January, shall be transferred to the county, and go into the county fund.

SEC. 40. The county commissioners shall, at their June session, apportion to the several road districts their amount of ready money which may have been collected by the treasurer, sheriff, or other officer, and the supervisors shall receive the same, and lay out such money in the improvement of roads in his road district.

SEC. 41. The following form of certificate shall be observed by supervisors of road districts, as far as the same may be applicable :

I hereby certify that (A. B.) has performed labor on the public highways in _____ county, Washington Territory, under my direction, to the amount of _____ dollars, and _____ cents, in discharge of (or say in part payment,) of his road tax for the year 18_____.

Dated at _____, the _____ day } D. C.,
of _____, 18____. } Sup. Road Dist. No. _____.

SEC. 42. All acts or parts of acts, inconsistent with the foregoing act are hereby repealed. This act to take effect and be in force from and after its passage.

PASSED, January 29th, 1863.

AN ACT

IN RELATION TO TERRITORIAL ROADS.

- SECTION 1. How vacancies in the office of road commissioners to be filled.
- “ 2. Report of road commissioners to be filed with the secretary of the territory.
- “ 3. Report of county commissioners to be filed with the secretary of the territory.
- “ 4. All military roads declared to be territorial roads.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That whenever there shall be a vacancy in any board of territorial road commissioners that have been, or may hereafter, be created by the legislature, and which have not before been provided for, the county commissioners of the county in which the vacancy occurs, shall, at their first meeting thereafter, fill such vacancy. But in case of the resignation of any commissioner the person so resigning may appoint

a person to fill the place thus vacated, who being duly qualified as heretofore provided, may enter upon his duties.

SEC. 2. Every board of territorial road commissioners shall file with the secretary of the territory, for the use of the legislature, duplicates of their report, which shall contain an estimate of the probable cost of constructing the road, and all necessary bridges thereon, and stating the amount of expenditure to be made in each county, and the amount of expenses incurred in laying out said road.

SEC. 3. The county commissioners of every county through which any territorial road may pass, shall report annually, in duplicate, to the secretary of the territory for the use of the legislature, an account of the expenditure made during the year, in constructing said road, and the condition of the same.

SEC. 4. All military roads in said territory be and the same are hereby declared territorial roads.

PASSED, January 19, 1863.

AN ACT

REGULATING FERRIES.

- SECTION 1. County commissioners may license ferries.
- “ 2. Commissioners shall fix tax on such license.
- “ 3. Owner of land adjoining stream, shall be first entitled to such license.
- “ 4. Notice requisite to obtain a license or renewal thereof.
- “ 5. Bond to be filed on application for license.
- “ 6. Every person licensed must keep necessary boats, hands, &c.
- “ 7. Ferry to be kept passable at certain times and penalty for refusal.
- “ 8. Board of commissioners to establish rates of ferriage.
- “ 9. Posted notice of rates of ferriage made necessary, and penalty for omission.
- “ 10. Preference to be given for certain passengers.
- “ 11. Exclusive privileges granted to licensed ferrymen.
- “ 12. Penalty for not paying tax, or for not keeping necessary boats, etc.
- “ 13. Penalty for charging rates of ferriage, without first obtaining a license.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of commissioners of any county in this territory, may grant a license to any person entitled and applying therefor, to keep a ferry across any lake or stream within their respective counties, upon being satisfied that a ferry is necessary at the point ap-

plied for, which license shall continue in force for a term to be fixed by the commissioners, not exceeding five years.

SEC. 2. The board of commissioners shall tax such sum as may appear reasonable, not less than one dollar nor more than one hundred dollars per annum for such license, and the person to whom such license shall be granted, shall pay to the county treasurer, the tax for one year in advance, taking his receipt therefor, and upon the production of such receipt, the clerk of the board of commissioners shall issue such license, under the seal of the board of commissioners.

SEC. 3. No such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where such ferry is proposed to be kept, unless such owner shall neglect to apply for said license. And whenever such application shall be made for a license by any person other than such owner, the board of commissioners shall not grant the same, unless proof shall be made that the applicant caused notice in writing of his intention to make such application to be given to such owner, if residing in the county, at least ten days before the session of the board of commissioners at which application is made.

SEC. 4. Every person intending to apply for a license to keep a ferry at any place, shall give notice of such intention, by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, or by advertising in the nearest newspaper published in the territory, twenty days prior to any regular session of the board of commissioners, at which the application shall be made: *Provided*, That when application shall be made for a renewal of a license, where the former license has expired, the same may be granted or renewed, without previous notice or petition.

SEC. 5. Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond with one or more sureties, to be approved by the clerk of the commissioners, in a sum not less than one hundred, nor more than five hundred dollars, conditioned that such person will keep said ferry according to law, and if default shall at any time be made in the condition of such bond, damages not exceeding the penalty may be recovered by any person aggrieved, before any court having competent jurisdiction.

SEC. 6. Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair, the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of

discreet and skillful men to attend and manage the same, and he shall also, at all times, keep the place of embarking and landing in good order and repair, by cutting away the banks of the stream, so that persons and property may be embarked and landed without danger or unnecessary delay.

SEC. 7. Every person obtaining a license as aforesaid, shall give constant and diligent attention to such ferry, from daylight in the morning until dark in the evening of each day, and shall moreover, at any hour in the night if required, except in case of evident danger, give passage to all persons requiring the same, on the payment of double the rate of ferriage allowed to be taken in the day time; and if he shall at any time neglect or refuse to give passage to any person or his property, he shall forfeit and pay to the party aggrieved for every such offense, the sum of twenty-five dollars, to be recovered before any justice of the peace having jurisdiction, and he shall moreover be liable in an action at law for any special damage which such person may have sustained in consequence of such neglect or refusal; but no forfeiture or damages shall be recovered for a failure or refusal to convey any person or property across such stream when it is manifestly hazardous to do so, by reason of any storm, flood, or ice, nor shall any keeper of a ferry be compelled to give passage to any person or property, until the fare or toll chargeable by law, shall have been fully paid, or tendered to such keeper.

SEC. 8. Whenever the board of commissioners of any county shall grant a license to keep a ferry across any lake or stream, such board shall establish the rates of ferriage which may lawfully be demanded for the transportation of persons and property across the same, having due regard to the breadth and situation of the stream, and the dangers and difficulties incident thereto, and every keeper of a ferry, who shall at any time demand and receive more than the amount so designated for ferrying, shall forfeit and pay to the party aggrieved for every such offense the sum of ten dollars, over and above the amount which shall have been illegally received, to be recovered before any justice of the peace having jurisdiction.

SEC. 9. Every person licensed to keep a ferry, shall post up, in some conspicuous place near his ferry landing, a written or printed list of the rates which shall at all times be written or printed in a plain legible manner, and posted up so near the place where persons shall pass across such ferry that the same may be easily read; and if at any time such keeper shall neglect or refuse to post and keep up such list, it shall not

be lawful to charge or take any ferriage or compensation at such ferry, during the time of such delinquency.

SEC. 10. All persons shall be received into the ferry boats and conveyed across the stream, over which such ferry shall be established, according to their arrival at the same, and if any keeper of a ferry shall act contrary to this regulation, he shall forfeit and pay the sum of ten dollars for every such offense, to the party aggrieved, to be recovered before any justice of the peace having jurisdiction: *Provided*, That public officers, on urgent business, post-riders, couriers, physicians, surgeons and midwives, shall in all cases be first carried over, where all cannot go at the same time.

SEC. 11. Every person licensed to keep a ferry, according to the provisions of this act, shall have the exclusive privilege of transporting all persons and property over and across the stream, where such ferry is established, and shall be entitled to all the fare, arising by law therefrom: *Provided*, That nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat, or to take in and carry over his neighbor, when the same is done without fee or charge, and not with intent to injure any person licensed to keep a ferry.

SEC. 12. If any person licensed to keep a ferry shall fail to pay the tax assessed thereon when due, or shall not provide and keep in good and complete repair, the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skillful and discreet ferrymen, as is provided in the sixth section of this act, within three months from the time license shall be granted; or if such ferry shall not at any time be kept in good condition and repair, agreeably to the provisions of this act, or if the same shall be abandoned, disused, or unfrequented for the space of one month at any one time, it shall be lawful for the board of commissioners of the proper county, on complaint being made in writing, to summon the person licensed to keep such ferry, to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced, and the laws of this territory, which decision when made, shall be valid, to all intents and purposes, but subject to an appeal to the district court, within twenty days after such decision shall be made: *Provided*, That if any ferry shall be disused by reason of the stream over which the same is established, being fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture, within the meaning of this section.

SEC. 13. Any person who shall maintain any ferry, and receive pay for ferriage, or let a boat knowing it will be used for ferry purposes, without first obtaining a license for the same, shall pay a fine of twenty-five dollars for each offense, to be collected for the use of the common school fund of said county by suit before any justice of the peace having jurisdiction, and any person is hereby authorized to bring such suit: *Provided*, That it shall not be considered unlawful for any person to transport any other person or his property over any stream for hire, when it shall be made evident that any ferry, established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

PASSED, January 19th, 1863.

AN ACT

TO PROVIDE FOR BUILDING BRIDGES.

- SECTION 1. Power of board of county commissioners.
- " 2. Bridges costing over fifty dollars to be built by the county.
 - " 3. County to repair, if it costs over fifty dollars.
 - " 4. Commissioner appointed to build and keep in repair, &c.
 - " 5. Such commissioner to take an oath.
 - " 6. Not to commence building until appropriation is made.
 - " 7. Bridge commissioner to make an estimate.
Appropriation not to exceed estimate.
 - " 8. If estimate less than one hundred and fifty dollars, to be certified to overseer of road district.
 - " 9. Letting to be advertised.
 - " 10. How the same shall be let.
 - " 11. Cost to be paid out of the county treasury.
 - " 12. When and how bridges may be built, aided by subscription.
 - " 13. Bridges over county lines, how built.
 - " 14. When one moiety of the expense of such bridge is raised by subscription, counties to unite and pay the residue.
 - " 15. Proceedings when repairs are necessary.
 - " 16 & 17. Proceedings when bridge requires repairs, which by contract is to be kept in repair.
 - " 18. Bridge commissioner prohibited from contracting or being security.
 - " 19. Compensation.
 - " 20 & 21. May take rock or timber, to be paid for by allowance by county commissioners.
 - " 22. Person aggrieved by cutting such timber, viewers to be appointed to assess damages.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That each board of county commissioners shall determine what bridges shall be built and maintained at the expense of the county, and what by the road district.

SEC. 2. Where estimated expense for a bridge shall exceed fifty dollars, it shall be built by the county.

SEC. 3. The board of county commissioners may order any bridge built by the county, to be attached to a road district, for the purpose of being kept in repair by such district, but when the repairs necessary at one time shall exceed in value fifty dollars, the same shall not be required to be done by such road district.

SEC. 4. If the board of county commissioners shall be of the opinion that a bridge is necessary, and that it should be built at the expense of the county, they shall determine in what manner, and of what materials the same shall be built, and shall appoint some suitable person bridge commissioner, to contract for building such bridge, and for keeping it in repair, not less than two nor more than four years, to be determined by the board of county commissioners. And all persons who build or own any bridge, built pursuant to the provisions of this act, shall be held liable for any and all damages done to passengers or property passing over such bridge, in consequence of the insufficiency of such bridge, such damages to be recovered before any court having competent jurisdiction.

SEC. 5. Said bridge commissioner shall take an oath faithfully to perform the duties enjoined on him by this act.

SEC. 6. The bridge commissioner shall do nothing towards building any bridge, until appropriation for the same shall first be made by the board of county commissioners.

SEC. 7. Unless the board, from its own information, shall be satisfied as to the expense of building the bridge, and shall make an appropriation accordingly, it shall be the duty of the said court to require the bridge commissioner to proceed to the spot where the bridge is to be built, and make an accurate estimate of the cost of building the same, according to any plan or plans ordered by the board of county commissioners, or such as in his opinion may be best, and without delay make report thereof, and the board may then, or may not, in its discretion, make an appropriation for building the bridge, which shall in no event exceed the estimate made by the bridge commissioner.

SEC. 8. If the estimated cost of the bridge shall be less than one hundred and fifty dollars, then that fact shall be certified to the overseer of the road district in which the bridge is to be built.

SEC. 9. The bridge commissioner shall advertise the time and place for letting the bridge out, at three public places in the township, (or at the court house door,) where such bridge is to be built, twenty days before letting the same.

SEC. 10. He shall let the same by receiving sealed proposals, to the lowest and best bidder, and shall take bond, payable to the county, with two good and sufficient householders as sureties, in such penalty as he shall deem sufficient, to cover all damages which may accrue from the breach of such contract.

SEC. 11. The board may order the expense of building such bridge out of any money in the county treasury.

SEC. 12. When one moiety of the estimated expense of building any bridge, upon any county road, shall have been raised by individual subscription, and such subscription exhibited to the board of county commissioners, with a petition to ten resident householders, in the county in which such bridge is intended to be built, praying the erection thereof, the court shall take such petition into consideration, and if in their opinion, all things considered, the interest of the public will be promoted by building the bridge, at that time, they shall make an order for building the same, and for the payment of the residue of the estimated expense of building said bridge, out of the county revenue.

SEC. 13. If a bridge be necessary, over any water course, which divides one county from another, the board of county commissioners of both counties shall unite in appointing a bridge commissioner for building said bridge, and the expense shall be defrayed by both counties, in proportion to the amount of tax of each, to be ascertained by the tax list, taken next before the contract for building such bridge shall be made.

SEC. 14. When one moiety of the estimated expense of building such bridge shall be raised by subscription, both boards of county commissioners, if satisfied of the expediency of so doing, shall forthwith unite to cause such bridge to be built, and shall pay the residue of the expenses of the bridge, in the proportion hereinbefore directed.

SEC. 15. The board of county commissioners shall, whenever it is necessary, without delay, make an appropriation to repair any public bridge in the county; and whenever any bridge shall be repaired, the like preliminary steps shall be had as in case of building a bridge, and the bridge commissioner shall have the same powers, and proceed in like manner, as in building a bridge.

SEC. 16. If any public bridge require repairing, which by contract is to be kept in repair, the commissioner of such bridge, or if he be ab-

sent or fail, or is incapable of acting, then a commissioner to be appointed by the board of commissioners, shall give notice, in writing, to any one or more of the obligors, or to his or their securities, stating the repairs necessary to be made, and requiring the same to be done within a reasonable time, to be set forth in such notice.

SEC. 17. If the repairs shall not be made within such time, the commissioner shall employ some other person forthwith to make the same, allowing therefor a reasonable price, and may immediately collect the amount paid, with costs, before any court of competent jurisdiction.

SEC. 18. No bridge commissioner shall be a contractor for building a bridge of which he is commissioner, nor be security for any such contractor.

SEC. 19. Such bridge commissioner shall be allowed three dollars for each day necessarily employed in the discharge of the duties of his office, to be paid out of the county treasury or treasuries of the county or counties in which said bridge may be located.

SEC. 20. He may take, or cause to be taken, from the adjoining or most convenient land, such quantity of rock and timber as may be necessary for the building or repairing of such bridge.

SEC. 21. When timber or rock shall be taken from the land of any individual, the board of county commissioners may allow compensation for the same.

SEC. 22. If any person be aggrieved by the cutting of such timber, such person may apply to the board of county commissioners of the proper county, who shall appoint three disinterested householders as viewers, who, after taking the proper oath or affirmation, shall proceed to assess the damages, if any, which shall be paid out of the county treasury or treasuries of the county or counties in which said bridge is located.

PASSED, January 19th, 1863.

AN ACT

TO ENCOURAGE THE BUILDING OF BRIDGES, PLANK OR TURNPIKE
ROADS.

- SECTION 1. Privilege to build bridges, plank roads and turnpikes granted.
" 2. Such privilege not to obstruct public roads.

SECTION 3. Property made by authority of this act may be taken by county.

- " 4. List of charges to be posted up by the owner.
- " 5. Toll must be first paid before crossing.
- " 6. Provisions of this act how construed.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person or persons having the right of soil, or having the consent of the owners thereof, may build over any river, creek, swamp, ravine, crevice, precipice or gully, a good and substantial bridge, plank, or turnpike road at his own expense, and shall receive such compensation in tolls as may be reasonable.

SEC. 2. This act shall not hinder the proper authorities from laying out roads alongside of said bridges, plank or turnpike roads, nor shall any person, under and by virtue of this act, in any way obstruct any county or territorial road now in use, or which shall be established before said bridges, plank, or turnpike roads shall be made.

SEC. 3. If at any time any bridge, plank, or turnpike road that may be built by virtue of this act, may be necessary for the convenience of the traveling public, it shall be lawful for the proper authorities of any county, or the territory, to appropriate any such bridges, plank or turnpike roads to the use of the county or territory, by first paying to the owner or owners what said bridge, turnpike or plank road may be worth at the time it is appropriated to the use of the public; said value to be determined by three disinterested persons, or a majority of them, one to be selected by the sheriff of the county in which said road is situated, the other by the parties interested, and the two persons selected as aforesaid, shall choose a third.

SEC. 4. All persons who may build any bridge, plank, or turnpike road under the provisions of this act, shall put up and keep, in some conspicuous place at each end of said bridge or road, a list of charges which shall not be changed at any time except on the first Mondays of January of each year; and said notice shall name the person or persons to whom such charge may be paid. Any and all persons who build or own any bridge, built pursuant to the provisions of this act, shall be held liable for any and all damages done to passengers or property passing over such bridge, in consequence of the insufficiency of such bridge, such damages to be recovered before any court having competent jurisdiction.

SEC. 5. All persons wishing to cross any bridge or road that may be constructed under the provisions of the foregoing act, shall first pay

to the person named in said notice, or his agent, the amount charged in the said list of prices.

SEC. 6. Nothing in this act shall be so construed as to prevent the proper authorities of counties or the territory, from constructing a public road across any such bridge, plank, or turnpike road, doing as little injury as possible to its proprietors, free of charge; and it shall also be lawful for any person building a bridge, plank, or turnpike road under the provisions of this law, to build across any public road, provided he shall not in any way obstruct or injure said public road.

SEC. 7. All acts or parts of acts in conflict herewith, be and the same are hereby repealed. This act to take effect and be in force from and after its passage.

PASSED, January 19, 1863.

AN ACT

RELATING TO FERRIES, TOLL BRIDGES AND TURNPIKE ROADS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That legislative grants or charters to individuals and companies to establish ferries, toll bridges, or turnpike roads, shall include the grant of the right of way over the land of private individuals, so far as the same may be necessary to enable the parties or party receiving such charter or grant to carry into effect such ferry, bridge, or turnpike road: *Provided always,* That no more land shall be trespassed upon than is absolutely requisite to secure the necessary landings, ferry house and roadway to accommodate the traveling public.

SEC. 2. Any damage enuring to any person or persons by reason of appropriating his land for a landing, or for said right of way, shall be paid for. The damage to be ascertained by an appraisement of one or three disinterested persons, to be selected by the parties interested. All laws or part of laws so far as they conflict with the provisions of this act be and the same are hereby repealed. This act to take effect and be in force from the date of its passage.

PASSED, Jan. 28th, 1863.

AN ACT

TO AUTHORIZE AND REGULATE THE ERECTION OF WHARVES.

- SECTION 1. Persons owning lands adjoining navigable waters, may build wharves and charge wharfage.
- “ 2. County commissioners may authorize the erection of wharves at terminus of highway, &c., and fix rate of wharfage.
- “ 3. Rate of wharfage under preceding section must be posted in conspicuous place on said wharf.
- “ 4. When wharves shall be deemed incomplete and unfinished.

SEC. 1. Any person owning land adjoining any navigable waters or water course, within or bordering upon this territory, may erect upon his own land any wharf or wharves, and may extend them so far into said waters or water courses as the convenience of shipping may require; and he may charge for wharfage such rates as shall be reasonable: *Provided*, That he shall at all times leave sufficient room in the channel for the ordinary purposes of navigation.

SEC. 2. Whenever any person shall be desirous of erecting upon his own land any wharf at the terminus of any public highway, or at any accustomed landing place, he may apply to the county commissioners of the proper county, who, if they shall be satisfied that the public convenience requires the said wharf, may authorize the same to be erected and kept up for any length of time not exceeding twenty years. And they shall annually prescribe the rates of wharfage, but there shall be no charge for the landing of passengers and their baggage.

SEC. 3. Whenever any person or persons shall be desirous of erecting a wharf at the terminus of any street, at any town or city in the territory, he or they may apply to the county commissioners of the proper county who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept in repair for any length of time not exceeding ten years; and every person building, owning or occupying a wharf in this territory, upon which wharfage is charged and received, shall be held accountable to the owner or owners, consignees or agents, for any and all damage done to property stored upon, or passing over said wharf, in consequence of the unfinished, incomplete, or insufficient condition of said wharf; and every such person shall post or cause to be posted in a conspicuous place on said wharf the established rates of wharfage, noting passengers and their baggage free.

SEC. 4. All wharves now standing, or hereafter to be built, in this territory, shall be deemed insufficient, incomplete and unfinished unless they have good and substantial banisters or railing on the sides thereof, or a strip of hewn timber at least eight by ten inches square, well secured all around said wharves within ten inches of the outer edge thereof, except at the ends.

PASSED, January 19th, 1863.

AN ACT

TO ORGANIZE THE MILITIA OF THE TERRITORY OF WASHINGTON.

- SECTION 1. The territory districted, brigadier general to be elected.
His term of office.
- “ 2. Colonel, lieutenant colonel and major to be elected in each council district; such officers to organize regiments and companies within their districts.
- “ 3. Captains to appoint sergeants and corporals.
- “ 4. Officers to be commissioned by the governor.
Term of office.
- “ 5. Regimental return to be made.
Brigadier general to report to the governor.
- “ 6. Rules and regulations to be prescribed by governor and brigadier general.
- “ 7. Volunteer companies, how to be formed.
- “ 8. Public arms, how sent to each county.
- “ 9. County commissioners to take care of public arms.
- “ 10. An adjutant, quartermaster and commissary general to be elected.
- “ 11. County assessor to make return to the adjutant general of all persons liable to militia duty.
- “ 12. Who liable to militia duty.
- “ 13. Formation and arming of companies and detachments.
Number constituting a company or a detachment.
Officers of the same.
Commissions and oath of.
- “ 14. When citizens of different counties may unite in the formation of a company.
- “ 15. Colonel, lieutenant colonel, and major, when to be elected.
Command of each.
- “ 16. Companies to adopt what regulations.
Oath of members in actual service.
- “ 17. Quartermaster general to forward arms to the county commissioners.
How to be issued.

- SECTION 17. Commanding officer to make return to quartermaster general.
 Upon resignation or removal, to account to county commissioners.
 Liability of, for loss or damage.
 Members of companies to give receipt for arms, &c.
 Liability for.
- “ 18. Adjutant and commissary general, duties of.
 Quartermaster general, duties of.
 To have custody of all military property.
 To report to the legislature the state of the same.
 To report to the governor the condition of the militia.
 Compensation of.
- “ 19. Governor, when to forward arms to county commissioners.
 County commissioners to report to quartermaster general.
- “ 20. Quota of each county.
- “ 21. Staff of governor, &c.
 Rank of, and how appointed.
- “ 22. Governor to fill certain vacancies.
 Person failing to qualify, office declared vacant.
- “ 23. Authority or the governor to call out the militia.
- “ 24. Volunteers in active service to be governed by the rules and regulations of the U. S. army as far as applicable.
- “ 25. Repealing clause.
 Proviso.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the territory of Washington shall constitute one military district for brigade purposes, in which the legislature, on joint ballot, shall elect a resident citizen thereof, brigadier general, who shall hold his office for three years, unless sooner removed by the legislature; and each council district in said territory shall constitute one regimental district.

SEC. 2. At the next annual election legal voters in each council district shall elect in the usual mode of electing officers, one colonel and one major, who shall assemble at such place within the district as a majority of them shall select within three months after their election, and proceed to lay off their regimental district into convenient company districts, containing as near one hundred white males as may be, between the age of eighteen and fifty years, capable of bearing arms, and shall appoint one captain and two lieutenants in each district as officers therein.

SEC. 3. Such captain shall appoint four sergeants and four corporals in each company, who shall continue in office one year.

SEC. 4. All such officers, except sergeants and corporals, shall be commissioned by the governor, and shall continue in office for the term of one year, unless bodily infirmity or unsoundness of mind prevent them from discharging active duty, or they be removed by a court martial for other good cause.

SEC. 5. In each year, every captain shall make out a list of the persons in his district subject to bear arms, and forward a copy thereof to the colonel of the regiment, who shall thereupon make out and forward to the brigadier general a regimental return, showing the number of each rank and grade composing his regiment. It shall be the duty of the brigadier general to report annually to the governor, the state of the militia, the number of regiments and the number of the different rank and grade in each, together with such other information as shall be in his possession relating thereto.

SEC. 6. The governor and brigadier general shall, from time to time, prescribe all the rules and regulations not herein provided, necessary for the calling and conducting courts martial.

SEC. 7. Volunteer companies may be formed in the bounds of a regiment under such rules and regulations prescribed by the colonel thereof and approved by the brigadier general.

SEC. 8. On application of the board of commissioners of a county by the certified copy of their order therefor, the governor shall cause to be sent to such county at its expense, its quota of public arms.

SEC. 9. Such county commissioners shall have the care of all public arms within their respective counties, and may transfer them under such regulations as they may prescribe to such volunteer companies, battalions, or regiments, on having the safe keeping and return thereof when demanded by the authorized agent of the board, secured by bonds and approved sureties.

SEC. 10. The legislature shall elect an adjutant, quartermaster and commissary general, who shall hold their offices for three years, unless sooner removed by the legislature.

SEC. 11. It shall be the duty of the county assessor of each county in this territory, in taking the census of their respective counties to make return in writing to the adjutant general of the territory, of the persons in their respective counties who may be liable to militia duty as hereinafter provided; and for such service they shall receive such compensation as the county commissioners of their respective counties may deem just and proper, to be paid out of the county treasury.

SEC. 12. Every white male citizen between the ages of eight and fifty, not disqualified by bodily infirmity, shall be liable to militia duty, and subject to be called upon for such purpose by the governor in case of emergency.

SEC. 13. Whenever any number of persons liable to militia duty as aforesaid, not exceeding one hundred nor less than twenty-five, shall form themselves into a company or a detachment, for the purpose of f

manent or temporary defence as volunteers, elect their own officers as hereinafter provided, and report the fact to the adjutant general, he shall thereupon make a requisition upon the quartermaster general, to be approved by the governor, for suitable arms for said company, which shall be issued as hereinafter provided. For the purpose of such organization, fifty-two persons and upwards to one hundred, shall constitute a company, and shall choose one captain, one first and one second lieutenant, four sergeants and four corporals; every less number shall be considered a detachment, and shall choose one lieutenant, two sergeants and two corporals. Said officers shall hold their respective offices for the term of one year, unless sooner removed by a sentence of a court martial; and said captains and lieutenants shall be commissioned by the governor, and on receiving said commission, each shall take an oath, to be endorsed on the back thereof, before an officer authorized to administer oaths, that he will support the constitution of the United States, and faithfully discharge the duties of his office.

SEC. 14. Whenever, by reason of neighborhoods, it shall be more convenient for citizens of a portion of one county to join a company or detachment in an adjoining county, it shall be lawful for them so to do: *Provided however,* That the company shall be deemed to belong to the county where the majority reside.

SEC. 15. Whenever several companies organized as aforesaid, shall be united together for active service, or otherwise, if two only, they shall proceed to elect a major to command the same; if four, to elect one major and one lieutenant colonel, and if more than four and less than ten, to elect in addition to the aforesaid officers, one colonel, who shall have command of all said companies so assembled together.

SEC. 16. It shall be lawful for every organized company or detachment of volunteers to adopt such regulations for its government and discipline as they may see fit, subject to the approval of the Governor and the brigadier general, and they may impose fines for non-attendance at drill or review, the proceeds of which shall form a company fund, to be expended in ammunition or other necessaries; and they may adopt such uniforms as are suitable for their particular service: *Provided however,* That whenever companies may be called for actual service, each member thereof shall take an oath to support the constitution of the United States and the laws of this territory, faithfully to discharge his duties, and to obey the lawful commands of the superior officers placed over him.

SEC. 17. The quartermaster general shall, with the approval of the governor, upon receiving from the adjutant general the returns of

any volunteer company or detachment, organized as hereinbefore provided, forward to the county commissioners of the county wherein the same is formed, a suitable quantity of arms and equipments of the kind required by said company or detachment, provided the same are in his custody, and such county commissioners shall thereupon issue the same to the officer commanding such company or detachment; and it shall be the duty of such commanding officer to make return of such arms and equipments, showing their condition to the quartermaster general, at least one month before the meeting of the legislature of each year; and each commanding officer shall, upon the election of his successor, or his resignation or removal from office or disability to act, or upon the disbanding of his company or detachment, turn over such arms or equipments to the county commissioners, who may then cancel his bond *Provided however*, That he shall be liable for all loss and damage not arising from the fortune of war or unavoidable accident: *Provided further*, Each member of a detachment or company receiving arms or equipments, shall give his receipt to the commanding officer for the same, which on their return, shall be cancelled; he shall, on failure to return them when called upon, pay double of the government valuation; said receipt to be received by the commissioners in lieu of the arms and equipments from the commanding officer.

SEC. 18. The adjutant and commissary general shall perform the same duties as the corresponding officers in the service of the United States, except so far as is herein modified. The quartermaster general shall have the custody of all the military property belonging to the territory, embracing arms and equipments, ammunition, ordnance and ordnance stores, and such as are not distributed among the several counties he shall preserve in good order in some suitable place at the seat of government, until they are legally disposed of. He shall annually report to the legislature the number and condition of said arms and other property, embracing not only those in his own custody, but also those issued to the several counties, and giving an abstract of the reports of the commanding officers of companies, and the county commissioners, with officers responsible for arms or property, and their securities, and the amount of their respective bonds; and shall annually report to the governor the number of organized companies, the names of the officers, and the number of the rank and file in each, together with such other information relative thereto, as shall be in his possession. He shall receive for his services a reasonable compensation, to be allowed him by the legislature.

SEC. 19. On application of the board of county commissioners for any county, the governor may, in his discretion, forward to them, at the expense of the territory, the whole, or any portion of its quota of arms as hereinafter defined, to be kept by them or issued to companies or detachments, under the same regulations as above provided; and it shall be the duty of such board to report annually to the quartermaster general the amount of arms and equipments received, on hand and issued, showing to whom issues have been made, and the amount of the bonds taken, with names of the sureties.

SEC. 20. The quota of arms of each county shall be in proportion to the number of persons liable to do militia duty, as hereinafter provided.

SEC. 21. The governor may appoint his staff, consisting of two aids, with the rank of lieutenant colonel. The brigadier general may appoint his aids, with the rank of captain. The quartermaster, adjutant and commissary generals may appoint their assistants and acting assistants, to rank the same as in the army of the United States. The regimental and battalion commanders may appoint their commissioned and non-commissioned staff.

SEC. 22. The governor shall fill all vacancies caused by death, resignation or otherwise, on the part of the officers elected by the legislative assembly, and provided for by this act, and in case any person so elected shall fail to qualify within ten days after he receives his commission, the office shall be deemed vacant, and it shall be competent for the governor to fill the same by appointment; and it shall be the duty of such officer so elected or appointed, to notify the governor of his having qualified.

SEC. 23. Whenever, in case of emergency, the governor shall deem it necessary to call upon the people of the territory for active service, he shall have authority so to do, and the troops so called for shall be organized in accordance with and subject to the provisions of this act.

SEC. 24. Whenever the volunteers of this territory are called into service by proclamation of the governor, they shall be governed by the rules and regulations that govern the army of the United States, as far as applicable.

SEC. 25. All acts and parts of acts not in conformity to the provisions of this act, are hereby declared void: *Provided*, That nothing in this act shall be so construed as to vacate any office heretofore filled

by the legislative assembly, under and by virtue of the said act entitled, "an act to organize the militia."

PASSED, January 28th, 1863.

AN ACT

IN RELATION TO COUNTIES.

- SECTION 1. The counties in this territory to be bodies corporate, for certain purposes.
- " 2. The conveyances for the use of the county to have the same effect as if made to the county.
- " 3. New counties to be liable for their proportion of the debts, and receive their proportion of the property.
- " 4. The auditors of the two counties to meet and settle, and apportion the debts.
- " 5. In case of disagreement an umpire to be chosen.
- " 6. Liquidation of the debt, how made.
- " 7. Repealing clause.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the several counties in this territory shall have capacity as bodies corporate, to sue and be sued in the manner prescribed by law; to purchase and hold lands within its own limits; to make such contracts and to purchase and hold such personal property as may be necessary to its corporate or administrative powers, and to do all other necessary acts in relation to all the property of the county.

SEC. 2. Every conveyance of lands or transfer of other property made in any manner for the use of such county, shall have the same force and effect as if made to said county in its proper and corporate name.

SEC. 3. That whenever a new county shall be, or shall have been organized over territory which shall have been included within the limits of any other county or counties, the new county shall be liable for a reasonable proportion of the debts of the county from which it was taken, and entitled to its proportion of the property of the county.

SEC. 4. The auditor of the old county shall give the auditor of the new county reasonable notice to meet him on a certain day at the county seat of the old county, or at some other convenient place, to

settle upon and fix the amount which the new county shall pay. In doing so they shall not charge either county with any share of debts arising from the erection of public buildings, or out of the construction of roads or bridges, which shall be and remain, after the division, within the limits of the other county. And of the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portions of territory so forming a part of the said counties while so united, and also the relative advantages derived from the old county organization.

SEC. 5. In case the two auditors cannot agree, they shall call a third person, not a citizen of either county or in any other manner interested, whose decision shall be binding. In case they cannot agree upon such third person, they shall each name one and decide by lot which it shall be.

SEC. 6. The auditor of the county indebted upon such decision, shall give to the auditor of the other county his order upon the treasurer for the amount to be paid out of the proper fund as in other cases, and also make out a transfer of such property as shall be assigned to either county.

SEC. 7. This act to take effect and be in force from and after its passage.

PASSED, January 17th, 1863.

AN ACT

CREATING THE BOARD OF COUNTY COMMISSIONERS AND DEFINING THEIR DUTIES.

- SECTION 1. Commissioners to be elected.
Two to constitute a quorum.
Their term of office.
- " 2. The first commissioners to be elected for one, two and three years,
and one annually thereafter.
Proviso.
- " 3. Persons elected to vacancies to fill unexpired term.
- " 4. Each commissioner to take and file an oath.
- " 5. Of the sessions of the commissioners.
- " 6. County auditor to be clerk of the board of county commissioners.
- " 7. Extra sessions may be held.
Notice thereof.
Proviso.

- SECTION 8. Compensation of county commissioners.
- “ 9. When two commissioners disagree, the question to be postponed.
- “ 10. Commissioners to have a seal.
The seal to be evidence.
Private seal of chairman of the board to be considered a seal, and when.
- “ 11. Duties of the county commissioners.
- “ 12. How real estate of a county may be sold.
- “ 13. Record of the proceedings of the commissioners to be kept.
- “ 14. Commissioners to elect a chairman.
His duties and powers.
Proviso.
- “ 15. Certain offices to be provided by the commissioners.
- “ 16. At the November session the commissioners to examine the accounts of the treasurer and auditor.
- “ 17. At the November term to examine and receive the assessment roll and cause it to be filed.
- “ 18. Commissioners to divide the county into precincts, and create new precincts and appoint judges of the election.
- “ 19. Commissioners to have the superintendence of the poor.
- “ 20. When commissioners may compound a debt of their county.
- “ 21. Power to levy special tax.
- “ 22. For what purposes to levy.
- “ 23. Construction.
- “ 24. County treasurer to report.
- “ 25. Commissioners to put convicts to labor.
- “ 26. Sheriff may appoint deputy.
- “ 27. No commissioner to be interested in a contract with the county, under penalty.
- “ 28. Commissioners may administer oaths.
- “ 29. Commissioners to provide a place for holding courts.
- “ 30. Appeals from the decisions of the board of commissioners; how taken.
- “ 31. When this act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be established in each organized county in this territory, a board of commissioners to consist of three qualified electors, two of whom shall constitute a quorum to do business, to be elected by the qualified electors at the annual election, who shall hold their office for three years: *Provided,* That the commissioners now in office, or hereafter appointed to office, shall continue in office until a new board of commissioners shall be elected at the first annual election.

SEC. 2. The commissioners first elected in any county in this territory, shall serve for the term of one, two and three years, to be by them determined by lot at their first session, and annually thereafter, one commissioner shall be elected and continue in office three years: *Provided,* That where there are three or more election districts in one

county, there shall not be two commissioners serving on the board from one precinct at the same time.

SEC. 3. Whenever it shall become necessary to elect a commissioner to fill any vacancy occasioned by death, resignation, or removal, the person elected, shall hold his office for the unexpired term for which his predecessor was elected, and until his successor is elected and qualified.

SEC. 4. Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath or affirmation before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county in which he resides, and deposit a certificate thereof with the clerk of the board of commissioners of his county, to be by him filed in his office.

SEC. 5. The board of commissioners in the several counties in this territory shall hold regular sessions at the seat of justice of their respective counties, commencing on the first Mondays of February, March, August and November, at each of which they shall transact any business which may be required by law: *Provided*, That if the district court be in session on any of the above mentioned days the commissioners shall meet on the Monday preceding, but no session shall be continued for a longer period than six days.

SEC. 6. The auditor of the county shall be the clerk of the board of county commissioners, and attend their meetings and keep a record of their proceedings, and the sheriff of the county shall also by himself or deputy, attend and execute their orders.

SEC. 7. The said board of county commissioners are hereby authorized to hold extra sessions, in case they may think the business of their county requires the same; and ten days' notice from any two of the commissioners to the third shall be considered a sufficient call for said extra session: *Provided*, That no such extra session shall exceed three days.

SEC. 8. The commissioners shall each receive three dollars per day for each and every day they may be necessarily employed in transacting the county's business, and ten cents a mile for every mile traveled in going to, and returning from the meeting of said board, or in the discharge of any official duty, to be computed by the most usually traveled route.

SEC. 9. When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, it shall be postponed to a subsequent meeting.

SEC. 10. The commissioners of each county shall have and use a seal for the purpose of sealing their proceedings; and copies of the same when signed and sealed by said commissioners, and attested by their clerk, shall be good evidence of such proceedings in the trial of any cause in any court of this territory, and until such seal shall be provided, the private seal of the chairman of such board of county commissioners shall be considered a seal.

SEC. 11. The several boards of county commissioners are authorized and required:

1st—To provide for the erection and repairing of court houses, jails, and other necessary public buildings for the use of the county;

2d—To lay out, discontinue, or alter county roads and highways, within their respective counties, and to do all other necessary acts relating thereto;

3d—To license and fix the rates of ferriage, to grant grocery and other licenses, authorized by law to be by them granted;

4th—To fix the amount of taxes to be assessed according to the provisions of law, and cause the same to be collected;

5th—To allow all accounts chargeable against such county not otherwise provided for, and to audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated to its benefit;

6th—To have the care of the county property and the management of the county funds and business; except in cases otherwise provided for, and shall have no other powers, except such as are, or may be given by law.

SEC. 12. Real estate belonging to any county, may be sold by an agent duly appointed by the order directing such sale, who shall have the same powers as a commissioner appointed to sell real estate by the district or probate court.

SEC. 13. The board of county commissioners shall cause to be recorded in a book to be kept for that purpose, all their proceedings and their determinations touching all matters properly cognizable before them, and all books, accounts, vouchers, papers and accounts touching the business or property of the county shall be carefully kept by the clerk, and open to the inspection of every person.

SEC. 14. The commissioners aforesaid, at their first session after their annual election in each and every year, shall elect one of their number to preside at the meetings of the board, and he shall sign all documents requiring the signature of the board, and the signature of such person as chairman of the board of commissioners shall be as legal

and binding as if the whole board had affixed their names: *Provided*, That in case such chairman shall be absent at any meeting of the board, all documents requiring the signature of the board, shall be signed by both members present.

SEC. 15. It shall be the duty of the board of county commissioners to provide offices for the sheriff, the county auditor, and clerk of the district court, and also to provide all books and stationery necessary for the use of the board of county commissioners, the office of the county auditor, the clerk of the district court, the probate court, and county treasurer, and also, to provide convenient desks for the preservation and security of the books and other documents in the several offices.

SEC. 16. At the November session, the board of county commissioners shall examine and compare the accounts and vouchers of the county auditor and county treasurer, count the funds in the county treasury, and shall make a full and accurate statement of the receipts and expenditures of the preceding year, and shall cause the same to be posted up at the court house door, and at two other public places in their county, and if there shall be no court house, then at three public places in such county, and shall publish the same in some newspaper of such county if there be any.

SEC. 17. The board of commissioners at their session in November in each year, shall receive and inspect the assessment roll returned by the assessors, and if it be found correct, it shall be accepted by the board in writing, signed by the chairman and attested by the clerk, and cause the same to be filed in the office of the county auditor, where it shall remain as a matter of record, and shall be a guide for future assessors, so far as the same shall remain correct.

SEC. 18. It shall be the duty of the board of county commissioners at their first session, to divide their respective counties into election precincts, in such manner as shall be most convenient for the population, and to appoint a place for holding the elections therein; and they shall create new precincts from time to time as the population may require, and on the petition of ten voters resident more than ten miles from any place of election, it shall be the duty of the board of county commissioners to establish a precinct and appoint judges of elections therefor.

SEC. 19. The boards of commissioners of the several counties of this territory, are vested with the entire superintendence of the poor in their respective counties.

SEC. 20. The county commissioners of their respective counties, shall have power to compound for a release in whole, or in part, of any debt due to their county, and for the use thereof, when in their

opinion the interests of the county will not be prejudiced thereby; except in cases when they or either of them are personally interested.

SEC. 21. The board of county commissioners of the several counties in this territory, shall have no power to levy a special tax for county purposes, except in the manner hereinafter provided.

SEC. 22. When, in the opinion of the commissioners of any county, the public good requires a court house, jail, or other county building, they shall estimate the cost thereof, and submit the same to the people of their county at the next annual election, notice thereof being given at the same time and place as for other elections, when, if a majority of the qualified voters of such county, shall vote in favor of such special tax, the commissioners shall assess and cause to be collected such tax in the same manner as other county taxes are collected.

SEC. 23. Nothing in this act shall be so construed as to prevent the county commissioners of any county from erecting any such court house, jail, or other county building, when there is in the treasury of their county, a surplus fund sufficient for the erection and completion of such county buildings.

SEC. 24. The county treasurers of the several counties shall, fifteen days before the first Monday in November, make out and return delinquent tax lists to the county auditors.

SEC. 25. The county commissioners in their respective counties, are hereby required to put all prisoners who shall be confined in the county jails of their respective counties, convicted of any crime or misdemeanor, to work on the roads within their counties, but such convicts shall not be put to labor at a greater distance from the jail or place of confinement than one mile: *Provided*, That if any such convict shall refuse to perform such labor, he shall be kept in close confinement on bread and water.

SEC. 26. The sheriff of the proper county may appoint a deputy to carry out the provisions of this act, who shall, before entering upon the duties of his appointment, be sworn faithfully to execute the duties of his appointment, and in the discharge of his duties he shall carry out the instructions of the county commissioners' court. The person having the custody of such convicted persons, may, to secure them from escape, attach a ball and chain to them.

SEC. 27. No county commissioner shall, directly or indirectly, as contractor, be concerned in any contract for work to be done, or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action at law, for the use of the county;

and such commissioner shall moreover forfeit any compensation he was to receive on such contract.

SEC. 28. The commissioners are authorized and empowered to administer all oaths or affirmations, necessary in discharging the duties of their office, and have the same power as justices of the peace, to commit for contempt any witness refusing to testify before them.

SEC. 29. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

SEC. 30. Any person may appeal from the decision of the board of commissioners, to the next term of the district court of the same county; such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to; which notice shall be in writing, and shall be delivered personally to the commissioners, or left with the clerk of the board; and the party appealing shall give bond to the county with one or more sureties, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court.

SEC. 30. This act to take effect and be in force from and after its passage.

PASSED, January 27th, 1863.

AN ACT

RELATING TO THE SUPPORT OF THE POOR.

- SECTION 1. Boards of county commissioners vested with the superintendence of the poor.
- “ 2. By whom poor to be supported.
Penalty for refusal to support the poor.
Proviso.
- “ 3. Who to be first called on.
Married females not to be sued.
- “ 4. When poor to be supported by the county.
- “ 5. Provisions for a non-resident pauper.

- SECTION 7. Residence of pauper to be proven.
- “ 8. Resident entitled to relief.
Non-resident to be removed; how.
- “ 9. After service of notice to leave the county, pauper not to be relieved.
- “ 10. Work houses may be built under the control of the county commissioners.
- “ 11. Penalty for bringing a pauper into the territory.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of county commissioners of the several counties of this territory, are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

SEC. 2. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grand children, brothers or sisters, of such poor person, if they or either of them be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, grandchild, sister or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor as aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided,* That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support from any relation except parent and child.

SEC. 3. The children shall be first called on to support their parents, if there be children of sufficient ability: if there be none, the parents of the poor persons shall be next called on, and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; and if there be no brothers and sisters, the grand children of such poor person shall be called on, and then the grandparents; but married females, whilst their husbands live shall not be liable to a suit.

SEC. 4. When any poor person shall not have relatives in any county in this territory, as are named in the preceding sections, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

SEC. 5. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents, or other relations, as aforesaid, are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects be to the tenor and effect as required in the act concerning apprentices.

SEC. 6. When any non-resident, or any other person not coming within the definition of a pauper, shall fall sick in any county in this territory, not having money or property to pay his board, nursing or medical aid, it shall be the duty of the commissioners of the proper county, on complaint being made, to give or order to be given, such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said commissioners shall give or order to be given to such person a decent burial; and the said commissioners shall make such allowance for board, nursing, medical aid, or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

SEC. 7. When the application is made by any pauper, to the board of county commissioners of any county in this territory, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of said county for twelve months immediately preceding the day upon which such application was made.

SEC. 8. When application is made by any pauper to the board of county commissioners as aforesaid, it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section of this act, he shall be entitled to all the relief provided by this act; but if on the contrary it shall appear to the satisfaction of said board, that such pauper has not been a resident of said county agreeably to the provisions of seventh section, they shall proceed to remove from their county, at the expense of said county, such pauper to the county where such pauper may have his residence, or may, if they think best, issue a notice directed to some constable of the county; which notice said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county, and after so serving said notice by reading the same to said pauper, said constable shall, within five days thereafter, return the

same to the said clerk of the board of county commissioners issuing the same, noting the time and manner of service.

SEC. 9. After service of such notice as aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners shall deem it absolutely necessary.

SEC. 10. The board of county commissioners of any county in this territory may, if they think proper, cause to be built or provided in their respective counties, work-houses for the accommodation and employment of such paupers, as may from time to time become a county charge; and said work-house and paupers shall be under such rules and regulations as said board of commissioners may deem proper and just.

SEC. 11. If any person shall bring and leave any pauper in any county in this territory, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offense to be sued for and recovered by, and to the use of such county, in a civil action before any court having jurisdiction of the same.

SEC. 12. This act to take effect and be in force from and after its passage.

PASSED, January 21st, 1863.

AN ACT

IN RELATION TO COUNTY AUDITOR.

- SECTION 1. Election of county auditor, his qualifications and term of office.
- “ 2. To perform the duties of clerk and recorder.
- “ 3. Form and manner of conducting the election.
Proviso.
- “ 4. Oath and bond of county auditor.
- “ 5. Duty of county auditor.
- “ 6. To keep an account current with the treasurer.
- “ 7. May appoint deputies.
Duties of deputies.
Auditor to be responsible for the acts of deputies.
- “ 8. Auditors authorized to administer oaths.
- “ 9. Auditor prohibited from practicing as an attorney.
- “ 10. Two or more orders may be issued instead of one.
- “ 11. Orders to be numbered by auditor.
- “ 12. When commissioners may deputize an auditor.

SECTION 13. Further duties of an auditor.

- “ 14. Auditor to record conveyances.
- “ 15. To give receipt therefor.
- “ 16. To keep seal.
- “ 17. To deliver to successor.
- “ 18. To give exemplification of record.
- “ 19. To make and keep index.
- “ 20. What to endorse on election returns.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be elected in each county in this territory, one county auditor, who shall have the qualifications of a voter, and shall continue in office for the term of two years, and until his successor is elected and qualified.

SEC. 2. The auditor shall be clerk of the board of county commissioners, and recorder for the county in which he is elected.

SEC. 3. The election, provided for by this act, shall be conducted and the returns made, in the manner and form prescribed by the law regulating general elections: *Provided,* That the person or persons associated with the auditor in opening and examining the poll books, shall issue to the person duly elected under this act, his certificate of election.

SEC. 4. Every auditor, within fifteen days after receiving his certificate of election, and before he shall enter upon the discharge of the duties of his office, shall take and subscribe an oath, before the clerk of the district court, or judge of probate of his proper county, faithfully and impartially to perform the duties of his office, as prescribed by law, to the best of his abilities; which oath shall be endorsed on the back of his certificate of election, recorded in a book kept for the purpose in his office, and filed in the office of the clerk of the district court of the county, or if there be no such office, with the clerk of the district court of the county to which his county may be attached for judicial purposes. He shall also give a bond to his county, with good and sufficient sureties, in the penal sum of one thousand dollars, to be approved by the county commissioners of his county, conditioned that he will faithfully and impartially fulfil the duties of his office; which bond shall be filed in the office of the clerk of the district court of the proper county.

SEC. 5. He shall audit all accounts and demands chargeable against his county, which are not directed to be settled and allowed by some other tribunal or person, and present the same to the county commissioners for their inspection and allowance, and for all such sums of money allowed by the county commissioners, or such other tribunal or person, or where the same is fixed by law, he shall issue his order on the treasurer of the county, payable to the person entitled thereto, which order

shall be numbered according to the date of issue, and the number, date, and amount of each, and to whom payable, and for what purpose drawn, shall, at the time of issuing the same, be entered in a book kept for that purpose.

SEC. 6. He shall keep an accurate account current with the treasurer of the county, and when any person shall deposit with him any receipt, given by the treasurer for money paid into the treasury, he shall file such receipt, and charge the treasurer with the amount thereof.

SEC. 7. The county auditors of the several counties may appoint deputy auditors, who shall be appointed in writing, and shall, before entering upon the discharge of the duties of their office, take and subscribe an oath, faithfully to perform the duties of their office, which oath shall be endorsed on the appointment, and recorded in the office of the county auditor. The county auditors shall be responsible for the acts of their deputies, and revoke their appointment at pleasure.

SEC. 8. Auditors and their deputies are authorized to administer oaths, necessary in the performance of their duties, and in all other cases where oaths are required by law to be administered, and to take acknowledgements of deeds and other instruments of writing.

SEC. 9. No person doing the duties of auditor shall practice as an attorney before the board of county commissioners.

SEC. 10. Any person may have a county order cancelled by the auditor, and two or more new orders issued in lieu thereof, by paying to such auditor the fees allowed for such services.

SEC. 11. All county orders shall be numbered by the auditor, beginning at the commencement and ending with the termination of each fiscal year, and shall draw ten per centum per annum interest from the date of their presentation to the county treasury, if not paid when so presented.

SEC. 12. In case the auditor is unable to attend to the duties of his office, during the session of the board of county commissioners, and having no deputy able to attend, some person may be deputized by such board to perform the duties of auditor and clerk thereof, for the time being.

SEC. 13. The county auditor shall attend the meeting of the board of county commissioners of their respective counties, and do and perform all the duties imposed by law, and shall copy into books the reports of the treasurer, of the receipts and disbursements of the county; and whenever the duplicate shall be put into the hands of the collector, it shall be the duty of the county auditor to send a statement of the same, wherewith such collector stands charged, to the county treasurer.

SEC. 14. That the auditor of each county in this territory, shall record in a fair and legible handwriting, in books to be by him provided for that purpose, at the expense of the county, all deeds, mortgages, and other instruments of writing required by law to be recorded, and which shall be presented to him for that purpose, and the same shall be recorded in regular succession, according to the priority of their presentation; and if a mortgage, the precise time of the day on which the same was presented shall also be recorded.

SEC. 15. That upon the presentation of any deed or other instrument of writing for record, the auditor shall indorse thereon the date of its presentation, and, if required, shall give to the person presenting the same a receipt therefor, without fee or reward, naming in such receipt the parties to such deed or other instrument of writing, the date thereof, and giving a brief description of the premises. And when such deed or other instrument of writing shall be recorded, the recorder shall endorse thereon the time when recorded, and the number or letter and page or pages of the book in which the same is recorded.

SEC. 16. That the auditor shall keep a seal of office, to be procured at the expense of the county; and shall make out for any person demanding the same, a fair and accurate copy of any record in his office, and certify the same, and shall affix his signature and official seal to such certificate.

SEC. 17. That each auditor, on going out of office, shall deliver to his successor the seal of office, all the books, records, and other instruments of writing belonging to said office, and shall take his successor's receipt therefor; and in case of the death of the auditor, his personal representatives shall deliver over the seals, books, records and papers as aforesaid.

SEC. 18. Each auditor shall upon the written demand or any person, make out a statement in writing, certified under his hand and the seal of his office, of all mortgaged, liens and incumbrances of any kind of record in his office, upon any real or personal property in relation to which the demand shall be made; and if said statement shall be incorrect, he and the sureties upon his official bond shall be liable to the person aggrieved for all damages sustained by him in consequence of such incorrect statement to be recovered in a civil action.

SEC. 19. That the auditors of the several counties of this territory be, and they are hereby authorized to provide suitable books, and make a new and complete general index to all records in the auditor's offices of their respective counties, and the auditors aforesaid shall be allowed and receive for their services, to be performed under this act,

such compensation as the commissioners of the respective counties may deem reasonable and just; which compensation shall be paid on the order of the commissioners aforesaid, out of the treasury of their proper county, and after such index shall be made, the auditors aforesaid shall keep a correct index of all instruments of writing recorded in their offices, without additional compensation therefor.

SEC. 20. All auditors when transmitting election returns to the secretary of the territory, shall endorse upon the envelope containing such returns, the words, "election returns," in addition to the other direction contained thereon.

SEC. 21. This act to take effect and be in force from and after its passage. And all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby repealed.

PASSED, January 24th, 1863.

AN ACT

IN RELATION TO COUNTY TREASURER.

- SECTION 1. Election of treasurer.
Term of office.
- " 2. Treasurer to take oath and bond.
- " 3. Treasurer to receive all moneys due.
- " 4. County treasurer may appoint deputies.
- " 5. County treasurer's office to be kept at the county seat.
- " 6. How his books are to be kept.
- " 7. His office to be subject to inspection and examination, and the money to be exhibited once a year.
- " 8. When to pay auditor's warrants.
Duty when not paid.
Proviso.
- " 9. Interest on auditor's order.
- " 10. County orders to be paid by priority.
Proviso.
- " 11. All orders redeemed to be deposited with the auditor.
- " 12. When sued county treasurer may be removed.
- " 13. Settlement of county treasurer annually.
- " 14. Compensation of county treasurer.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That at the first annual election in each county, and*

every two years thereafter, there shall be elected a county treasurer, who shall have the qualifications of a voter, and shall continue in office for the term of two years, and until his successor is elected and qualified.

SEC. 2. The county treasurer, before he enters on the duties of his office, shall take an oath faithfully to discharge the duties of his office, as prescribed by law; he shall, also, before he shall enter upon the duties of his office, give a bond to the county, with at least two sureties, residing in the county, in a penal sum of not less than double the amount of funds liable to come into the hands of the said treasurer during his term of office, the amount to be fixed, and the bond to be approved by the county commissioners of the proper county, conditioned that all moneys received by him for the use of the county, shall be paid, as the commissioners shall from time to time direct, except where special provision is made by law for the payment of such moneys, by order of any court, or otherwise, and for the faithful discharge of his duties.

SEC. 3. He shall receive all moneys due and accruing to his county and disburse the same on the proper orders, issued and attested by the county auditor.

SEC. 4. County treasurers may appoint one or more deputies, and may take from them bond, with sureties; they shall have power to remove their deputies at pleasure, and every county treasurer and his sureties shall be liable for all official acts of his deputies.

SEC. 5. The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for transaction of business during business hours; and he and his deputy are authorized to administer all oaths necessary in the discharge of the duties of his office.

SEC. 6. He shall so arrange and keep his books, that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account.

SEC. 7. He shall at all times, keep his books and office subject to the inspection and examination of the board of county commissioners, and shall exhibit the money in his office to such board at least once a year, and as often as such board may require.

SEC. 8. He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order the date of redemption, and his signature. If there be no funds to pay such order when presented, he shall indorse thereon: "not paid for want of funds," and the date of such indorse-

ment, over his signature, which shall entitle such order thenceforth to draw legal interest: *Provided*, That such interest shall cease from the date of notice by publication in some newspaper, printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case; and if there be no such newspaper, then by posting such notice at three public places in such county.

SEC. 9. When the county treasurer shall redeem any order on which interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

SEC. 10. County orders shall be redeemed by the treasurer according to the priority of the time of presentment: *Provided*, Such orders, payable out of the county revenue, shall be received in payment of county taxes, without any regard to priority of presentment, or number, but such treasurer shall not pay any balance thereon, over and above such tax, when there are outstanding orders unpaid, for want of funds.

SEC. 11. The treasurer shall, on the first Monday in September, in each year, deposit with the county auditor all county orders redeemed, who shall receipt therefor.

SEC. 12. Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed by the board of county commissioners of his county.

SEC. 13. The county treasurer shall annually make complete settlement with the board of county commissioners, at the regular September term thereof, and shall, at the expiration of his term of office, deliver to his successor all public money, books and papers in his possession.

SEC. 14. The county treasurer shall receive as a compensation for his services four per cent. on all moneys received and paid out by him for the county.

PASSED, January 19th, 1863.

AN ACT

TO CREATE AND ESTABLISH THE OFFICE OF COUNTY SURVEYOR.

SECTION 1. County surveyor to be elected every two years; to reside in the county where elected; to take an oath, and give bond for the performance of his duties.

- SECTION 2. May appoint deputies; deputies to take same oath as surveyor.
 Surveyor to be responsible for acts of deputy.
 Surveyor's certificate to be admitted as *prima facie* evidence.
 When surveyor or deputy is interested, commissioners to appoint a person to act.
- “ 3. Surveyor to execute all surveys required.
- “ 4. Surveyor to keep record, preserve field notes, and furnish copies to the party for whom a survey is made.
- “ 5. Fees of surveyor.
- “ 6. When surveyor to furnish chainmen and markers.
 Compensation and duties thereof.
- “ 7. Vacancy in office, how filled; appointee to give bond and take oath.
- “ 8. Surveyor to procure and have recorded field notes, and hand over papers to his successor.
- “ 9. When to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the qualified electors in each organized county in this territory may at the next annual election, and biennially thereafter, elect a county surveyor, who shall reside in the county for which he shall have been elected, and shall, previous to his entering upon the duties of his office, take and subscribe an oath or affirmation, before the county auditor of his proper county, to faithfully and impartially discharge the same; and shall give bond to the board of county commissioners of the proper county, in the sum of one thousand dollars, conditioned for the faithful performance of his duties.

SEC. 2. The said surveyor may appoint such number of deputies as he may think proper, who shall severally take an oath or affirmation of office, and for the faithful performance of whose duties the said surveyor shall be responsible. The certificate of the county surveyor, or of his deputies, shall be admitted as *prima facie* evidence in any court within this territory, but the same may be explained or rebutted by other evidence. And if said surveyor, or either of his deputies, be interested in any tract of land, a survey of which may become necessary by this act, such survey may be executed by any competent person, appointed by the board of county commissioners for that purpose.

SEC. 3. It shall be the duty of said surveyor, by himself or his deputies, to execute any survey which may be required by any court, or upon application of any individual or corporation, within a reasonable time.

SEC. 4. The said surveyor shall keep a correct record of all surveys made by him or his deputies, in a suitable book to be provided by him for that purpose, which he shall transmit to his successor in office;

he shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, indorsing thereon its proper number; a copy of which, and also a fair and accurate plot, together with a certificate of survey, shall be furnished to the party for whom the survey shall have been made.

SEC. 5. The said surveyor and his deputies may demand and receive for their services the following fees, to wit:—For a half, or fraction less than one half day's work, two dollars and fifty cents; for every day's work actually employed, five dollars; and for every mile traveled in going to and returning from the work, the sum of ten cents; for copy of a plat of land, or certificate of survey, fifty cents; making out a complete report of any survey made of any road, including field notes, one dollar; if such survey exceeds five miles, two dollars. In all surveys made by authority of the board of county commissioners, or any board of trustees, chain-bearers and axe-men shall receive, per day, three dollars.

SEC. 6. If the party for whom the survey is made does not furnish the chainmen and markers, then the surveyor or his deputies may employ the necessary chainmen and markers, and shall receive for each chainman and marker so employed, the sum of three dollars per day; and each chainman and marker, before entering upon the duties assigned them, shall take an oath or affirmation, before the surveyor or his deputy, faithfully and impartially to discharge the duties of chainman or marker, as the case may be.

SEC. 7. If at any time the office of county surveyor shall become vacant, the board of county commissioners may cause such vacancy to be filled by appointment; the person so appointed to give bond, and take and subscribe an oath or affirmation, in the same manner as provided for in the first section of this act.

SEC. 8. It shall be the duty of such surveyor, whenever directed so to do, by the board of county commissioners, to procure a copy of the original field notes of the townships in his county, at the expense of the county, and have the same recorded, and hand them, as well as all other papers, maps, books and charts belonging to his office over to his successor.

SEC. 9. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

TO CREATE AND REGULATE THE OFFICE OF SHERIFF.

- SECTION 1. Election of sheriff.
 His term of office and bond.
- “ 2. Of the appointment of deputies.
- “ 3. Powers of deputy sheriffs the same as sheriff.
- “ 4. Duties of sheriff.
- “ 5. No sheriff to practice law.
 Fine for violation.
- “ 6. Sheriff may be fined for neglect of duty.
- “ 7. No sheriff liable for damages unless his fees are tendered.
- “ 8. How a vacancy in the office of sheriff to be filled.
- “ 9. Sheriffs to have their certificates of election, and bond filed in the office of the auditor.
- “ 10. When to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be elected in each county in this territory, a sheriff, who shall possess the qualifications of a voter, and hold his office for the term of two years, and shall, before he enters upon the duties of his office, execute a bond, with at least three sureties, in such penal sum, not less than two thousand dollars, nor more than five thousand dollars, to be approved by the board of county commissioners, in open court, or by the county auditor during vacation, subject to the approval of said board at their next meeting, and filed in the office of said county auditor.

SEC. 2. Each sheriff may appoint as many deputies as he may think proper, for whose official acts he shall be responsible to the amount of their bond, and may revoke such appointments at his pleasure; and persons may also be deputed by any sheriff, in writing, to do particular acts; and the sheriff shall be responsible on his official bond, for the default or misconduct in office of his deputies.

SEC. 3. Every deputy sheriff shall possess all the power, and may perform any of the duties prescribed by law to be performed by the sheriff, or by his deputies; shall serve or execute, according to law, all process, writs, precepts and orders, issued or made by lawful authority, and to him directed, and he shall attend upon all courts of record at every term.

SEC. 4. It shall be the duty of sheriffs and of their deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for

which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

SEC. 5. No sheriff, deputy sheriff, or coroner, shall appear or practice as attorney in any court, except in defense of themselves or their deputies; and either of said officers, for a violation of this section, shall forfeit a sum not exceeding fifty dollars.

SEC. 6. Whenever any sheriff shall neglect to make due return of any writ or other process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal; such fine, however, not to exceed two hundred dollars, and also, to an action for damages to the party aggrieved.

SEC. 7. No sheriff, deputy sheriff, or coroner, shall be liable for any damages for neglecting or refusing to serve any civil process unless his legal fees (and an indemnifying bond if he requires one) are first tendered him.

SEC. 8. When a vacancy happens in the office of sheriff, the county auditor shall cause three advertisements to be put up in conspicuous places, in each election precinct in his county, stating the office to be filled, the time and place of holding the election, which time shall be at least ten days from the putting up of such advertisement, unless such vacancy shall occur within six months of the general election, then it shall be the duty of the board of county commissioners to fill such vacancy by appointing some person who shall possess the same qualifications as prescribed in the first section of this act, be subject to the same liabilities, and shall continue to perform the duties of said office until a sheriff is elected and qualified.

SEC. 9. Every sheriff shall, before he enters on the duties of his office, cause his certificate of election or appointment, with the oath of office indorsed thereon, and his bond with the approval thereon to be recorded in the office of the auditor of the county.

SEC. 10. This act to take effect and be in force from and after its passage.

PASSED, January 19, 1863.

AN ACT

RELATIVE TO CORONERS.

- SECTION 1. Election of coroner.
 His term of office, oath and bond.
- “ 2. Coroner to act as sheriff.
 When and with what restrictions.
- “ 3. Coroner’s inquest.
 When and where held.
- “ 4. Juror failing to attend a coroner’s inquest, to be fined.
- “ 5. Four persons may constitute a jury of inquest.
- “ 6. Coroner may subpoena and examine witnesses, summon a surgeon,
 &c.
- “ 7. Witnesses may be compelled to attend as before a justice of the
 peace.
- “ 8. Of the verdict of the jury.
- “ 9. When testimony to be reduced to writing.
 Witnesses may be bound over or committed.
 Papers to be filed with district clerk.
- “ 10. Proceedings when the person charged is arrested.
- “ 11. When a coroner to issue a warrant of arrest.
- “ 12. Form of coroner’s warrant.
- “ 13. Coroner’s warrant to be served in any county.
- “ 14. When the coroner to provide for the burial of the deceased.
- “ 15. When the money of the deceased to be delivered to the treasurer.
- “ 16. Disposition of the money or property of deceased by treasurer.
- “ 17. When the money may be paid on demand of the legal representa-
 tives.
- “ 18. Auditing the account of the coroner.
- “ 19. When justice of the peace may act as coroner.
- “ 20. Fees of coroner.
- “ 21. Justice acting as coroner, entitled to same fees.
- “ 22. When to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That there shall be elected at the first annual election, in every county in this territory, and every two years thereafter, a coroner, who shall hold his office for two years, and until his successor shall be elected and qualified, and shall take an oath of office, and file a copy thereof, together with a bond, in the sum of one thousand dollars, conditioned for the faithful performance of the duties of his office, to be approved by, and filed with the county auditor.

SEC. 2. The coroner shall perform the duties of sheriff, in all cases where the sheriff is interested, or otherwise incapacitated from serving; and whenever the coroner acts as sheriff, he shall possess the powers and perform all the duties of sheriff, and shall be liable on his official

bond, in like manner as a sheriff would be, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services; but before serving any process, as required by this section, the coroner shall give an additional bond, in double the amount of the sum sued for or damages claimed.

SEC. 3. When a coroner has been informed that a person has been killed, or has committed suicide, or has suddenly died, under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another, by criminal means, he shall go to the place where the body is, and forthwith summon six good and lawful persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of the deceased is, to inquire into the cause of the death.

SEC. 4. Every person summoned as a juror, who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding twenty dollars, to be recovered by the coroner in the name of the territory, before any justice of the peace in the proper county, and when collected to be paid over to the county treasurer for the use of the county.

SEC. 5. When four or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict therein, according to the evidence afforded them, or arising from the inspection of the body.

SEC. 6. The coroner may issue subpoenas for witnesses, to the sheriff or any constable of the county, returnable forthwith, or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses, on oath, by him administered, every person who, in his opinion, or that of any of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body, and give, under oath, a professional opinion as to the cause of the death.

SEC. 7. A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace.

SEC. 8. After inspecting the body, and hearing the testimony, the jury shall render their verdict, and certify the same, by an inquisition, in writing, signed by them, and setting forth who the person killed is, if known, and when, where, and by what means he came to his death;

and if he was killed or his death occasioned by the act of another, by criminal means, who is guilty thereof, if known.

SEC. 9. In all cases where murder or manslaughter is supposed to have been committed, the testimony of witnesses taken before the coroner's jury, shall be reduced to writing by the coroner, or under his direction, and he shall also bind over such witnesses as he may deem proper, to appear and testify at the next term of the district court of the county, and in default of a recognizance may commit such witnesses to the county jail, and shall forthwith file the written testimony, inquisition, and recognizance with the clerk of such court.

SEC. 10. If, however, the person charged with the commission of the offense be arrested before the inquisition can be filed, the coroner shall deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statements taken before him, and the recognizance to the office of the clerk of the district court of the county.

SEC. 11. If the jury find that the person was killed by another, by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the coroner shall issue a warrant, signed by him, with his name of office, for the arrest of the person charged, into one or more counties, as may be necessary, and returnable forthwith to the nearest justice of the peace, judge, or committing magistrate.

SEC. 12. The coroner's warrant shall be in substantially the following form:

United States of America. }
 Territory of Washington. ss. }

To any sheriff or constable of the county:

An inquisition having been this day found by the coroner's jury, before me, stating that A. B. has come to his death by the act of C. D., by criminal means, (or as the case may be, as found by the inquisition,) you are therefore commanded, in the name of the United States of America, forthwith to arrest the above named C. D., and take him before the nearest or most accessible magistrate in this county.

Given under my hand this _____ day of _____, A. D. 18—.

E. F

Coroner of the county of _____

SEC. 13. The coroner's warrant may be served in any county, and

the officers serving it shall proceed thereon, in all respects, as upon a warrant of arrest.

SEC. 14. In all cases where no demand shall be made by the friends of the deceased for the body for burial, in a suitable manner, at the expense of the estate of the deceased, if there be sufficient to pay the same, if not, at the expense of the county.

SEC. 15. The coroner must within thirty days after an inquest upon a dead body, deliver to the county treasurer any money, or other property, which may be found upon the body, unless claimed in the mean time by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against the coroner to recover the same, by a civil action, in the name of the county.

SEC. 16. Upon the delivery of money to the treasurer, he shall place it to the credit of the county. If it be other property, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and shall, in like manner, place the proceeds to the credit of the county.

SEC. 17. If the money in the treasury be demanded within six years, by the legal representatives of the deceased, the treasurer shall pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the same may be so paid at any time thereafter, upon the order of the board of county commissioners of the county.

SEC. 18. Before auditing and allowing the account of the coroner, the board of county commissioners shall require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

SEC. 19. If the office of coroner be vacant, or he be absent, or unable to attend, the duties of his office may be performed by any justice of the peace in the county, with the like authority, and subject to the same obligations and penalties as the coroner.

SEC. 20. A coroner shall receive ten dollars for each inquest that he may hold, and necessary burial expenses; and also twenty cents per mile for each mile necessarily traveled, to hold any inquest; to be paid by the county, and to be audited and allowed as other county charges.

SEC. 21. A justice of the peace, acting as coroner, shall be entitled to the same fees, payable in the same manner.

SEC. 22. This act to take effect and be in force from and after its passage.

PASSED, January 19th, 1863.

AN ACT

IN RELATION TO CONSTABLES.

CHAPTER 1.

- SECTION 1. Constables, when and where elected.
" 2. Vacancies, how filled.
" 3. Election of, how conducted.
" 4. Constable to take an oath.
" 5. Shall give bond.
" 6. Jurisdiction of.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at each general election, there shall be elected by the qualified electors of each precinct in the several organized counties of this territory, as many constables as there are justices of the peace elected, or authorized to be elected, in such precinct.

SEC. 2. All vacancies existing in the offices of constable, whether happening by death, resignation or failure to elect, or otherwise, may be filled by appointment by the board of commissioners of the proper county; and every person so appointed shall hold his office until the next election.

SEC. 3. The election of constables shall be conducted, and the return of such election made, and certificates of election issued in the same manner as in elections of justice of the peace.

SEC. 4. Every person elected or appointed a constable, shall, within twenty days after receiving his certificate of election, take an oath before any person authorized to administer oaths, that he will support the constitution of the United States, and the laws of this territory, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be endorsed on the back of the certificate of election, or appointment, and filed, together with the certificate, in the office of the auditor of the proper county.

Sec. 5. Every person elected or appointed to the office of constable, shall, within the time prescribed for filing his oath of office, enter into a bond to the proper county, with two or more sureties, residents of the county, to be approved by the county auditor; in the sum of one thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office; and in every respect discharge all the duties of constable according to law. The auditor shall endorse thereon his approval of the sureties therein named, and shall file the same in his office.

Sec. 6. Any constable may within his county serve any writ, process, or order, lawfully directed to him by any justice of the peace, judge of probate, or coroner, and generally do and perform all acts, by law required of constables.

Sec. 7. It shall be the duty of all constables, and all sheriffs, to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions,

Sec. 8. This act to take effect and be in force from and after its passage.

PASSED, January 19th, 1863.

AN ACT

TO CREATE THE OFFICE OF WRECK MASTER AND DEFINE HIS DUTIES.

- SECTION 1. When and in what counties wreck master to be elected.
- “ 2. Wreck master to qualify and give bond.
- “ 3. Certain wrecked property not deemed to belong to the territory.
- “ 4. Duty of wreck master in reference to wrecked property.
- “ 5. Proceedings in case such property be in a perishable state.
- “ 6. How same shall be sold.
- “ 7. Proceedings when such property is claimed within one year.
- “ 8. Bond to be given by claimant.
- “ 9. Disposition of such bond.
- “ 10. Plaintiff prevailing in suit, costs of defendant to be deducted from damages recovered.
- “ 11. Duty of officer upon order to deliver wrecked property.
- “ 12. Wreck master to render aid and assistance; when.
- “ 13. Magistrates, constables, &c., to assist wreck master.

- SECTION 14. Compensation of all persons rendering assistance.
- “ 15. Salvage shall not exceed a certain amount.
- “ 16. Proceedings in case salvage is not settled by agreement of parties.
- “ 17. Justice of the peace may appoint three persons to settle salvage and expenses.
- “ 18. Powers and duties of such appraisers.
- “ 19. Compensation of appraisers.
By whom paid.
- “ 20. Wreck master to give notice of wrecked property.
- “ 21. What such notice shall contain.
- “ 22. Liability of wreck master.
- “ 23. Penalty for taking any goods from any stranded vessel.
- “ 24. Penalty for defacing or obliterating marks on wrecked property, &c.
- “ 25. Duty of wreck master if property not claimed within a year.
- “ 26. Duty of certain persons to prosecute for violations of this act.
- “ 27. This act not to conflict with “act relative to scows, boats, &c.”
- “ 28. Wreck masters to hold their office for three years.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That on the next annual or general election, the qualified voters of Pacific, Chehalis, Thurston, King, Jefferson, Island, Whatcom, Pierce, Kitsap and Clalm counties, shall elect a wreck master, whose duties shall be as hereinafter provided.

SEC. 2. Every wreck master before entering upon the duties of his office, shall be sworn faithfully to discharge his duty, and shall give bond to the judge of probate, for the county in which he resides, with sufficient security to the acceptance of said judge, for the faithful discharge of his duty, and every person having a claim against any such wreck master, for any breach or neglect of his official duty, may have a remedy therefor by a suit on his bond to be prosecuted in the name of the judge of probate, in like manner as bonds given to judges of probate by administration of the estate of deceased persons.

SEC. 3. No ship, vessel, boat, nor any goods, wares and merchandise, that shall be cast by the sea upon the land, shall be deemed to belong to the territory as wrecked property, but may be recovered by the owner, consignee, or person having charge thereof, at the time of the happening of the disaster by which the wreck was occasioned, upon the payment of a reasonable salvage and necessary expenses.

SEC. 4. The wreck master in each county to which the provisions of this act are applicable, in which any wrecked property shall be found, when no owner or other person entitled to the possession of said property shall appear, shall have power, and it shall be his duty, to pursue all necessary measures for saving and securing such property, to take possession thereof, in whose hands soever the same may be, in the name of the people of this territory, to cause the value thereof to be appraised

by disinterested persons, and keep the same in some safe place, to answer the claims of such persons as may thereafter appear entitled thereto.

SEC. 5. If the property so saved shall be in a perishable state so as to render the sale thereof expedient, it shall be the duty of the wreck master to apply to some judge of the United States district court, or justice of the peace by a petition supported by an affidavit of the facts for an order authorizing such sale; and if the judge or justice of the peace, to whom such application shall be made, shall be satisfied that a sale of the property would be most beneficial to the parties interested, it shall be the duty of the officer to whom the application is made to make the order so applied for.

SEC. 6. If such order be made, the officer having custody of the property directed to be sold, shall sell the same at public auction, at the time and in the manner that shall be specified in the order; and the proceeds of such sale, deducting the expense thereof, as the same shall be made by the officer making such order, shall be paid to the treasurer of the county.

SEC. 7. If within one year after such recorded property shall have been found and saved, any person shall claim the same or the proceeds thereof, as owner or consignee or the agent of the owner or consignee, and shall establish his claim by evidence, which any United States judge or justice of the peace shall deem to be satisfactory, it shall be the duty of such officer to make an order directing the wreck master in whose possession the property may be, to deliver the property if not sold as above, or to pay the proceeds arising from the sale thereof, if sold as aforesaid, to the claimant, upon the payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping of said property.

SEC. 8. No order shall, however, be made, unless the claimant shall deliver to such officer a bond, with one or more sufficient securities, to be approved by said officer, conditioned for the payment of all damages that may be recovered against such claimant or his representatives within two years after the sale of such property by any person establishing his title as owner of the property or proceeds to be delivered, said bond shall be taken in the name of the United States of America, and the penalty shall be double the value of the property or proceeds before mentioned.

SEC. 9. The bond shall be filed in the office of the judge of probate court for the county in which it shall be taken. If it shall be forfeited, the party injured by such forfeiture shall be entitled to recover,

in the proper court, the full amount of the condition of said bond together with costs of suit.

SEC. 10. If the plaintiff prevail in such suit, there shall be deducted in addition to the salvage and expense charged on the property, from the damages to be recovered, all the costs of the defendant making his defense.

SEC. 11. It shall be the duty of every officer to whom any order, duly made for the delivery of wrecked property, on the payment of its proceeds shall be directed to present to the claimant exhibiting such order, a written statement of the claims for salvage and expenses on such property and proceeds. If the claimant shall refuse to allow such claims, the amount of such salvage and expenses shall be adjusted in the manner hereinafter provided, and in all cases, after the payment, or tender of the payment of such salvage and expenses as agreed to, or adjusted, the officer in whose custody such property or proceeds shall be, shall deliver or pay the same according to the order directed to him.

SEC. 12. It shall be the duty of the wreck masters in the several counties in which they shall be appointed, to give all possible aid and assistance to all vessels stranded on the coasts of their respective counties, and to the persons on board the same, and to use their utmost endeavors to save and preserve such vessels and their cargoes, and all goods and merchandize that may be cast by the sea upon the land, and in the performance of their duties, they shall employ such and so many men as they shall think proper.

SEC. 13. It shall be the duty of all magistrates, constables and citizens, to aid and assist the wreck masters when required in the discharge of their duties.

SEC. 14. All sheriffs, wreck masters, and all persons employed, and all other persons aiding and assisting in the recovery and preservation of wrecked property, shall be entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved, and the officer having the custody of such property, shall detain the same until such salvage and expenses shall be paid.

SEC. 15. The whole salvage that shall be claimed in any case, shall not exceed one half of the value of the property or proceeds on which such salvage shall be charged; and every agreement, order or adjustment allowing a greater salvage, shall be void.

SEC. 16. If in any case the amount of salvage and expenses on property saved, shall not be settled by agreement of the parties, the owner or consignee of such property, or the master or supercargo having

charge thereof, at the time the same was wrecked, or a claimant having an order for its delivery, may apply to any justice of the peace for the county in which such property shall be, for the appointment of suitable persons as appraisers, to adjust and settle the amount of such salvage and expenses.

SEC. 17. It shall be the duty of such justice of the peace, to whom such application shall be made, by an order under his hand and seal, to appoint three disinterested freeholders of the county to adjust and settle the salvage and expenses.

SEC. 18. The persons so appointed, before they enter on the performance of their duties, shall be sworn to perform faithfully and impartially the duties of their trust, before any officer authorized to administer oaths. They shall have power to issue compulsory process for the attendance of witnesses, who shall attend or be produced, and their decision or that of any two of them under their hands, as to the amount of salvage and expenses that ought to be paid, and the sums to be paid to each person entitled to share in such salvage, or claiming such expenses, shall be final and conclusive.

SEC. 19. The fees and expenses of the appraisers shall be paid by the person upon whose application they shall have been appointed, and shall be a charge on the property saved; each appraiser shall be entitled to three dollars for each day's attendance, and to a sum not exceeding two dollars for his daily expenses.

SEC. 20. Every wreck master into whose possession any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties, for at least four weeks in succession, in one or more of the newspapers printed in this territory.

SEC. 21. Every such notice shall contain a minute description of the wrecked property and of every bale, bag, box, cask, piece or parcel thereof, and of the marks, brands, letters and figures on each; and shall state where such wrecked property then is, and its actual condition, and the name if known, of the vessel from which it was taken or cast on shore, and of the master and supercargo of such vessel, and the place where such vessel then is and its actual condition; and the expenses of publishing every such notice shall be charged on the property or proceeds to which such notice shall relate.

SEC. 22. Every wreck master, or other officer who shall detain in his hands any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon shall have been agreed to or adjusted, and the amount thereof shall have been paid or tendered to him, or who shall be guilty of any fraud, embezzlement or extortion, in the discharge

of his duties, or who shall in any manner violate the provisions of this act, shall forfeit treble damages to the party injured, and shall be deemed guilty of a misdemeanor.

SEC. 23. Every person who shall take away goods from any stranded vessels, or goods cast by the sea upon the land, or found in any bay or creek, or who shall knowingly have in his possession any goods so taken or found, and shall not notify the same to the wreck master of the county where the same shall have been found, within forty-eight hours after the same shall have been taken by him, or have come into his possession, shall forfeit treble the value of the goods so taken or kept by him to the owner or consignee thereof, and shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, at the discretion of the court by which he shall be tried.

SEC. 24. Every person who shall deface or obliterate the marks on wrecked property, or in any manner disguise the appearance with intent to prevent the owner from discovering its identity, and every person who shall destroy or suppress any invoice, bill of lading, or other document tending to show the ownership of wrecked property, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, the fine not to exceed two thousand dollars, the imprisonment three years.

SEC. 25. If, within a year after wrecked property shall have been saved, no person shall have appeared to claim the same, or if, within three months after a claim shall have been preferred, the salvage and expenses on such property shall not have been commenced, it shall be the duty of the wreckmaster to sell the same at public auction, and to pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this territory, for the benefit of the parties interested, but in no case shall any deduction of salvage and expenses be made, unless the amount thereof shall have been settled upon due proof, before some court of record of the county in which the property shall have been saved; a copy of which order, and the evidence in support thereof, shall be transmitted by the officer making it to the territorial treasurer.

SEC. 26. It shall be the duty of all judges, sheriffs, justices of the peace, coroners, constables, and wreck masters to present all offenses against the provisions of this act, that shall come to their knowledge within their respective counties, to the grand jury at the next term of the United States district court therein.

SEC. 27. Nothing in this act shall be so construed as to conflict

with an act entitled, "an act relative to scows, boats, skiffs, canoes and other water craft."

SEC. 28. All wreck masters elected under this act shall hold their office during the term of three years, and until their successors are elected and qualified.

PASSED, January 19, 1863.

AN ACT

TO CREATE AND REGULATE THE OFFICE OF INSPECTOR OF SALMON.

- SECTION 1. County commissioners may appoint inspector of salmon.
Term of office.
- " 2. Qualification and bond of inspector.
- " 3. Duty of inspector of salmon.
Unmerchantable salmon to be destroyed.
Merchantable salmon to be branded.
Prohibition of exporting salmon without inspection.
- " 4. Compensation to be fixed by county commissioners.
- " 5. Penalty for exporting salmon not inspected.
Action for recovery of penalty.
Penalties recovered under act, to go to school fund, &c.
Inspector not responsible for costs.
- " 6. When act to take effect.

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 each of the counties, who may deem it expedient, to appoint one inspector of salmon, within and for their respective counties, at their annual session in April, in each year, who shall hold his office for the term of one year, and until his successor shall have been duly appointed and qualified.

SEC. 2. Said inspectors shall, before entering upon the duties of their respective office, take an oath before the county auditor of his respective county, faithfully and impartially to discharge his duty as such inspector, and execute a bond to the county commissioners of his respective county, in the penal sum of one thousand dollars, with two or more sureties, to be approved by said commissioners, conditioned for the faithful performance of his duties.

SEC. 3. It shall be the duty of said inspector to examine, or cause to be examined, all salmon intended for exportation, which may be cured and put up at any fishery in either of said counties: and if any of said salmon shall, on such examination, be found unfit for market, they shall destroy, or cause the same to be destroyed; but if, on such inspection, a part thereof shall be found good, they shall proceed to separate the same, and shall put up the good salmon in a proper manner. Upon all merchantable salmon shall be branded the name of such inspector, and no salmon shall be exported from any of the fisheries of said counties, unless the same shall have been branded by the inspector as aforesaid.

SEC. 4. Said inspector shall receive such compensation for his services as the county commissioners of his respective county shall prescribe at their annual session aforesaid.

SEC. 5. Any person who shall export, or cause to be exported, any salmon, contrary to the provisions of section 3, of this act, shall, on conviction thereof, by civil action, before any justice of the peace of either of said counties, in the name of said inspectors, be fined in any sum not exceeding one hundred dollars; one half of which shall go into the common school fund of said counties, for the support of common schools, and the other half to the informer. The proceedings shall be the same as in other civil cases, but the inspector shall not be responsible for costs.

SEC. 6. This act shall take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

TO AMEND AN ACT ENTITLED, "AN ACT TO INCREASE COUNTY REVENUE."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the second section of the act to which this is an amendment be so amended as to authorize the county commissioners of Walla Walla to grant the license mentioned in said act, upon the

party applying for the same paying into the county treasury a sum not less than one hundred, nor more than three hundred dollars, at the discretion of said commissioners.

SEC. 2. All acts and parts of acts contravening the provisions of this act, be and they are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED, Jan. 16th, 1863.

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I N D E X

TO THE

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LOCAL LAWS.

LOCAL AND PRIVATE LAWS.

AN ACT

TO CREATE AND ORGANIZE THE COUNTY OF BOISE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all that portion of Idaho county embraced within the following boundaries, to wit: Commencing at the mouth of Payette river, and following up said river mid channel, to the mouth of the middle fork of said river, thence up the mid channel of said fork to its source, thence in a direct east line to the summit of the Bitter Root mountains, thence along the summit of said mountains to the eastern line of Washington territory, all that portion of the territory of Washington lying south of the aforementioned boundaries, the same is hereby constituted and organized into a separate county to be known and called Boise: that said territory shall compose a county for civil and military purposes, and shall be under the same laws, rules, regulations and restrictions as all other counties in the territory of Washington, and entitled to elect the same officers as all other counties are entitled to elect.

SEC. 2. The county seat of said county be, and the same is hereby temporarily located at the mouth of Elk Creek, on Moore's Creek.

SEC. 3. The following named persons are hereby appointed officers of said county, viz: John C. Smith, Dr. Noble and Frank Moore, county commissioners; — Gilbert, probate judge; David Mulford, sheriff; David Alderson, county treasurer; A. D. Saunders, auditor; — Baird, J. M. Murphy, Dr. Swan, justices of the peace; James

Warren, coroner, who shall hold their respective offices until the next annual election, or until their successors are elected or appointed and qualified, before entering upon the discharge of the duties of their offices they shall comply with all existing laws relating to qualifying by giving bond and taking and official oath. Said bonds may be approved by the persons named as county commissioners, or a majority of them, and the several persons named herein as officers may administer the oath of office to each other.

SEC. 4. All vacancies which may occur by the non-acceptance, death, removal, or resignation of any of the persons above named, may be filled by the board of county commissioners, and they may also appoint such other officers as may be required for said county, to hold their offices until the next general election, and until their successors are elected or appointed and qualified.

SEC. 5. At the next general election the qualified voters of said county shall elect their county commissioners, and all other county officers in the same manner as by law prescribed for other counties.

SEC. 6. Said county commissioners, when elected, as in the preceding section provided, shall hold their respective offices, one for one year, one for two years, and one for three years, as shall, at their first meeting after the election, be determined by lot.

SEC. 7. The persons appointed county commissioners may, at any time after the passage of this act, and before the day appointed for the next general election, upon posting up suitable notices signed by a majority of them, ten days prior to the time appointed, hold a meeting of the board of county commissioners at which they may transact any business that may be done at a regular meeting of the board.

SEC. 8. This act to take effect and be in force from and after its passage.

SEC. 9. All acts and parts inconsistent herewith are hereby repealed.

PASSED, January 12th, 1863.

AN ACT

TO CREATE AND ORGANIZE THE COUNTY OF FERGUSON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all that portion of Washington Territory

lying north of the summit of the Simcoe range of mountains, bounded on the west by the summit of the Cascade range, and the counties of Walla Walla and Spokane on the east, and the Wenatchee river on the north, be, and the same is hereby organized into a county called Ferguson.

SEC. 2. *Be it further enacted*, That James H. Wilbur, Alfred Hall, — Place, be appointed county commissioners, W. Shaugh, justice of the peace, and — Thorp, sheriff.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED, January 23d, 1863.

AN ACT

TO AMEND AN ACT ENTITLED, "AN ACT CREATING AND ORGANIZING THE COUNTY OF NEZ PERCE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the boundaries of Nez Perce county shall be as follows: Beginning mid channel of Snake river at a point opposite the mouth of the Alpawai creek, thence due north to the divide between the Pelouse and Snake river, thence following said divide in an easterly direction to a point due north of the forks of Clearwater, thence due south to the forks of Clearwater, thence following South Fork to Lolo creek, thence with the southern boundary of Shoshone county to the summit of the Bitter Root mountains, thence south, following the main divide between the waters of Salmon river and South Fork of Clearwater to Snake river, thence following mid channel of said river to the place of beginning.

SEC. 2. All acts or parts of acts conflicting with the foregoing be, and the same are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED, January 21st, 1863.

AN ACT

TO CREATE AND ORGANIZE THE COUNTY OF STEVENS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all of that portion of Walla Walla county embraced within the following boundaries, to wit: Commencing at a point on the Columbia river where the 49th parallel of latitude crosses said river, thence west with said parallel to the summit of the Cascade mountains, thence south with summit of said mountains to the Wenatchee river, thence down mid channel of said river to the Columbia river, thence up mid channel of said river to the place of beginning, be, and the same is hereby constituted and organized into a separate county to be known and called Stevens county.

SEC. 2. That said territory shall compose a county for civil and military purposes, and shall be under the same laws, rules, regulations and restrictions as all other counties in the territory of Washington, and entitled to elect the same officers as other counties are entitled to elect.

SEC. 3. That the county seat of said county be, and the same is hereby temporarily located at the store of H. Young.

SEC. 4. That — Doyle, — Hill, Richard Longfield be, and the same are hereby appointed a board of county commissioners, and that W. B. Yantis be and he is hereby appointed sheriff, and that Charles H. Campfield be and he is hereby appointed county auditor.

SEC. 5. That the persons hereby constituted officers by the fourth section of this act, shall, before entering upon the discharge of their respective duties, qualify in the same manner and with like restrictions as those elected at an annual or general election.

SEC. 6. That the said county of Stevens be, and the same hereby is attached to the county of Spokane for judicial purposes.

SEC. 7. This act to take effect and be in force from and after its passage.

PASSED, January 20, 1863.

AN ACT

TO AMEND AN ACT ENTITLED, "AN ACT DEFINING THE BOUNDARY LINE BETWEEN THE COUNTIES OF SAWAMISH AND THURSTON."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington* That the act to which this is amendatory be so amended as to read as follows: Commencing at the corner of townships the corners of sections thirty-three and thirty-four, and three and four, seventeen and eighteen north, range three and four west, thence east to and thence due north to the middle of the main channel of Totten's Inlet, thence along said channel to the waters of Puget Sound, intersecting the line in channel of Puget Sound west of the southern portion of Squaxon reservation.

SEC. 2. All acts or parts of acts conflicting with the provisions of this act are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED, January 28th, 1863.

AN ACT

CONFERRING JURISDICTION UPON THE DISTRICT COURT OF THE COUNTY OF BOISE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That a court is hereby established at the county seat of Boise county, to be called the district court of the county of Boise.

SEC. 2. Said court shall have concurrent jurisdiction within the county of Boise of all matters and causes, except those in which the United States is a party, in the same manner and to the same extent as is now had and exercised by the district court of the first judicial district, with the same right as to appeals, certiorari, and writs of error from inferior courts; and to the supreme court as is now or hereafter may be provided by law.

SEC. 3. Said court shall be held by the judge of the first judicial

district, at the county seat of Boise county at such time or times as shall be prescribed by the judges of the supreme court.

SEC. 4. The said district judge of the first judicial district shall appoint a clerk of the court, who shall give bonds and security as shall be ordered by said court, or the judge thereof, and shall keep his office and records of said court at the county seat of said county, and said district court shall be a court of record, and the expenses of holding the same shall be payable by the said county of Boise.

SEC. 5. The various laws now in force, and which may hereafter be enacted, regulating the practice and proceedings in civil actions, and in criminal prosecutions, shall govern the practice and proceedings in said district court of the county of Boise.

SEC. 6. The said court, or the judge thereof, shall direct the number of grand and petit jurors to be summoned from said county to attend at the several terms of said court, and shall direct the clerk to certify to the auditor of said county the number of grand and petit jurors apportioned to said county, whereupon said jurors shall be selected and summoned in said county as is now or hereafter may be provided by law for the selection and summoning of jurors to attend upon the district court: *Provided*, That when from any cause there shall not be in attendance a sufficient number of grand and petit jurors, or when those summoned shall have been discharged, it shall be competent for the court to order a sufficient number of qualified and competent jurors from the bystanders, or from the body of the county; and the court, after discharging a grand jury, may order one or more grand juries to be empaneled at the same time: *Provided*, The same shall, in the opinion of the court, be necessary.

SEC. 7. The number summoned as grand jurors shall not exceed sixteen, and the number of petit jurors summoned shall not exceed twenty-four, and the provisions of the act to provide for the manner of selecting and procuring the attendance of jurors at the term of the district court, passed January twenty-seventh, one thousand eight hundred and fifty-seven, consistent with the foregoing, and not modified thereby, shall fully apply to the said district court of the county of Boise.

SEC. 8. The foregoing sections which relate to the summoning of grand and petit jurors for the terms of said district court of the county of Boise, 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 Boise, to attend the district court of the first judicial district. But the said county of Boise shall not be chargeable in any event for

the mileage and attendance of any grand or petit jurors who may be summoned from said county of Boise to attend any term of the district court of the first judicial district, but no jurors shall be summoned to attend at the district court of said district, except on the order of the judge of said district.

SEC. 9. All acts and parts of acts inconsistent with the foregoing, be and the same are hereby repealed.

PASSED, January 13th, 1863.

AN ACT

CONFERRING JURISDICTION UPON THE DISTRICT COURT OF THE COUNTY OF IDAHO.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a court is hereby established at the county seat of Idaho county, to be called the district court of Idaho county.

SEC. 2. Said court shall have exclusive jurisdiction within the county of Idaho, of all matters and causes, except those in which the United States is a party, in the same manner, and to the same extent as is now had and exercised by the district court of the first judicial district, with the same right as to appeals, certiorari and writs of error, from inferior courts; and to the supreme court as is now or hereafter may be provided by law.

SEC. 3. Said court shall be held by the judge of the first judicial district, at the county seat of Idaho county, at such time or times as shall be prescribed by the judges of the supreme court.

SEC. 4. The said district judge of the first judicial district shall appoint a clerk of the court, who shall give bonds and security as shall be ordered by said court or the judge thereof, and shall keep his office and records of said court at the county seat of said county; and said district court shall be a court of record, and the expenses of holding the same shall be payable by the said county of Idaho.

SEC. 5. The various laws now in force and which may hereafter be enacted, regulating the practice and proceedings in civil actions, and in criminal prosecutions, shall govern the practice and proceedings in said district court of the county of Idaho.

SEC. 6. The said court or the judge thereof, shall direct the number of grand and petit jurors to be summoned from said county to attend at the several terms of said court, and shall direct the clerk to certify to the auditor of said county the number of grand and petit jurors apportioned to said county, whereupon said jurors shall be selected and summoned in said county, as is now or hereafter may be provided by law for the selection and summoning of jurors to attend upon the district court: *Provided*, That when, from any cause, there shall not be in attendance a sufficient number of grand and petit jurors, or when those summoned shall have been discharged, it shall be competent for the court to order a sufficient number of qualified and competent jurors from the bystanders, or from the body of the county, and the court, after discharging a grand jury, may order one or more grand juries to be empaneled at the same time, provided the same shall, in the opinion of the court, be necessary.

SEC. 7. The number summoned as grand jurors shall not exceed sixteen, and the number of petit jurors summoned shall not exceed twenty-four; and the provisions of the act to provide for the manner of selecting and procuring the attendance of jurors at the term of the district court, passed January twenty-seventh, one thousand eight hundred and fifty-seven, consistent with the foregoing and not modified thereby, shall fully apply to the said district court of the county of Idaho.

SEC. 8. The foregoing sections, which relate to the summoning of grand and petit jurors for the terms of said district court of the county of Idaho, 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 Idaho, to attend the district court of the first judicial district. But the said county of Idaho shall not be chargeable in any event for the mileage and attendance of any grand or petit jurors who may be summoned from said county of Idaho, to attend any term of the district court of the first judicial district, but no jurors shall be summoned to attend at the district court of said district, except upon the order of the judge of the district.

SEC. 9. All acts and parts of acts inconsistent with the foregoing be and the same are hereby repealed.

PASSED, January 27th, 1863.

AN ACT

CONFERRING JURISDICTION UPON THE DISTRICT COURT OF THE
COUNTY OF PIERCE.

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 Pierce, to be called the district court for Pierce county.

SEC. 2. The said court shall have exclusive jurisdiction within said county of all matters and causes, except those in which the United States is a party, in the same manner, and to the same extent as is now had and exercised by the district court of the second judicial district, with the same rights as to appeals, certiorari and writs of error from inferior courts, and to the supreme court, as is now provided and allowed by law.

SEC. 3. Said court shall be held by the judge of the second judicial district at the county seat of Pierce county, upon the fourth Monday of March, and the third Monday of September of each and every year, or at such time or times as shall be prescribed by the judges of the supreme court, or a majority of them.

SEC. 4. The said judge of the second judicial district shall appoint a clerk of the court, who shall give bonds and security as shall be ordered by said court or the judge thereof, and shall keep his office and records of said court at the county seat of said county; and said district court shall be a court of record, and the expense of holding the same shall be payable by the said county of Pierce.

SEC. 5. The various laws now in force, and which may hereafter be enacted, regulating the practice and proceedings in civil actions, and in criminal prosecutions, shall govern the practice and proceedings in said district court of the county of Pierce.

SEC. 6. The county commissioners, at their May session, shall select from the statement of persons qualified, a sufficient number to serve as grand and petit jurors, at each term of said district court for the ensuing year. And the county auditor shall therefrom furnish a list of grand and petit jurors so selected, to the clerk of said county of Pierce: *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 num-

ber of qualified grand and petit jurors to be summoned from the bystanders, or from the body of the county.

SEC. 7. At least thirty days before the commencement of said terms of court, the clerk shall issue one venire, embracing the names of the grand and petit jurors, specifying which are grand and which petit jurors, commanding the sheriff to summon the persons so named, to attend on the first day of the term of said court.

SEC. 8. The number summoned as grand jurors shall not exceed sixteen, and the number of petit jurors summoned shall not exceed twenty-four; and the provisions of 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 Pierce.

SEC. 9. The foregoing sections which relate to summoning grand and petit jurors for the terms of said district court of the county of Pierce, shall not be construed to alter, amend, or repeal the law now in force in regard to the quota of jurors to be summoned from said county of Pierce to attend the district court of the second judicial district. But the said county of Pierce shall not be chargeable in any event for the mileage and attendance of any grand or petit jurors who may be summoned from said county of Pierce to attend any term of the district court of the second judicial district; and no jurors shall be summoned to attend at the district court of the second judicial district, except upon the order of the judge thereof.

SEC. 10. All laws and parts of laws inconsistent with the foregoing be and the same are hereby repealed.

SEC. 11. This act to take effect and be in force from and after its passage.

PASSED, January 27th, 1863.

AN ACT

CONFERRING JURISDICTION ON THE DISTRICT COURT OF PORT TOWNSEND.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That a court is hereby established at Port Towns-*

end, in the county of Jefferson, to be called the district court of Port Townsend.

SEC. 2. Said court shall have exclusive jurisdiction within the counties of Whatcom, Clalm, Jefferson, Island and Snohomish, of all matters and causes, except those in which the United States is a party, or which are under exclusive jurisdiction of the United States courts, in the same manner and to the same extent, as is now had and exercised by the district court of the third judicial district, with the same right as to appeals, certiorari, and writs of error from inferior courts, and to the supreme court as is now, or hereafter may be provided by law: *Provided*, Nothing herein contained shall be construed so as to prevent the holding of admiralty courts at said Port Townsend, for the said third judicial district.

SEC. 3. Said court shall be held by the judge of the third judicial district at Port Townsend aforesaid, at such time or times as shall be prescribed by the judges of the supreme court, or the judge of said third judicial district, at time or times not named by the said judges of the supreme court.

SEC. 4. The said district judge of the third judicial district, shall appoint a clerk of the court, who shall give bonds and security as shall be ordered by the said court or the judge thereof, and shall keep his office and records of said court at said Port Townsend, and said district court shall be a court of record, and the expense of holding the same shall be payable by the said counties.

SEC. 5. The various laws now in force, and which may hereafter be enacted or become in force, regulating the practice and proceedings in civil actions and criminal prosecutions, shall govern the practice and proceedings in said district court of Port Townsend.

SEC. 6. The said court or judge thereof, shall direct the number of grand and petit jurors to be summoned from each of said counties to attend at the several terms of said court, and shall direct the clerk to certify to the auditor of each of the counties, the number of grand and petit jurors apportioned to each county; whereupon said jurors shall be selected and summoned in said counties, as is now or hereafter may be provided by law for the selection and summoning of jurors to attend upon the district courts: *Provided*, That when from any cause there shall not be in attendance a sufficient number of grand or petit jurors, or when those summoned shall have been discharged, it shall be competent for the court to order a sufficient number of qualified and competent jurors from the bystanders or from the bodies of all or any of said counties; and the court after discharging a grand jury, may order one or

more grand juries, to be empanelled at the same term, provided the same shall, in the opinion of the court be necessary.

SEC. 7. The number summoned as grand jurors shall not exceed sixteen, and the number of petit jurors shall not exceed twenty-four, but may be in lesser number of either in the discretion of the judge of said court; and the provisions of the act to provide for the manner of selecting and procuring the attendance of jurors at the terms of the district court, passed, January twenty-seventh, one thousand eight hundred and fifty seven, consistent with the foregoing and not modified thereby, shall fully apply to the said district court of Port Townsend.

SEC. 8. The foregoing sections which relate to the summoning of grand and petit jurors for the terms of said district court at Port Townsend, 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 counties, to attend the district court of the third judicial district. But the said counties shall not in any event be chargeable for the mileage and attendance or either, of any grand or petit jurors who may be summoned from said counties, or either of them, to attend any term of the district court of the third judicial district, if held at any other place than Port Townsend aforesaid, and no jurors shall be summoned to attend the district court of said district except upon the order of the said district judge.

SEC. 9. The expenses of holding said court as provided by section four of this act shall, before the close of each term of each court be adjudged against the several counties comprising the district, and in favor of the officers and parties to whom payable, and the amount so adjudged to be paid shall stand as a judgment against the said counties severally, to be satisfied as other judgments are provided by law to be: *Provided*, That no execution shall issue against any county of the district until the expiration of thirty days after notice to the clerk of the board of county commissioners has been duly mailed by the clerk of said district court, stating the amount required and adjudged to be paid by the county, and to whom due. Upon the receipt of said notice it shall be the duty of the auditor of the county to draw his warrant upon the county treasurer for the payment of the sums severally due, in favor of the parties to whom due, and to whom they shall be delivered, which orders shall be paid in their regular order of presentation by the county treasury.

SEC. 10. This act to take effect, and be in force from and after its passage. And all acts or parts of acts inconsistent with the provisions of this act be, and the same are hereby repealed.

PASSED, January 27th, 1863.

AN ACT

CONFERRING JURISDICTION UPON THE DISTRICT COURT OF THE
COUNTY OF SHOSHONE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a court is hereby established at the county seat of Shoshone county, to be called the district court of Shoshone.

SEC. 2. Said court shall have exclusive jurisdiction within the counties of Shoshone and Nez Perces, of all matters and causes, except those in which the United States is a party, in the same manner, and to the same extent as is now had and exercised by the district court, of the first judicial district, with the same rights as to appeals, certiorari, and writs of error from inferior courts; and to the supreme court as is now or hereafter may be provided by law.

SEC. 3. Said court shall be held by the judge of the first judicial district at the county seat of Shoshone county, at such time or times as shall be prescribed by the judges of the supreme court.

SEC. 4. The said district judge of the first judicial district shall appoint a clerk of the court, who shall give bonds and security as shall be ordered by said court, or the judge thereof, and shall keep his office and records of said court at the county seat of said county; and said district court shall be a court of record, and the expenses of holding the same shall be payable by the said county of Shoshone.

SEC. 5. The various laws now in force, and which may hereafter be enacted, regulating the practice and proceedings in civil actions, and in criminal prosecutions, shall govern the practice and proceedings in said district court, of the county of Shoshone.

SEC. 6. The said court, or the judge thereof, shall direct the number of grand and petit jurors to be summoned from each of said counties to attend at the several terms of said court, and shall direct the clerk to certify to the auditor of each of the counties the number of grand and petit jurors apportioned to each county, whereupon said jurors shall be selected and summoned in said counties, as is now or hereafter may be provided by law for the selection and summoning of jurors to attend upon the district courts: *Provided,* That when, from any cause, there shall not be in attendance a sufficient number of grand or petit jurors, or when those summoned shall have been discharged, it shall be competent for the court to order a sufficient number of qualified and

competent jurors from the by-standers, or from the bodies of both or either of the counties, and the court, after discharging a grand jury, may order one or more grand juries to be empaneled at the same time, provided the same shall, in the opinion of the court, be necessary.

SEC. 7. The number summoned as grand jurors shall not exceed sixteen, and the number of petit jurors summoned shall not exceed twenty-five; and the provisions of the act to provide for the manner of selecting and procuring the attendance of jurors at the term of the district court, passed January twenty-seventh, one thousand eight hundred and fifty-seven, consistent with the foregoing and not modified thereby, shall fully apply to the said district court of the county of Shoshone.

SEC. 8. The foregoing sections which relate to the summoning of grand and petit jurors for the terms of said district court of the county of Shoshone, 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 Shoshone to attend the district court of the first judicial district. But the said county of Shoshone shall not be chargeable in any event for the mileage and attendance of any grand or petit jurors who may be summoned from said county of Shoshone, to attend any term of the district court of the first judicial district, but no jurors shall be summoned to attend at the district court of said district, except upon the order of the judge of the district.

SEC. 9. That the county of Nez Perces shall pay all the expenses of the district court of the county of Shoshone, arising out of cases coming from said county of Nez Perces, including the mileage and per diem of the jurors from said county; which expenses shall be paid by the treasurer of said county upon the certificate of the clerk of said court, approved by the judge thereof.

SEC. 10. All acts and parts of acts inconsistent with the foregoing, be, and the same are hereby repealed.

PASSED, January 27th, 1863.

AN ACT

CONFERRING JURISDICTION UPON THE DISTRICT COURT OF THE COUNTY OF SPOKANE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a court is hereby established at the county

seat of Spokane county, to be called the district court of Spokane county.

SEC. 2. Said court shall have exclusive jurisdiction within the counties of Spokane and Missoula of all matters and cases except those in which the United States is a party, in the same manner and to the same extent, as is now had and exercised by the district court of the first judicial district, with the same right as to appeals, certiorari and writs of error from inferior and to the supreme court, as is now or hereafter may be provided by law.

SEC. 3. Said court shall be held by the judge of the first judicial district, at the county seat of Spokane county, at such time or times, as shall be prescribed by the judges of the supreme court.

SEC. 4. The said district judge of the first judicial district shall appoint a clerk of the court, who shall give bonds and security as shall be ordered by said court, or the judge thereof, and shall keep his office and records of said court at the county seat of said county, and said district court shall be a court of record, and the expense of holding the same shall be payable by the said county of Spokane.

SEC. 5. The various laws now in force, and which may be hereafter enacted, regulating the practice and proceedings in civil actions and in criminal prosecutions, shall govern the practice and proceedings in said district courts of the county of Spokane.

SEC. 6. The said court or the judge thereof, shall direct the number of grand and petit jurors to be summoned from each of said counties to attend the several terms of said court; and shall direct the clerk to certify to the auditor of each of the counties, the number of grand and petit jurors appointed to each county, whereupon the said jurors shall be selected and summoned in said counties as is now, or hereafter may be provided by law for the selection and summoning of jurors to attend upon the district courts; *Provided*, That when, from any cause, there shall not be in attendance a sufficient number of grand or petit jurors, or when those summoned shall have been discharged, it shall be competent for the court to order a sufficient number of qualified and competent jurors from the bystanders, or from the bodies of both or either of the counties; and the court, after discharging a grand jury, may order one or more grand juries to be empaneled at the same time, provided the same shall, in the opinion of the court, be necessary.

SEC. 7. The number summoned as grand jurors, shall not exceed sixteen; and the number of petit jurors summoned shall not exceed twenty-four; and the provisions of the act to provide for the manner of selecting and procuring the attendance of jurors at the term of the dis-

trict court, passed January twenty-seventh, one thousand eight-hundred and fifty-seven, consistent with the foregoing, and not modified thereby, shall fully apply to the said district court of the county of Spokane.

SEC. 8. The foregoing sections which relate to the summoning of grand and petit jurors for the terms of the said district court of the county of Spokane, 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 Spokane, to attend the district court of the first judicial district. But the said county of Spokane, shall not be chargeable in any event for the mileage and attendance of any grand or petit jurors, who may be summoned from said county of Spokane, to attend any term of the district court of the first judicial district; but no jurors shall be summoned to attend at the district court of said district, except upon the order of the judges of the district.

SEC. 9. That the county of Missoula shall pay all of the expenses of the district court of the county of Spokane, arising out of cases coming from said county of Missoula, including the mileage and per diem of the jurors from said county of Missoula, which expenses shall be paid by the treasurer of said county, upon the certificate of the clerk of said court, approved by the judge thereof.

SEC. 10. All acts and parts of acts, inconsistent with the foregoing, be, and the same are hereby repealed.

PASSED, January 27th, 1863.

AN ACT

TO PROVIDE A DOCKET FEE FOR THE JUDGE OF THE FIRST JUDICIAL DISTRICT.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That before the clerks of the several courts in the first judicial district shall file any paper or issue any process in any civil cause, they shall be paid the sum of two dollars by the party commencing suit, and in every appeal case the appellant shall pay a like sum to the clerk before the appeal shall be docketed, which said sums shall constitute a docket fee for the use of the judge holding the several courts in

the first judicial district, and shall, by the several clerks be paid over to such judge upon his order, and shall be taxed against the losing party to such suit as other costs are taxed.

SEC. 2. That in every criminal case, a like sum of two dollars, for a like use, shall be taxed as other costs are taxed against the accused, in case of conviction, and in case of acquittal, against the county where the violation of law is alleged to have occurred.

SEC. 3. The clerks of the several courts in said district, upon the receipt of any sum of money, under the provisions of this act, shall keep a true and accurate account of the same, showing from whom received, and upon the payment of any sum from said fund shall take the receipt of the judge therefor: and shall, on the first Monday of July in each year, make out and file in the office of the county auditor, a correct statement of all sums received and paid out by him under the provisions of this act.

SEC. 4. This act shall not apply to criminal or civil cases in the county of Walla Walla.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

REGULATING FEES AND COSTS IN THE COUNTIES OF BOISE, IDAHO,
NEZ PERCE AND SHOSHONE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the fees and compensation of the several officers herein named shall be as follows in the county of Boise, Idaho, Nez Perce and Shoshone :

CLERK OF THE SUPREME AND DISTRICT COURTS.

1st. For filing declaration, petition, pleas, demurrer, affidavit, exhibit, or any other paper, in each cause, each,	25
For issuing <i>capias</i> , attachment, execution, certiorari, supersedeas, habeas corpus, information, mandate, writ of error, replevin,	

and for any other original writ,.....	2 00
For entering each writ,.....	50
For issuing writs of venditione, exponas or order of sale, every hundred words,.....	30
For entering appearance of either party, personally or by attorney, charged but once,.....	25
For entering sheriff's return on any writ for every folio,.....	30
For docketing each cause,.....	50
For writs of venire, charged in each cause,.....	1 00
For receiving panel and swearing jury,.....	1 00
For swearing witnesses, each,.....	25
For entering claim for each witness for their attendance,.....	25
For giving order thereof for each witness,.....	25
For entering judgment, recognizance, special rule, continuance, discontinuance, retraxit, rule of reference, allowance of writ of habeas corpus, confession of judgment on default or consent, rule, or plea, notice of appeal to supreme or district court, each,.....	2 00
For entering surrender of principal by bail, exonerator, cancelling bail bond, discharge of recognizance, issue joined, motion, non-suit, report of referees, appeals from inferior courts, appeals to higher courts, and acknowledgments, each,.....	2 00
For taking affidavits, each,.....	50
For taking affidavits with seal attached,.....	1 00
For writing affidavits per folio,.....	30
For making entries in execution docket, for each cause,.....	50

SHERIFF'S FEES.

For service of every notice and complaint and return thereof on each defendant besides mileage,.....	2 00
For levying each writ of execution on real or personal property, besides mileage,.....	3 00
For levying each writ of attachment on real or personal property, or executing an order of arrest besides mileage,.....	3 00
For service of capias, ad satisfaciendum upon the body of each defendant named in the writ, besides mileage,.....	3 00
For every bail bond,.....	2 00
For serving writ of possession without the aid of the county, besides mileage,.....	3 00

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For serving writ of possession, with the aid of the county, besides mileage,.....	5 00
For executing a writ of inquiry and returning the same with inquisition,	3 00
For copy of any complaint, notice, writ or process necessary to complete a service, for each folio,.....	30
For serving and returning a notice to witness, besides mileage, for each person therein named,.....	50
For summoning each grand and petit juror, to be paid out of the county treasury, besides mileage,.....	50
For summoning jury in other cases, besides mileage,.....	4 00
Percentage on all moneys actually made and paid to the sheriff on execution, decree, or sale of real estate under one thousand dollars, three per cent. on all sums over one thousand dollars, two per cent.	
Percentage on all sums collected and paid over on attachment, two per cent.	
For serving declaration in ejectment and return, besides mileage,	2 00
For making a deed of land sold on execution, decree, or order of court to be paid by the grantee,.....	6 00
For serving scire facias for each defendant, besides mileage.....	2 00
For calling jury,.....	1 00
For calling each witness,.....	25
For bringing up a person on a writ of habeas corpus, besides mileage,	2 00
For each day's attendance on any court of record by himself or deputy,	5 00
For posting each notice of election, besides mileage,.....	1 00
For executing a sentence of death,.....	50 00
For posting notices of sale of property, besides mileage, each,..	1 00
For each mile necessarily traveled in going, only to be computed from the court house,.....	75

COUNTY COMMISSIONERS.

For services per diem, besides mileage,.....	6.00
Mileage going to the county seat, for each mile traveled,.....	75

COUNTY AUDITOR.

For making out assessment roll to county assessor, for each quire such roll may contain,.....	10 00
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For making out original tax duplicate, for each folio such duplicate may contain counting every two figures as a word,	30
For making out exhibit of receipts and expenditures of county for past year, counting every two figures as a word,	30
For each settlement of his accounts, or of any other officer, with the county,	2 00
For filing each paper exhibit, exhibit, or necessary document connected with the duties of his office,	25
For attending each regular and special term of county commissioners per diem,	6 00
For recording proceedings of board of county commissioners, per folio,	30
For each order drawn on county treasurer,	25
For copy of any order drawn upon the order of the board, per folio,	30
For opening and examining election returns, and making abstracts of votes and copies thereof, per diem,	6 00
For each certificate of election, to be paid by the parties entitled to the same,	1 00
For each order for view of road,	25
For taking bonds for county officers and all other persons required by the board or by law to give bonds, each,	2 00
For taking oaths of county officers, and other persons, and certifying to the same,	1 00
Administering an oath,	25
For each bond executed by the commissioners, to purchase of county property and other purposes,	3 00
For each deed executed by county commissioners,	3 00
For each poll book delivered to sheriff or judges of election,	1 00
For filing each bond, oath receipt, bill, order, appointment and petition, resignation, deed, affidavit and all other papers required to be put on file,	25
For issuing each license under seal for grocery, tavern, ferry, or to peddlers, showmen or managers, or owners of circus and all other license to be paid by the party to whom granted,	1 50
For entering of license on record,	50
For entering approval of county commissioners of license granted in vacation in each case, to be paid by applicant,	1 00
For notifying clerk of the district court of the selection of grand and petit jurors, each list,	1 00

For all writs ordered issued by the board or required by law, the same fees as are allowed the clerk of the district court for the same service.	
For reading and entering remonstrance against view of road or petition for damages, each to be paid by the person remonstrating,.....	2 00
For entering appointment of road viewers,.....	50
For reading and entering report of road viewers,.....	50
For notifying justices of the peace or county commissioners to attend the opening and examining of the election returns, each,	50
For certified copy of commissioners' proceedings or part thereof for each folio, to be paid by the party requiring such copy,	30
For making final settlement of any account with the county, each folio such account may contain,.....	30
For all instruments recorded, per folio,.....	30
For indexing each instrument,.....	25
For examining record, each year examined,.....	50
For entering satisfaction of mortgage,.....	50
For filing papers for safe keeping, each,.....	50
And for all similar services required to be rendered the same fees as are allowed by this act for similar services.	

NOTARY PUBLIC.

For every protest of a bill of exchange or promissory note,.....	2 00
Attesting any instrument of writing and seal,.....	1 00
Noting a bill of exchange or promissory note for non-acceptance or non-payment,.....	1 00
Taking acknowledgment of any legal instrument,.....	2 00
Registering protest of bill of exchange or promissory note,.....	1 50
Certifying an affidavit and all other certificates under seal,.....	1 00
Each oath or affirmation without seal,.....	50
Being present at demand, tender, or deposit, and noting the same, besides mileage,.....	1 00
For each instrument of writing drawn by a notary public per folio,	50

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CORONERS.

For each inquest he may hold, besides mileage,	10 00
When performing the duties of sheriff shall receive the same fees as sheriffs are entitled to receive for services performed.	
For drawing all necessary writings per folio,	30
For issuing venire,	1 00

JURORS.

That each grand and petit juror shall be allowed for each days' attendance, if not a talesman,	4 00
For every mile travel going to the seat of justice,	50
Talesman serving as a petit juror, each trial,	2 00
Talesman serving as a petit juror each trial when he may be de- tained more than one day, per diem,	4 00
For every attendance upon the justice of the peace court, besides mileage,	3 00

JUSTICES OF THE PEACE.

For a <i>capias</i> or notice,	1 00
For a warrant in criminal cases,	1 00
For taking a recognizance of bail,	2 00
For committing to jail,	1 00
For every subpoena for each person named therein,	25
For entering a judgment on trial,	1 50
For entering a judgment of confession or default,	1 00
For issuing an execution,	1 00
To each folio on certified copy of proceedings on appeal, certio- rari or otherwise,	30
For every adjournment at the request of either party,	50
For entering a rule of reference or copy thereof, each,	25
For swearing witnesses, jurors or arbitrators, each,	25
For issuing writs of attachment,	1 00
For scire facias,	50
For the acknowledgment of a deed or other instrument of wri- ting with a certificate thereof, for each name,	1 00
For a venire for a jury,	1 00
For a writ of restitution,	1 00
For taking affidavits, each,	50
For every search warrant,	1 00

For attending with clerk of the board of county commissioners at the opening of the poll books, per diem,..... 6 00

CONSTABLES.

For service of complaint and notice on each defendant besides mileage, 2 00
 For summoning a jury on a dead body besides mileage,..... 5 00
 For service and return of a capias or warrant, besides mileage,;. 1 00
 For committing to prison, besides mileage,..... 1 00
 For serving an execution on goods, besides mileage,..... 2 00
 For all moneys made on execution, five per centum.
 For every day's attendance upon any court of record,..... 5 00
 For serving other writs, or any process, besides mileage,..... 1 00
 For summoning jury before justices of the peace,..... 3 00
 All sheriffs, when performing the duties of constables, shall be allowed no other fees than those allowed to constables.

WITNESSES.

For every day's attendance upon the supreme or district court, besides mileage,..... 4 00
 For every day's attendance upon county commissioners, or probate court, besides mileage,..... 3 00
 For every day's attendance upon justices' of the peace court, besides mileage,..... 3 00
 That the clerks of the several courts in this territory shall, for services under the several acts of congress upon the subject of naturalization receive the fees hereinafter specified, and no more.
 For entering a declaration of intention to become a citizen of the United States,..... 3 00
 For certificate of such entry under the seal of the court,..... 2 00
 For entering the final admission of an alien to the rights of citizenship, 5 00
 For a certified copy thereof under the seal of the court,..... 5 00
 Any person authorized to take depositions shall be allowed to collect forty cents per folio for taking same, besides certificate and seal.

SEC. 2. All officers shall, when required so to do, make out a bill of their fees in every case, and for any services, specifying each partic-

ular item thereof, and receipt the same when it is paid, which bill of fees shall always be subject to examination and correction by the several courts, and any officer who refuses or declines to comply with the requirements of this section shall forfeit his fees in such case.

SEC. 3. If any clerk, sheriff, justice of the peace or constable shall not have received any fees which may be due him for services rendered in any suit or proceeding, he may have execution therefor in his own name against the party from whom they are due, to be issued from the court in which the action is pending.

SEC. 4. All acts and parts of acts in conflict herewith are hereby repealed, and no fees or compensation for services not provided for herein, shall be received or demanded, except as hereinafter provided, unless some special existing law provides for the payment of such services, and if such law exists, then he shall be entitled to receive such compensation as therein provided; it being the true intent and meaning of this act to supersede and operate instead of laws or parts of laws heretofore enacted in relation to said counties.

SEC. 5. Each and every officer who shall be called on or required to perform services for which no fees and compensation are provided for in this act, shall be allowed fees similar and equal to those allowed for services of the same kind for which allowance is made herein.

SEC. 6. All officers and other persons entitled by the provisions of this act to charge mileage shall charge at the rate of fifty cents a mile, and only for the distance actually and necessarily traveled in going only: *Provided*, That sheriffs shall be allowed seventy-five cents per mile going only.

SEC. 7. The term folio, now used as a measure for computing fees or compensation, shall be construed to mean one hundred words.

SEC. 8. All laws and parts of laws in conflict herewith be and the same are hereby repealed, so far as the same relates to the counties herein before named.

PASSED, January 24th, 1863.

AN ACT

TO PROVIDE FOR THE PURCHASE OF A SET OF COLORS FOR THE FIRST WASHINGTON TERRITORY INFANTRY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the secretary of the territory, be, and is hereby empowered to purchase a set of colors for the first Washington territory infantry, and cause them to be presented, in and on behalf of the territory to Colonel Justus Steinberger, the commander of the said regiment. The set shall consist of one national and one regimental color, which shall conform in size, and every other respect, to the provisions of the revised regulations of the U. S. Army of 1861. The regimental flag to be inscribed with the arms of the United States upon one side and the arms of the territory upon the other.

SEC. 2. The territorial auditor is hereby authorized to draw a warrant upon the territorial treasurer, in favor of said secretary of the territory, for the necessary fund to purchase the said colors, which amount, however, shall not exceed the sum of five hundred dollars, and shall be paid out of the first money in the hands of the said treasurer.

PASSED, January 6th, 1863.

AN ACT

TO ENABLE THE SUPERINTENDENT OF COMMON SCHOOLS OF CHEHALIS COUNTY TO SELL AND CONVEY CERTAIN SCHOOL LANDS TO JOHN BRADY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the superintendent of common schools of Chehalis county is hereby enabled and authorized to sell and convey to John Brady, of said county, the north-west quarter of section thirty-six, township ———, range west, upon the payment by the said John Brady to the said superintendent, the full sum of two hundred dollars, for the use of the school fund of Chehalis county.

PASSED, January 16, 1863.

AN ACT

RELATIVE TO THE COUNTY REVENUE OF CLALM COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all monies arising from fines and licenses, hereafter paid into the treasury of Clalm county, be, and the same are hereby set apart for the purposes of paying the debt of the county, and shall form a part of the regular county fund of said county.

SEC. 2. The board of county commissioners of Clalm county, shall have the power to issue licenses for the sale of ardent spirits, to all persons of good moral character who may desire the same, and they shall possess the power to assess the value of said license in any sum not less than fifty dollars, nor more than five hundred dollars per year.

SEC. 3. All laws or parts of laws repugnant to the intent and meaning of this act, so far as the county of Clalm is concerned, are hereby repealed.

PASSED, January 12th, 1863.

AN ACT

IN RELATION TO COUNTY COMMISSIONERS OF CLALM COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the office of county commissioner of Clalm county, to which Nathaniel Clifford was elected, is hereby declared vacant, said Clifford having accepted and entered upon the duties of the office of inspector of customs.

SEC. 2. That James Delgardneau is hereby appointed to fill such vacancy until the next general election.

SEC. 3. This act to take effect immediately.

PASSED, January 27th, 1863.

LOCAL AND PRIVATE LAWS.

AN ACT

TO AUTHORIZE THE COUNTY AUDITOR OF IDAHO COUNTY TO TRANSCRIBE RECORDS OF SAID COUNTY, AND PROVIDE FOR THE PAYMENT OF HIS SERVICES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the county auditor of Idaho county, be, and is hereby authorized to transcribe all instruments recorded in said county into well bound books.

SEC. 2. That said record when so copied, shall have the same validity and legal effect as the original record.

SEC. 3. That the county auditor of said county shall be allowed the same fees for transcribing said record, as are allowed by law for recording instruments, and the board of county commissioners of said county are hereby authorized and directed to allow, and cause an order to be drawn on the treasurer of said county for the amount found to be due for said services, and said treasurer is hereby authorized to pay said order out of any moneys in the county treasury not otherwise appropriated.

SEC. 4. This act to take effect and be in force from and after its passage.

PASSED, January 13, 1863.

AN ACT

TO RELOCATE THE COUNTY SEAT OF ISLAND COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the seat of justice for Island county, shall be, and the same is hereby established at Coupeville, in said county, subject, however, to the decision of a majority of the electors of said county, who shall have the right to vote thereon at the next annual election.

SEC. 2. All acts or parts of acts conflicting with this act, be, and the same are hereby repealed.

SEC. 3. This act to take effect and be in force from and after the first day of March, 1863.

PASSED, January 21st, 1863.

AN ACT

TO REPEAL AN ACT ENTITLED, "AN ACT IN RELATION TO SCHOOL FUND OF KING COUNTY."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the act passed January 17th, 1861, entitled "an act relative to school fund of King county," be, and the same is hereby repealed.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED, December 20th, 1862.

AN ACT

TO REGULATE THE ROAD TAX OF KITSAP COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the county commissioners of the county of Kitsap, be, and are hereby authorized at their May session, to assess a tax of not less than three dollars on each and every individual liable to do labor on the public roads, and to assess a tax of twenty cents on every one hundred dollars of all real estate.

SEC. 2. That it shall be the duty of the auditor of Kitsap county, on delivering the abstract or duplicate of taxes assessed for road purposes to the supervisors of roads in said county, to charge each supervisor with the amount of the road tax thus shown to be due in his district, and on settlement with the county commissioners' court, he shall credit the several supervisors with the amount delinquent and unpaid in his district.

SEC. 3. The supervisors of roads in said county are hereby authorized and empowered to collect all road tax in their respective road districts, for which purpose they are fully authorized to enforce the payment of the same, in accordance with the provisions of the general road law.

SEC. 4. The county auditor shall, at the time of delivering said abstract or tax list, append a warrant thereto for the collection of the same.

SEC. 5. All acts or parts of acts inconsistent herewith are hereby repealed.

SEC. 6. This act to take effect and be in force from and after its passage.

PASSED, January 20th, 1863.

AN ACT

TO LEGALIZE CERTAIN ACTS OF THE COUNTY COMMISSIONERS AND OFFICERS OF NEZ PERCE COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the acts of the county commissioners of Nez Perce county, on the last Monday of May, 1862, and their appointment of Sandford Owens as sheriff, and also their appointment of Sandford Owens as assessor, and the acts of said Owens in such official capacities, be, and the same are hereby declared legal and valid acts.

PASSED, January 13th, 1863.

AN ACT

LEGALIZING THE OFFICIAL ACTS OF THE PROBATE JUDGE OF PIERCE COUNTY, AND OF HENRY E. BRADLEY, A PERSON APPOINTED CLERK OF THE PROBATE COURT OF PIERCE COUNTY, BY THE PROBATE JUDGE, AND ACTING AS SUCH CLERK.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the appointment of Henry E. Bradley by the

probate judge of Pierce county, as clerk of said probate court for Pierce county, be, and the same is hereby declared legal, and all the acts heretofore done or hereafter to be done by the said Bradley as clerk of said court, under said appointment, be, and the same are hereby declared legal.

SEC. 2. All acts and parts of acts, so far as they conflict herewith, be, and the same are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

ABOLISHING THE CREATION OF THE SEPARATE FUND NOW KNOWN AS THE "COURT FUND" OF PIERCE COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county of Pierce be exempt from all laws and parts of laws heretofore passed, providing for the assessing and collecting of a separate and distinct tax, set apart and designated as a "court fund," be, and the same are hereby repealed, so far as the same shall be applicable to the county of Pierce, and said fund known as the "court fund," be, and the same is hereby abolished in said county.

SEC. 2. Said county shall be liable for the expenses of the sheriff in maintaining prisoners charged with crime, and conveying them out of the county, also his mileage, or other compensation in lieu thereof, when required to travel out of the limits of the county, so far as the same is chargeable against the county; also, the share due by said county in payment of the attendance of the prosecuting attorney, together with the fees due him by law, properly chargeable to, and payable by said county; also the pro rata share of the expenses of the district court, which it may devolve upon said county to pay, the per diem and mileage, or other compensation in lieu thereof, to jurors of the county attending the district court, the fees of the sheriff for maintaining prisoners; the fees of the sheriff for maintaining prisoners charged with crimes, and his costs in conveying them to and from the district court, as well as the

board of such prisoners while there; the per diem and mileage, or such other compensation as is allowed in lieu thereof, of the sheriff of the county; when, in criminal cases, he is required to attend or travel to the district court out of the limits of his own county, the costs in criminal cases taken from the county to the district court; *Provided*, That for the time or travel which may be paid by the parties or United States, no payment from the county shall be allowed, and no officer, juror or witness, shall receive from the county double pay as a per diem, for the same time, or as travelling expenses or mileage for the same travel, in however many different capacities, or in however many different causes they may be summoned, notified or called upon to testify or attend in.

SEC. 3. That all bills for services referred to in section two of this act, before being audited and allowed by the board of county commissioners of said county, shall be approved by the judge of the district court, and sealed by the seal of said court, and attested by the clerk of said court.

SEC. 4. All claims against the "court fund" heretofore audited and allowed, but unpaid for want of funds properly applicable thereto, and all claims against said "court fund" by the provisions of the law now in force, shall be paid by the county, against which they are chargeable by the foregoing provisions, and shall be placed upon the same footing as other claims against the county, and the "court fund" of said county, shall, after the passage of this act, vest in and merge in the county fund.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED, January 21st, 1863.

AN ACT

TO LEGALIZE THE ASSESSMENT AND COLLECTION OF TAXES OF SKAMANIA COUNTY IN THE YEAR 1862.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the assessment and collection of taxes in Skamania county, for the year eighteen hundred and sixty two, be, and the same is hereby legalized.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED, January 26th, 1863.

AN ACT

TO AUTHORIZE THE COUNTY TREASURER OF SPOKANE COUNTY, TO
LOAN THE SCHOOL FUNDS OF SAID COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county treasurer of Spokane county, be, and he is hereby authorized to loan any moneys belonging to the school fund of said county.

SEC. 2. It shall be the duty of said county treasurer to loan said moneys in such manner as shall be most profitable to the fund, and he shall secure the prompt and faithful payment of all sums by him so loaned, with good and sufficient sureties, for which, in case of any default being made in the payment of said money when the same becomes due, the said treasurer and his sureties shall be held liable.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED, January 19th, 1863.

AN ACT

IN RELATION TO ROAD TAX IN WALLA WALLA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the auditor of Walla Walla county, on delivering the abstract or duplicate of taxes assessed for road purposes to the supervisors of roads in said county, to charge each supervisor with the amount of the road tax thus shown to be due

in his district, and on settlement with the county commissioners' court, he shall credit the several supervisors with the amount delinquent and unpaid in his district.

SEC. 2. The supervisors of roads in said county are hereby authorized and empowered to collect all road tax, in their respective districts, for which purpose they are fully authorized to enforce the payment of the same, in accordance with the provisions of the general road law.

SEC. 3. The county auditor shall, at the time of delivering said abstract or tax list, append a warrant thereto for the collection of the same.

SEC. 4. This act to take effect and be in force from and after its passage.

PASSED, January 10, 1863.

AN ACT

REGULATING FEES AND COSTS IN THE COUNTY OF WALLA WALLA.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the fees and compensation of the several officers and persons herein named shall be as follows in the county of Walla Walla, to wit :

SHERIFFS.

1st. For the service of every writ of summons, a return thereof (subpoenas only excepted) on each defendant, besides mileage at fifteen cents per mile, which mileage shall be allowed in all cases, going and returning, to be charged from the county seat to the place of service,.....	1 00
For levying each writ of execution on real or personal property, besides mileage,.....	1 00
For service of <i>capias ad satisfaciendum</i> upon the body of each defendant named in the writ, besides mileage,.....	1 75
For every bail bond,.....	2 00

For committing to prison, or discharging therefrom, or attending a person before a judge or court, besides mileage,	1 75
For serving writ of possession without the aid of the county, besides mileage,	3 00
For serving writ of possession, with the aid of the county, besides mileage,	8 00
For executing a writ of inquiry and returning the same with inquiry,	5 00
For copy of any complaint, notice, writ or process necessary to complete a service, for each folio,	25
For serving and returning a notice to witness, besides mileage, for each person therein named,	75
For summoning a grand and petit juror, to be paid out of the county treasury, besides mileage, each panel,	12 00
For summoning jury in other cases required by law, besides mileage,	8 00
Percentage on all moneys actually made and paid to the sheriff on execution, decree, or sale of real estate under one thousand dollars, one per cent.	
On all sums over one thousand dollars, five mills.	
For serving declaration in ejectment and return, besides mileage,	75
For making a deed of land sold on execution, decree, or order of court to be paid by the grantee,	4 50
For serving scire facias for each defendant, besides mileage,	1 75
For serving any person with an order of court and making a return, besides mileage,	1 50
For calling jury,	50
For opening court, and calling each action, to be charged once each term of the court in which the case may be pending,	50
For calling each witness,	25
For bringing up a person on a writ of habeas corpus, besides mileage,	4 00
For each day's attendance on any court of record by himself or deputy,	3 00

JUDGES OF PROBATE.

2d. For granting letters of administration,	2 00
For probate of will or testament,	2 00
For granting letters testamentary,	2 00
When the same are contested,	5 00

Taking bonds of executors and administrators,	3 00
Taking bonds in other cases,	2 50
Hearing complaints against spendthrifts and lunatics,	2 50
Appointing guardian,	1 00
Decree for settlement of an estate,	1 50
When contested,	2 00
Order of distribution,	1 50
Examining inventory of appraisement or bill of sale and filing the same in office, each,	1 00
Every writ or process under seal,	1 00
Each order of court on record,	1 00
Examining accounts, each hundred words, counting two figures for a word,	25
Warrant to appraise or divide an estate,	1 00
Issuing a commission,	50
Allowing appeal,	1 00
Approving securities in bonds, each,	25
Assigning dower in real estate,	1 00
Assigning personal estate to a widow,	1 00
Refusing letters of administration or probate of will, to be paid by the losing party,	1 00
For every continuance when asked by a party,	50
Order for the sale of personal estate,	1 00
Certificate of necessity for the sale of real estate,	1 00
Order for partition of real estate,	1 00
Allowing reports on the accounts of executors or administrators,	1 00
Extending letters of administration,	50
Decree respecting the probate of wills or codicils,	1 00
A quietus,	1 00
Filing each paper,	20
Administering an oath,	40
Recording all papers required by law to be recorded, for each hundred words,	25
Order for apportionment of an insolvent estate among the cred- itors,	1 00
Acknowledgment with seal,	50
Entering appointments of executors, administrators or guardians, or other appointments necessary,	1 00
Issuing letters of guardianship,	1 00

For hearing each contested case, to be taxed as cost against the party in default,.....	5 00
Issuing citation to executors, administrators and guardians,....	1 00
Copies of papers and of records, each one hundred words,.....	25

COUNTY AUDITOR.

For making out assessment roll to county assessor, for each quire such roll may contain,.....	10 00
For making out original tax duplicate, for each folio such duplicate may contain counting every two figures as a word,....	25
For making out exhibit of receipts and expenditures of county for past year, counting every two figures as a word,.....	25
For each settlement of his accounts, or of any other officer, with the county,.....	50
For filing each paper exhibit, or necessary document connected with the duties of his office,.....	12
For attending each regular and special term of county commissioners per diem,.....	3 00
For recording proceedings of board of county commissioners, per folio,.....	25
For each order drawn on county treasurer,.....	10
For copy of any order of the board, certified,.....	50
For making out appointments upon order of the board, each,...	50
For drawing each receipt,.....	10
For each notice delivered to the sheriff, for each general or special election,.....	50
For opening and examining election returns, and making abstracts of votes and copies thereof, per diem,.....	3 00
For each certificate of election,.....	25
For each order for view of road,.....	1 00
For taking bonds for county officers and all other persons required by the board or by law to give bonds, each,.....	1 00
For taking oaths of county officers, and other persons, and certifying to the same,.....	50
Administering an oath,.....	20
For each bond executed by the commissioners, to purchase of county property and other purposes,.....	1 00
For each deed executed by county commissioners,.....	1 50
For each poll book delivered to sheriff or judges of election,....	1 00

For filing each bond, oath, receipt, bill, order, appointment and petition, resignation, deed, affidavit and all other papers required to be put on file,.....	10
For issuing each license under seal for grocery, tavern, ferry, or to peddlers, showmen or managers, or owners of circus and all other license to be paid by the party to whom granted,	1 00
For entering grant of license on record,.....	25
For entering approval of county commissioners of license granted in vacation in each case, to be paid by applicant,.....	50
For notifying clerk of the district court of the selection of grand and petit jurors, each list,.....	50
For all writs ordered issued by the board or required by law, the same fees as are allowed the clerk of the district court for the same service.	
For reading and entering petition for view of road, to be paid by petitioners,.....	50
For reading and entering remonstrance against view of road or petition for damages, each to be paid by the person remonstrating,.....	50
For entering appointment of road viewers,.....	25
For reading and entering report of road viewers,.....	50
For notifying justices of the peace or county commissioners to attend the opening and examining of the election returns, each,	25
For certified copy of commissioners' proceedings or part thereof for each one hundred words,.....	20
For making final settlement of any account with the county, each folio such account may contain,.....	25
And for all similar services required to be rendered the same fees as are allowed by this act for similar services.	

SEC. 2. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 3. This act to take effect and be force from and after its passage.

PASSED January 20th, 1863.

AN ACT

TO AUTHORIZE COUNTY COMMISSIONERS OF WALLA WALLA COUNTY
TO LEVY A DIRECT TAX.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That special power be and hereby is granted to the county commissioners of Walla Walla county to levy a direct tax of three mills on the dollar of all taxable property in said county for the purpose of liquidating the indebtedness of said county.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 15th, 1863.

AN ACT

TO REGULATE ROAD POLL TAX IN AND FOR THE COUNTIES OF SA-
WAMISH, CHEHALIS, LEWIS, COWLITZ AND WAHAKIAKUM:

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the road poll tax of each person required by law to work the roads in the counties of Sawamish, Chehalis, Thurston, Lewis, Cowlitz and Wahkiakum shall be six dollars.

SEC. 2. This act to take effect and be in force from and after the first of April, 1863.

SEC. 3. All acts and parts inconsistent herewith are hereby repealed.

PASSED January 15th, 1863.

AN ACT

TO INCREASE THE FEES OF JUSTICES OF THE PEACE FOR WHAT-COM COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the fees for justices of the peace for What-com county be as follows:

For a capias or notice,.....	1 00
For a warrant in criminal cases,.....	1 00
For taking a recognizance of bail,.....	1 00
For committing to jail,.....	1 00
For every subpoena for each person named therein,.....	25
For all persons more than one named in a subpoena,.....	20
For entering a judgment on trial,.....	1 50
For entering a judgment of confession or default,.....	75
For issuing an execution,.....	1 00
For each folio on certified copy of proceedings on appeal, certiorari or otherwise,.....	20
For every adjournment at the request of either party,.....	50
For entering a rule of reference or copy thereof, each,.....	25
For swearing witnesses, jurors or arbitrators, each,.....	25
For issuing writs of attachment,.....	1 00
For scire facias,.....	1 00
For entering a discontinuance or satisfaction,.....	50
For the acknowledgment of a deed or other instrument of writing with a certificate thereof, for each name,.....	1 00
For a venire for a jury,.....	1 00
For a writ of restitution,.....	1 00
For taking affidavits, each,.....	1 00
For attending with clerk of the board of county commissioners at the opening of the poll books, per diem,.....	5 00

PASSED, January 20th, 1863.

AN ACT

DECLARING VACANT THE EXISTING ALLEYS IN BLOCK NO. SIXTY, IN LAFAYETTE BALCH'S PART OF THE TOWN OF STEILACOOM, AND FIXING THE PARTIES TO WHOM THE ALLEYS, WHEN VACATED, SHALL BELONG.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the alleys in block No. sixty, in Lafayette Balch's part of the town of Steilacoom, in Pierce county, Washington Territory, that is to say, the public lanes running through the centre of said block at right angles, and ten feet wide, be and the same are hereby declared vacant, and the said alleys or lanes are hereby declared to belong to the persons owning the lots bordering on the same, in equal proportions, that is to say: Five feet of the said alleys or lanes are attached to, and belong to the lots lying adjacent to said alleys.

SEC. 2. All laws and parts of laws so far as they conflict with the provisions of this act be and they are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

PASSED January 23d, 1863.

AN ACT

TO AMEND AN ACT TO INCORPORATE THE TOWN OF OLYMPIA,
PASSED JANUARY 28, 1859.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That, in section fourth, article fourth of an act to incorporate the town of Olympia, passed January 28th, 1859, the words "to appoint one of the justices," be struck out, and the words "to elect a justice" be inserted.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 26th, 1863.

AN ACT

TO INCORPORATE THE CITY OF LEWISTON.

ARTICLE I.

OF BOUNDARIES AND GENERAL POWERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the city of Lewiston shall be bounded as follows, to wit: Commencing at the mid-channel of Snake river, at the mouth of Clear Water, running thence up said mid-channel of Snake river one mile: Thence east one and a half miles: Thence north to the mid-channel of Clear Water river: Thence west with the mid-channel of said Clear Water river to the place of beginning.

SEC. 2. The inhabitants of the city of Lewiston within the limits above described, shall be and they are hereby constituted a body politic and corporate in fact and in law by the name and style of the "City of Lewiston," and by that name and style they and their successors shall be known in law, have perpetual succession, sue and be sued, plead and be impleaded, defend and be defended in all courts of law, and in all actions whatsoever: may purchase, hold and receive property, real and personal, within said city for public buildings and city improvements: may lease, sell and dispose of the same for the benefit of the city: may purchase, hold and receive property real and personal, beyond the limits of the city, to be used for burial purposes. Also, for the establishment of a hospital for the reception of persons affected with contagious or other diseases: Also, for work-houses or houses of correction: Also, for the erection of water works to supply the city with water, and may sell, lease and dispose of the same for the benefit of the city, and they shall have and use a common seal, and may alter and amend the same and make a new one at pleasure.

ARTICLE II.

OF THE GOVERNMENT OF THE CITY.

SEC. 1. The government of said city shall be vested in, first, a mayor; second, a recorder; third, a common council, consisting of five members, who shall severally hold their offices until the next annual meeting after their election, and until their successors shall be qualified.

There shall also be elected at the same time a city marshal, city assessor, city treasurer and city surveyor, and there may be appointed by the city council a city attorney.

ARTICLE III.

OF THE DUTIES OF OFFICERS.

SEC. 1. It shall be the duty of the mayor to communicate to the council at least once in each year, and oftener if he shall deem it expedient, a general statement of the condition and situation of the city in relation to its general finances and improvements, to recommend to the common council the adoption of all such measures connected with the police, security of the public health, cleanliness and ornament of the city, and such other improvements, of the government and finances as he shall deem expedient, to be vigilant and active in causing the laws and ordinances of the city government to be executed and enforced, to exercise a constant supervision and control over the conduct and acts of all subordinate officers; to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and certify the same to the common council, who shall act upon the same, and if they find the complaint to be true, shall have power to declare the office of the person so complained of to be vacant, and the same shall be filled as hereinafter mentioned; and the mayor shall generally perform all such duties as may be prescribed to him by the charter and city ordinances, and the laws of this territory and the United States.

SEC. 2. The recorder, as to the offenses committed within the city, shall have like jurisdiction as is or may be conferred upon justices of the peace, and shall have the same power as a justice of the peace to examine into and commit persons brought before him, and charged with the commission of offenses within the limits of the city: to take recognizance to appear and keep the peace, and to issue all such writs and process as a justice of the peace may lawfully do, and be subject to all the rules governing justices of the peace.

SEC. 3. The recorder shall also have jurisdiction over all violations of city ordinances, hold to bail, fine or commit persons found guilty of any violation thereof.

SEC. 4. It shall be the duty of the city marshal, in addition to the duties prescribed to him by the city council, to execute and return all process issued by the recorder, or directed to him by any legal authority, and attend regularly upon the recorder's court and the meetings

of common council; he may appoint one or more deputies who shall possess the same power and authority as the marshal; he shall arrest all persons guilty of a breach of the peace, and of a violation of the city ordinances, and bring them before the recorder for trial, and possess superintending control over the peace and quiet of said city.

SEC. 5. It shall be the duty of the assessor, in addition to the duties prescribed to him by the city council, to make out within such time as the common council shall order, a correct list of all the property taxable by law within the limits of the city with the valuation thereof, which list, certified to by him, shall be returned by him to the common council, the mode of making out said list, and ascertaining the value of said property, and collecting all taxes, shall be the same as that prescribed by law for assessing and collecting the territorial and county taxes.

SEC. 6. It shall be the duty of the city treasurer to receive all moneys that shall come to said city, either by taxation or otherwise, and to pay out the same as provided for by this act: to direct, and to do and perform all such other acts as shall be prescribed to him by the common council: he shall, on the first Monday of January, April, July and October, of each year, make out and present to the mayor a full and complete statement of the receipts and expenditures of the preceding three months, which statement the mayor shall cause to be published in manner prescribed by law.

SEC. 7. It shall be the duty of the city attorney to attend to all suits, matters and things in which the city may be legally interested: to give his advice or opinion in writing whenever required by the mayor or common council, and to do and perform all such things touching his office as by the common council may be required of him.

SEC. 8. If any person elected to any city office shall remove from the city, absent himself therefrom for more than thirty days, without leave from the common council, or shall fail to qualify within ten days after the day of election, his office shall be deemed vacant.

SEC. 9. The common council shall define the duties of all officers which are not herein prescribed.

ARTICLE IV.

OF THE ELECTION OF OFFICERS AND FILLING OF VACANCIES.

SEC. 1. A general election for all the officers of the corporation

required to be elected by this act, or any ordinance of the city, shall be held on the first Monday in April in each year.

SEC. 2. At all elections for officers, the voters shall vote by ballot at the time and place designated by the common council.

SEC. 3. It shall be the duty of the common council to order all elections, to designate the place of holding the same; to give at least ten days' notice thereof, and to appoint inspectors of elections at the place or places of voting. The elections shall be conducted according to the provisions of the act regulating general elections. If any inspector shall fail to attend, the electors present may appoint another in his stead. The returns of all elections shall be made to the common council, who shall publicly examine and declare the result thereof and give certificates of election to the persons having a plurality of votes.

SEC. 4. All vacancies that may occur in the offices provided for, shall be filled in the following manner :

I.—OF THE MAYOR.

If, by death, resignation or otherwise, the office of mayor shall become vacant, a special election shall be called by the common council to fill the vacancy.

II.—OF THE RECORDER.

If, by death, resignation or otherwise, the office of recorder shall become vacant, a special election shall be called by the common council to fill the vacancy.

3d—Vacancies occurring in the office of councilman, or in any of the city offices other than the office of mayor and recorder, shall be filled by the common council by appointment.

SEC. 5. All elections for city officers shall continue but one day, and during that day from nine o'clock, A. M., to six o'clock, P. M. The polls may be closed for one hour at noon, at the option of the judges of election.

ARTICLE. V.

SEC. 1. The mayor, recorder and common councilmen, and all other officers elected or appointed under this act, shall be qualified within ten days after their election or appointment, and shall enter upon the discharge of their duties; and all officers required to be elected by the people under this act, shall hold their office for one year and until their successors are duly qualified; the term of office to commence ten days after the annual election.

SEC. 2. The members of the common council elected under this act, shall assemble ten days after their election, and choose a presiding officer from their number, and some suitable person as clerk. In case of the absence of the president, they may elect a president pro tempore, who shall have the power and perform all the duties of the president. They shall fix the time and place of holding their stated meetings, and may be convened by the mayor at any time. A majority of the members shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time, and compel the attendance of absent members in such manner, and under such penalties as the council may have previously prescribed. They shall judge of qualifications, elections, and returns of their own members, and the other officers qualified under this act, and determine contested elections. They may determine rules for their own proceedings; punish any member or other person for disorderly conduct, in their presence at any meeting of the council, and with the concurrence of two thirds of all members elect, expel any member: They shall keep a journal of their proceeding, and at the desire of any member, shall cause the yeas and nays to be taken on any question, and entered on the journal, and their proceedings shall be public.

SEC. 3. The mayor and common council shall have power within the city:

1st—To make by-laws and ordinances not repugnant to the laws of the United States nor to the laws of the territory of Washington.

2d—To levy and collect taxes, not to exceed one-half of one per cent, per annum, upon property made taxable by law for county and territorial purposes: *Provided*, That if any person at any time after the annual assessment, shall commence the sale or barter any goods, wares or merchandize within said city, such person shall pay to the city treasurer, a tax on such goods, wares or merchandize, proportioned to the amount paid for the city, county, and territorial taxes: *And provided further*, That said city council shall not pass any by-laws whatever, that will in anywise exclude any person from bringing into said city and selling any article of produce raised in the territory.

3d—To make regulations to prevent the introduction of contagious and other diseases into the city.

4th—To establish hospitals and make regulations for the government of the same, and to secure the general health of the inhabitants.

5th—To prevent and remove nuisances.

6th—To erect water works either in or beyond the limits of corporation, and provide the city with good and wholesome water.

7th—To license, tax, and regulate auctioneers, taverns, ordinaries, hawkers, pedlars, brokers, pawnbrokers, and money changers.

8th—To license porters and to fix the rate of portorage.

9th—To tax, license and regulate hackney carriages, wagons, carts, drays and omnibuses, and to fix the rate to be charged for the carriage of persons, and the wagonage, cartage and drayage of property.

10th—To license, tax, regulate and restrain bar-rooms, theatrical and other exhibitions, shows and amusements.

11th—To license, tax, restrain, prohibit, and suppress billiard tables, tipling houses, gaming and gambling houses and houses of ill-fame.

12th—To erect market houses, establish market places, and to provide for the government and regulation thereof.

13th—To provide for the presentation and extinguishment of fines, and to organize and establish fire companies.

14th—To appoint fire wardens and prescribe their duties, and to compel any person or persons present, to aid in extinguishing fires or for the preservation of property exposed to danger in time of fire, and by ordinance to prescribe such other powers as may be necessary on such occasions.

15th—To establish and regulate a police.

16th—To impose a fine, forfeitures and penalties, for the breach or violation of any ordinance.

17th—To erect a work house, or a house of correction, and to provide for the government and regulation thereof.

18th—To remove all obstructions from the side and cross walks, and provide for the construction, cleaning and repair of the same, as well all gutters, sewers, water courses and under-ground drainage.

19th—To establish and regulate night watch and patrol.

20th—To appropriate for any item of city expenditure, and to provide for the payment of the debts and expenses of the city.

21st—To grade, pave, plank, or otherwise improve, clean, and keep in repair, streets and alleys.

22d—To regulate the storage of gunpowder, pitch, tar, rosin, and all other combustible materials, and the use of candles, lamps, or other lights in shops, stables and other places. To prevent, remove or secure any fire-place, stove, chimney, oven, boiler, or other apparatus which may be dangerous in causing fire.

23d—To regulate and prescribe the manner of building partition walls and fences.

24th—To impose and appropriate fines, forfeitures and penalties, for the breach of any ordinance, and provide for the punishment of breaches of the city ordinances; but no fine shall be imposed of more than two hundred dollars, and no offender shall be imprisoned more than thirty days.

25th—To prevent and restrain any riot, noise, disturbance or disorderly assemblage in any street, house, or place in the city.

26th—To provide for the collection of and receiving by said city of all moneys authorized by law, or which may be authorized to be assessed and collected, for school purposes within said city, which fund so collected, shall be under the control of the city council, and by them laid out and expended for free schools within said city in such manner as they shall deem most expedient.

SEC. 4. Any ordinance which shall have been passed by the common council, shall, before it becomes effective, be presented to the mayor for his approbation; if he approve, he shall sign it, if not, he shall return it with his objections in writing to the common council, who shall cause the same to be entered in their journal, and shall proceed to reconsider the same. If, after such reconsideration two-thirds of the members of the common council shall agree to pass the same, it shall become an ordinance. In all such cases the votes shall be by yeas and nays, and the names of the members voting for or against the same shall be entered in the journal. If any ordinance shall not be returnable by the mayor within ten days, (Sundays excepted,) after it shall have been presented to him, the same shall become effective, as if the mayor had signed it.

SEC. 5. All demands and accounts against the city shall be audited by the city council, and shall be paid by the treasurer on the warrant of the president of the council, countersigned by the mayor.

SEC. 6. The president of the council shall exercise the duties of mayor whenever the said office shall be vacant, or the mayor be absent from the city, or from any cause unable to attend to the duties of his office.

SEC. 7. The style of the city ordinances shall be as follows :
“The people of the city of Lewiston do ordain as follows :”

ARTICLE VI.

OF THE SALARIES OF OFFICERS.

SEC. 1. The mayor and members of the council shall receive no salary for their services.

SEC. 2. The recorder shall receive the same fees for his services as justices of the peace are entitled to by law for services of a similar nature.

SEC. 3. All other officers provided for by this act, or to be created, shall receive such compensation as may be established by ordinance.

ARTICLE VII.

MISCELLANEOUS PROVISIONS.

SEC. 1. Upon the passage of all bills appropriating money, imposing taxes, increasing, lessening or establishing licenses, the yeas and nays shall be entered on the journal.

SEC. 2. The mayor may call a special session of the common council at any time, by proclamation, and shall state to them when assembled, the cause for which they have been convened.

SEC. 3. When two or more persons shall have an equal and the highest number of votes for the office of mayor or recorder, the common council shall decide the election.

SEC. 4. All resolutions and ordinances calling for appropriations of any sums of money, shall lie over for seven days.

SEC. 5. No member of the city council, shall, during the period for which he is elected, be interested in any contract, the expenses of which are paid out of the city treasury.

SEC. 6. The fiscal year of this city shall terminate on the first Monday in April in each year.

SEC. 7. The city council shall cause to be published at least one month before the annual election, a full, complete, and detailed statement of all moneys received and expended by the corporation during the preceding year, and on what account received and expended, classifying each receipt and expenditure under its appropriate head.

SEC. 8. The legislature may at any time amend, alter, or repeal this charter.

SEC. 9. All laws and parts of laws, heretofore passed and now in force in this territory, in anywise conflicting with the provisions of this act, be, and they are hereby repealed, so far as they shall affect this act.

ARTICLE VIII.

SEC. 1. To carry the foregoing act into effect, until the first election, to be held on the first Monday in April, A. D., 1863, the following officers are appointed to fill the offices created by this act for the city of Lewiston:

A. M. Kelly mayor, R. H. Johns recorder, Hill Beachy, D. M. Lessey, F. H. Simmons, Wm. Kaughman and James McNeil, members of the council, and ——— Schwatka, marshal.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 15th, 1863.

AN ACT

AUTHORIZING HILL BEACHY AND HIS ASSOCIATES TO MAKE AND SELL GAS TO LIGHT THE TOWN OF LEWISTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Hill Beachy and his associates, are hereby constituted a company with corporate powers to manufacture and sell gas, for lighting the streets, houses, and other places in the town of Lewiston.

SEC. 2. That the said Hill Beachy and his associates shall have power to lay down gas pipes, erect gas posts, burners and reflectors, in the streets, alleys and lanes, and public grounds in the town and its vicinity, and do things necessary to light the said town, and the dwellings, stores and other places situated therein: *Provided*, That the public travel shall at no time be affected by the laying of the said pipes,

and that streets, plank roads, side walks, lanes, avenues and public grounds, shall be left in as good condition as before the laying of said pipes, and the erection of said posts.

SEC. 3. The said Beachy and his associates shall make by-laws for their government, and keebooks of account, which shall be open to the inspection by the town authorities, and all other persons who buy gas from said company.

SEC. 4. That the said Hill Beachy and his associates, shall have power to sell and transfer shares, or do whatever they may deem best to promote the objects of the association, provided it be not inconsistent with the by-laws of said company.

SEC. 5. That if any person or persons shall willfully do or cause to be done, any injury to the conduit, pipes, cocks, machine or structure whatsoever, or anything appertaining to the works, whereby the works may be stopped, obstructed or injured, the person or persons so offending, shall be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding four hundred dollars, or by imprisonment at hard labor two years, or both, provided such criminal proceedings shall in nowise impair the right of the said Beachy and his associates to sue such offender or offenders for damages in the civil courts of the territory.

SEC. 6. That this act shall continue in force for the term of twenty years, subject to amendment by the Legislature, when the public good shall require.

SEC. 7. This act to be in force from and after its passage.

PASSED January 12, 1863.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE CITY OF WALLA WALLA," PASSED, JANUARY 11th, 1862.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section three of article ten of the act of which this is amendatory, shall not be so construed as to authorize any

person or persons to sell spirituous liquors within the city limits in less quantities than one gallon, without first obtaining license from the board of county commissioners of Walla Walla county, W. T.

SEC. 2. This act shall be in force from and after its passage.

PASSED January 20, 1863.

AN ACT

TO AUTHORIZE THE CITY COUNCIL OF THE CITY OF WALLA WALLA,
TO LEVY AN EXTRA TAX TO REMOVE OBSTRUCTIONS FROM
STREETS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the city council of the city of Walla Walla, Washington territory, be, and are hereby authorized and empowered to levy an extra tax, not exceeding five mills on the dollar, for the purpose of removing buildings and other obstructions from the cross streets of said city.

SEC. 2. This act shall take effect from and after its passage.

PASSED December 23, 1862.

AN ACT

TO INCORPORATE STEILACOOM LODGE NO. TWO, OF ANCIENT FREE
AND ACCEPTED MASONS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the masters, wardens and members of Steilacoom Lodge No. 2, of Ancient Free and Accepted Masons, their associates and successors be and they are hereby constituted and declared a body corporate and politic, to be known by the name and style of Steilacoom Lodge No. 2, of Ancient Free and Accepted Masons.

SEC. 2. Said lodge may, by their corporate name sue and be sued, plead and be impleaded, defend and be defended against in all the courts of law and equity in this territory, and may receive and hold all moneys and other property coming to their hands, by voluntary subscriptions, contributions, or otherwise; also, all legacies and devises of real or personal estate, and to have, hold, possess or acquire lands and tenements, furniture, chattels, regalia, and property of any description, incident to such bodies, to an amount not exceeding one hundred thousand dollars; and the estate aforesaid to lease, grant, convey and dispose of in such manner as they may deem expedient.

SEC. 3. The masters and wardens, upon an order made at any regular communication of said lodge, may dispose of any property, either real or personal, or mortgage the same that belongs to the lodge, and they are hereby authorized upon, such order being first made, to make, execute, and deliver in due form of law, the proper and legal muniment of the transaction.

SEC. 4. No deed, mortgage, bill of sale, or other evidence of incumbrance shall be of any validity, nor be binding upon said lodge unless the same shall be executed by the master and wardens, and shall be by them in their official capacity acknowledged before some person authorized to take acknowledgments of deeds to be their free and voluntary act and deed, and to be done in pursuance of an order of their lodge, made at a regular communication of the same.

SEC. 5. Any paper executed and acknowledged as above provided, and certified by the secretary under the seal of his lodge, to be in accordance with the order made at a regular communication of the same, shall be received and respected, and treated as binding upon the lodge by all the courts of this territory, but none shall be so considered unless so authenticated.

SEC. 6. The said lodge may, at any of their meetings for business, enact and pass such rules, regulations and laws for the government of said lodge and its management, as they may deem necessary: *Provided*, The same be not inconsistent with the laws of the United States or of this territory.

SEC. 7. The said lodge may hold its meetings at such times and places, and elect such officers for the management and government of its affairs as they may deem proper.

SEC. 8. All acts and parts of acts in conflict herewith be and the same are hereby repealed.

SEC. 9. This act to take effect and be in force from and after its passage.

PASSED January 24th, 1863.

AN ACT

AUTHORIZING THE CONSTRUCTION OF A TELEGRAPH LINE BETWEEN THE SOUTHERN AND THE NORTHERN BOUNDARIES OF WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the right and privilege be, and the same is hereby granted to Joseph Cushman, his associates and assigns, to construct and put in operation an electro telegraphic line from the dividing line between the state of Oregon and the territory of Washington, at the city of Vancouver, in Clarke county, to connect with the city of Portland in said state, thence by the way of Olympia and other towns on Puget Sound and Admiralty Inlet to the northern boundary of Washington territory at a convenient point to connect with New Westminster, in British Columbia, and Victoria, on Vancouver's Island, with the right of way over any lands under the control of the authorities of Washington territory, and over and along any streets, roads, or highways, or across any stream or streams, or waters: *Provided*, They do not obstruct the same, or across any private lands, with the right to cut down, and remove any trees other than fruit or ornamental trees.

SEC. 2. This line shall be bound to do all the business of other lines connected therewith, but no other line shall have the power to do business over this line, between the points before named, or intermediate points or places.

SEC. 3. This line shall be bound to transmit all despatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit by the person or persons suffering damages therefrom: *Provided however*, That an arrangement may be made with the proprietors or publishers of newspapers for the transmission for the purpose of publication of intelligence of general or public interest, out of regular order: *And provided further*, That, in case of war or insurrection, preference shall be given to the despatches of officers of the army or navy, where such despatches relate to their official

duties or acts, and preference shall also be given to sheriffs and other civil officers for the transmission of intelligence for the detection or capture of criminals.

SEC. 4. The party named in section one, of this act, or his associates or assigns, shall proceed, within one year from the passage of this act, to incorporate themselves under the provisions of this act by the said party giving public notice through two of the newspapers printed in the territory for the first meeting of the stock holders of said telegraph company by giving two weeks' notice to said stock holders of the time and place of meeting.

SEC. 5. The management of this company shall be vested in five directors, to be chosen by the stock holders, who shall hold office until others shall be elected, and a majority of said directors shall form a quorum, who shall elect one of their number as president of the board, and he shall also be president of the company, and they shall have authority to choose a clerk and treasurer, and such other officers or agents as they shall determine, and said board of directors shall have power to make all such rules and by-laws, as they shall see fit, not repugnant to the laws of the territory or of congress.

SEC. 6. The annual meeting of the stockholders of the corporation shall be held on the day prescribed by the by-laws, and at such place as the directors for the time being shall appoint, or the by-laws prescribe.

SEC. 7. The capital stock of this company or corporation shall be any amount not exceeding one hundred and fifty thousand dollars, in shares of one hundred dollars each, and whenever the sum of five thousand dollars shall be subscribed to its capital stock, the corporation shall have power to make assessments, collect the same, and proceed to the construction of the line.

SEC. 8. Any person or persons who shall unlawfully and intentionally injure, molest, or destroy any of said line, posts, wires, pins, or other materials, or the property belonging thereto, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in any county jail or other prison not to exceed one year, or by both such fine and imprisonment for such offense, and shall be liable to the party injured, in civil action, for double the amount of damages sustained.

SEC. 9. This act to take effect and be in force from and after its passage.

PASSED January 27th, 1863.

AN ACT

TO INCORPORATE THE MONTICELLO AND COWLITZ LANDING STEAM-BOAT COMPANY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Nathaniel Stone, together with all other persons who shall become associated with him by subscribing to the capital stock of said company, and their successors, be, and they are hereby constituted and declared a body corporate and politic, by the name and style of the "Monticello and Cowlitz Landing Steamboat Company," for the purpose of keeping on said river a steamboat or steamboats, for the transportation of freight and passengers, from Monticello on the Cowlitz river, to Cowlitz Landing on the Cowlitz river, and from said Cowlitz Landing to Monticello, and said company is hereby authorized and empowered, to have and to receive, purchase and possess, enjoy and retain, land, lots, tenements goods, chattels, rents and effects of any kind, and to any amount necessary to carry into effect the objects of said corporation, and the same to use, aliene, sell and dispose of at pleasure: To sue and be sued, in any court having competent jurisdiction; to have and to use a common seal, the same to alter, break, and renew at pleasure: To ordain and establish such rules, regulations and by-laws, as may be necessary for the well being of said corporation, subject, however, to the constitution of the United States, the laws of this territory and the restrictions and limitations contained in this act.

SEC. 2. The capital stock of said company shall consist of ten thousand dollars, divided into shares of one hundred dollars each, and shall be transferable in entire shares or parts of shares as the regulations of the corporation may prescribe; *Provided, however*, That no stockholder shall be at liberty to transfer his stock without the consent of the directors after an instalment is ordered, until such stockholders shall have paid the amount due his stock.

SEC. 3. The person named in the first section of this act with a majority of those who may be associated with him shall do and perform all acts necessary to organize said company, shall be commissioners to receive subscriptions, and shall have power to cause books to be opened at any time, or in any place they may think proper, to receive subscriptions to the capital stock of said company.

SEC. 4. The commissioner shall at any time call a meeting of the subscribers, by causing notice of the time and place thereof to be posted

up in at least three different places in Lewis county, and published in the nearest newspaper, not less than twenty days preceding the time of said meeting; and at such time and place those present shall proceed to elect directors, who shall serve one year from their election, and until their successors are chosen and qualified, and they shall adopt such regulation and by-laws for the government of the corporation, as by them may be deemed expedient, the stockholders to vote either by person or by proxy, each stockholder being entitled to one vote for each share.

SEC. 5. The affairs of said company shall be governed by three directors, or a majority of them, who shall be elected by the stockholders, on the first Monday of April each year, and shall hold their office until their successors are elected and qualified and each director shall be a stockholder at the time of his election, and shall cease to be a director when he shall cease to be a stockholder; all vacancies which may happen in said board of directors, shall be filled by a new election to be held as prescribed in the previous section.

SEC. 6. Said directors before entering upon their duties, shall take oath or affirmation, faithfully and impartially to discharge their duties. They shall choose a president and treasurer from among their number. They shall appoint such officers and agents as they may think proper to promote said undertaking. To make contracts, and do all things necessary to carry them into effect, and allow them such compensation as they may deem just. They may determine on the amount of bonds they may see fit to exact from their officers or agents, and pass upon their sufficiencies, prescribe the amount of instalment to be paid upon subscriptions, the manner of securing payment of such subscriptions, and take the general charge and supervision of the affairs of said company.

SEC. 7. Said directors shall have power to annually establish and fix the rates of freight and passage on said Cowlitz river: *Provided however*, The rates by them established shall in no case exceed the following: To wit—

Seven dollars per ton from said point of Monticello to Cowlitz Landing. Each passenger, five dollars, and the freight and passage to any intermediate point between Monticello and Cowlitz Landing other than those specified above, shall be in the same proportion: *Provided, however*, That in any case where the convenience of the passenger or passengers may require the steamboat to stop at any point other than its usual place for taking in freight and passengers, then a bargain fare may be charged: *Provided however*, That in no case said fare shall exceed the fare for the entire distance.

SEC. 8. If said company shall not be organized within six months after the passage of this act, and shall not within six months afterwards have a steamboat in full operation on said river, then this act shall cease and be null and void.

SEC. 9. That said company may, at any time contract debts and liabilities, to the amount of stock actually subscribed by responsible stockholders, and payable within twelve months from the time of contracting said debts and liabilities: *Provided*, That in any case of default or failure to pay the debts or liabilities contracted by the company, each and every stockholder in the company shall be individually liable for the payment of such debt or liability, equally and ratably, to the full amount of his stock in the same.

SEC. 10. Said company shall be subject to the provisions of any law that now is, or may hereafter be enacted, regulating the mode of taxation, and the capital stock of said company shall be subject to such tax as may now or hereafter to be provided by law.

SEC. 11. And the said company is hereby granted six years for the exclusive right and privilege of navigating the said Cowlitz river, with freight and passage steamboats.

SEC. 12. This act shall not be so construed as to prohibit the transportation of goods and passengers in any other mode than in steamboats.

SEC. 13. This act to take effect and be in force from and after its passage.

PASSED January 21, 1863.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE COLUMBIA TRANSPORTATION COMPANY OF THE TERRITORY OF WASHINGTON."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That section ten of the act entitled "an act to incorporate the Columbia transportation company of the territory of Washington," be amended so as to read as follows: To wit—

The landings may be surveyed and located before said railroad shall be surveyed, and may be changed and relocated to better carry out the

provisions of this act. Said railroad shall be commenced within three years and completed in good running order within six years, and until said railroads are completed it shall be lawful, and said company are hereby authorized to lay out, open, build, construct, maintain, operate and use a plank road, upon the proposed line for the said road, or elsewhere, as they may deem best, between the several landings at the Cascades of the Columbia river. Said plank road to be constructed in a good substantial manner; to be at least six feet wide, and to be commenced within one year and completed within three years, or otherwise to construct a temporary track on lands near to said river, on the watercourse of said river as before provided for said railroad, and the said company shall by advertisement to the public, name the time of opening the said line of travel.

SEC. 2. *Be it further enacted*, That section thirteen of said act, be amended so as to read as follows: To wit—

It shall be lawful for said company to borrow money, sell or mortgage real or personal estate, and to do any and all acts necessary for the purposes of carrying into effect the provisions of this act, and to exercise all the rights and privileges incident thereto. This act shall receive a liberal construction, having in view the object of this corporation, and this charter shall not be forfeited because of the non-use of any of the privileges granted herein, but the non-completion of said plank road within three years, and the non-completion of said railroad, or either of them within six years, shall be cause of forfeiture, as shall also be cause of forfeiture the transfer of said franchise, or any agreement or combination to charge rates of transportation for freight or passengers with the Oregon steam navigation company, or with any owner or owners of railroads, or transportation companies, on the Oregon side of the Columbia river, so as to control or monopolize the transportation on the said river, or on the Cascades or Dalles portage: *Provided*, That this act, nor the act to which this is amendatory, shall in nowise be construed as to work a forfeiture of either of the roads, if completed within the time herein provided and specified, because of the failure to commence or complete any other road herein, or in the act to which this is amendatory enumerated or described.

SEC. 3. This act shall take effect and be in force from and after its passage.

PASSED January 8th, 1863.

AN ACT

TO INCORPORATE THE PUYALLUP NAVIGATION COMPANY OF PIERCE COUNTY, AND TO GRANT CERTAIN PRIVILEGES FOR IMPROVING THE NAVIGATION OF THE PUYALLUP RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That* Cyril Ward, William Billings, A. J. Perkins, Israel Wright, John Carson, John Walker, Isaac Woolery, Abraham Woolery, J. P. Stewart, — Miller, R. S. Moore, Wm. M. Kincaid, Jonathan McCarty, L. F. Thompson, Archibald McMillan, — Sherman, J. B. Leach, W. H. Whitesell, Aronomous Nix, Isaac Lemmon, Van Ogle, Daniel E. Lane, Edward Lane, Wm. Lane, H. W. Berry, James H. Downey, R. M. Downey, F. C. Seaman and Willis Boatman, their associates, (successors or assigns, be, and they are hereby declared and constituted a body corporate and politic to be known by the name and style of the Puyallup Navigation Company of Pierce county.)

SEC. 2. Said corporation, by their corporate name, may sue and be sued, plead and be impleaded, defend and be defended against in all the courts of law and equity in this territory, and may receive all moneys and other property either real or personal, coming to their hands by purchase or otherwise, and may have and hold, possess and acquire lands and tenements and property of any description to an amount not exceeding one hundred thousand dollars; and the estate aforesaid to lease, grant, convey and dispose of in such manner as they may deem expedient.

SEC. 3. On the third Saturday of February, A. D., 1863, it shall be lawful for the corporators hereinbefore named, or a majority of them, to meet at the court house in Steilacoom, at the hour of 11 o'clock, A. M., and to adopt a seal, and to enact such rules, regulations and by-laws for the government of said corporation and its management as they may deem proper and necessary: *Provided*, The same be not inconsistent with the laws of the United States or of this territory.

SEC. 4. Should the corporators, or a majority of them, fail to meet at the time specified in section three, then it may and shall be lawful for any member of the corporation by giving three weeks previous notice in the Puget Sound Herald, or some other newspaper published within the the third judicial district of Washington territory, to call at the place specified in said section three, a meeting of said corporators, at which time and place the said corporators, or a majority of them, may do and

transact any and all business provided to be done by them in said section three.

SEC. 5. Either of the incorporators may, by power of attorney duly authenticated, authorize any other person of lawful age to act for them in the organization of the corporation, or may, by bill of sale, dispose of and convey to any person any and all the rights and interests hereinbefore, or hereinafter granted to such person.

SEC. 6. Said corporation shall, within six months from the passage of this act, meet and organize as hereinbefore provided, and shall thereupon transmit to the secretary of the territory a copy of their doings together with the impression of their adopted seal, which shall be by said secretary placed on file among the archives of his office, and from thence said corporation shall be deemed and considered fully organized.

SEC. 7. Should said corporation fail, for the period of six months from the passage of this act, to organize as provided in the foregoing provisions, then this act shall be void and of no effect: *Provided*, That nothing herein contained shall prevent said corporation at any future time, upon giving three weeks' previous notice in some public newspaper of the third judicial district, from changing their seal, or making any alterations or amendments to their rules, regulations and laws so as aforesaid to be passed; and after the same shall be received by the secretary shall be taken and regarded by all the courts of this territory as the law governing said corporation.

SEC. 8. Said corporation, when fully organized as hereinbefore provided, are hereby authorized and empowered and vested with full and exclusive power and authority to remove or cause to be removed, all drifts, jams, sunken logs and other obstructions of every description, to the navigation of the Puyallup river from its mouth to the mouth of Stuck river.

SEC. 9. Said corporation shall, within three months from their organization as aforesaid, commence clearing said river within said limits, and shall, each year from the date of such organization, clear at least one mile of the channel of said river of all drifts, jams, sunken logs, and other obstructions to the passage up or down the same of flat boats or other small crafts: *Provided*, That said corporation shall, within five years from the passage of this act, clear the entire distance as aforesaid, from the mouth of Puyallup to the mouth of Stuck river, or else forfeit all the rights, interests and privileges granted by this act.

SEC. 10. From and after, and not till said river Puyallup shall be cleared of the obstructions hereinbefore enumerated, from its mouth to the mouth of Stuck river by said corporation, it shall and may be lawful

for the said corporation to receive and collect the following sums or tolls for passing up and down said river, to wit :

For steamer each way, not more than.....	\$2 50
For flat boats, not more than.....	1 00
For small passenger boats or canoes.....	25
For freight each way, not to exceed per ton.....	2 50
For saw logs, per thousand feet, not to exceed.....	1 00

And for anything not herein enumerated, to receive rates and tolls in proportion to those herein specified.

SEC. 11. This act to take effect and be in force from and after its passage, and for and during the period of twenty years.

PASSED January 27th, 1863.

AN ACT

TO INCORPORATE THE SKOQUAMISH AND WENATCHEE ROAD COMPANY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Francis Dolon, Salem Woods, Jacob D. Fowler, Henry McClerg and William Cisson, or either of them and their associates, are hereby constituted and declared a body corporate and politic, and shall be known as the Skoquamish and Wenatchee Road Company, for the purpose of leveling and constructing a road with the necessary bridges and ferries, commencing at a point on the north bank of the Skoquamish river at or near its mouth : thence up the valley of said river to the summit of the Cascade mountains : thence down the valley of the Wenatchee river to its mouth or some suitable point, to be hereafter ascertained or selected for diverging said road to the right or left as circumstances may require.

SEC. 2. The said company is hereby empowered and authorized to purchase and possess and enjoy all lands, goods, chattels and effects of every kind, to any amount not exceeding in value the sum of fifty thousand dollars, necessary to carry into effect the object of said corporation, and the same to use and dispose of, and to sue and be sued in any court having competent jurisdiction, and to ordain and establish such regulations as may be necessary for such corporation, subject to the constitution of the United States, and laws of this territory.

SEC. 3. The persons named in the first section of this act, or a majority of them, and their associates, shall do and perform all acts necessary to organize and prosecute the business of said company, and shall keep proper books and records of their proceedings therein, and shall report to the governor of this territory a synopsis of their proceedings within ten months after the passage of this act, for the purpose of being laid before the legislature at their next regular session.

SEC. 4. For the purposes of this act the said road shall be deemed a territorial road, saving to the corporators their rights therein, with the understanding that the corporators may sell the same to the territory of Washington, or the United States, after the period of five years from the commencement of work on said road, for such consideration as shall be assessed by a board of commissioners consisting of three disinterested persons, citizens of this territory, to be appointed as follows: one by the company and one by the governor of this territory, who shall appoint the third person to fill the board.

SEC. 5. The said company shall, as soon as they shall have completed a good and sufficient pack trail along the line of said road be empowered to collect and receive tolls as follows:

For one man,.....	\$1 00
For one man and horse,.....	2 00
For mules, asses and horned cattle, each,.....	1 00
For sheep, goats and hogs, each,.....	50
For pack animal,.....	1 50

Provided, That when a good and sufficient wagon road shall have been completed on the line of said trail, the rates of toll shall be as follows:

For hack or sulkey with one horse,.....	4 00
For wagon with two horses or oxen,.....	6 00
And for each additional horse or ox in the team,.....	50

SEC. 6. The privileges and immunities herein granted to the said corporation, the Skoquamish and Wenatchee Road Company, shall exist and continue in said company for the term of twenty years: *Provided*, That nothing herein contained shall be so construed as to prevent the legislature from altering or amending the above rates of tariff after five years after the passage of this act.

SEC. 7. This act to take effect and be in force from and after its passage.

PASSED January 24, 1863.

AN ACT

TO AMEND AN ACT TO INCORPORATE THE WALLA WALLA RAILROAD COMPANY, PASSED JANUARY 28th, 1862.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section one of an act to incorporate the Walla Walla Railroad Company be, and is hereby amended by inserting as corporators after the name of W. W. Johnson, the following names, to wit: John Mullan, J. H. Fairchild, R. Jacobs, R. R. Rees and Edward Nugent.

SEC. 2. That section four of the act to which this is amendatory shall be, and hereby is amended to read as follows: The capital stock of said company shall be eight hundred thousand dollars, and divided into shares of one hundred dollars each, which shall be deemed personal property, and be transferable in such manner as said corporation shall, by its by-laws, provide and direct.

PASSED January 16th, 1863.

AN ACT

TO AMEND AN ACT ENTITLED, AN ACT TO INCORPORATE THE NISQUALLY ROAD COMPANY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section three of the act to which this is amendatory, be so amended as to read: That the persons named in the first section of the act to which this is amendatory, or a majority of them and their associates, shall do and perform all acts necessary to organize and prosecute the business of said company, and shall keep proper books and records of their proceeding therein, and shall report to the governor of this territory a synopsis of their proceedings within twelve months after the passage of this act, for the purpose of being laid before the legislature at their next regular session.

SEC. 2. That the name of William Packwood be stricken out of the first section of the act to which this is amendatory.

SEC. 3. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 4. This act to take effect and be force from and after its passage.

PASSED January 15th, 1863.

AN ACT

TO INCORPORATE THE FOURTH PLAIN DITCHING AND DRAINING COMPANY FOR THE PURPOSE OF DRAINING FOURTH PLAIN SWAMP, IN CLARKE COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Thomas Norton, Peter Bersch, Frederick Proebstel, Charles Bird and A. R. Willey and such other persons as they may hereafter associate with them, be, and are hereby constituted a body corporate and politic, with the right of succession, to sue and be sued, and purchase, hold and convey such property, both real and personal, as may be necessary for the carrying into effect the purposes of this act.

SEC. 2. Said company shall, within six months after the passage of this act, proceed to lay out, mark and designate the line and course of said ditch where it crosses the land claims of the persons named in section first of this act, and shall, before that time, hold a meeting of the said company upon due notice being given to all of said persons named, at which said meeting they shall appoint a director, or directors, and a clerk, who shall keep a correct record of the proceedings of said meeting.

SEC. 3. Said company may, at any of their meetings, enact and pass such rules and regulations, and such laws for the management and carrying on of the work of said company as they may deem expedient, provided the same be not inconsistent with the laws of the United States or this territory.

SEC. 4. Nothing in this act shall be so construed as to allow said company to interfere with, or encroach upon the lands of any other person or persons, along the line of said ditch, without first obtaining the permission of the owners or occupiers of said lands.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 15th, 1863.

AN ACT

TO INCORPORATE THE PAYETTE CANAL AND WATER COMPANY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Stephen Kinsey, William McMillan, R. W. Marshall, Frank Moore, J. Marian Moore, R. P. Wilson, A. A. M. Beach,, John T. Bell, J. B. Cecil, J. J. Standifer, Daniel Alderson, C. North, Lyman Shaffer, R. Bledsoe, and all others who are, or shall be hereafter associated with them, their successors and assigns, are hereby constituted and created a body corporate and politic, by the name of the "Payette Canal and Water Company," for mining and manufacturing purposes, and by that name shall have perpetual succession, and are made able and capable in law, to have, possess, purchase, receive, hold, enjoy and retain unto them, their successors and assigns, estates of every kind, real, personal or mixed, and the same to manage, let, lease, assign, grant, bargain or sell, aliene, convey or dispose of at pleasure, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended against in all courts of law and equity, and before all tribunals whatever. To make, have and use a common seal, and the same to alter and renew at pleasure, and shall also have power to make, establish, and put in execution such by-laws and regulations not contrary to law as they may deem necessary and convenient for the government of said corporation, and the management of their property and concerns, and the duties, services, and employment of their officers and agents, and the same to change, alter or amend, and generally to do and execute all acts, matters and things which may be necessary to carry into effect the powers and privileges hereby granted.

SEC. 2. The capital stock of said corporation shall consist of seventy-five thousand dollars, with liberty to increase the same from time to time to an amount not exceeding in the whole the sum of two hundred thousand dollars, and no additional stock shall be created except by a vote of the stockholders of said corporation, at a meeting thereof especially called for that purpose. The shares shall be five hundred dollars each, and are hereby declared to be personal property, and shall be transferred by bill of sale which shall be recorded in the office of the Treasurer of the corporation, in such books as shall be provided for that purpose: *Provided, however*, That no stockholder who may wish to dispose of his stock, shall transfer in manner aforesaid any share or shares of the capital stock, without first giving refusal of the same to

the corporation at the price for which he is willing to sell. *And provided also,* That the shares in said capital stock shall not be liable to assessment after the capital stock, so fixed in amount, has been paid in; except in equal proportions and by consent of the stockholders owning at least three fourths of the shares of the capital stock of the corporation.

SEC. 3. The property and concerns of the said corporation shall be managed and conducted by five directors, being stockholders, one of whom shall be president, who shall hold their office for one year, and until others are chosen, and the said directors shall be chosen on the first day of May in each year, and after the first election, at such time and place as shall be directed by the by-laws of the said company, and public notice thereof shall be given in the nearest newspaper, and also by posting a written notice at their place of business, and each stockholder shall be entitled in person or by proxy, to one vote on each share of stock held by him or her, and the persons receiving the greatest number of votes, and being stockholders, shall be directors, and all vacancies occurring by deaths, resignation or otherwise, among the directors chosen as above mentioned, shall be filled by such person or persons as a majority of the remainder of the directors shall appoint, and a majority of the directors shall be a quorum for transacting the business of said corporation.

SEC. 4. It shall be lawful for the directors or a majority of them, from time to time to call for, and demand from the stockholders respectively, all such sums of money by them subscribed, at such time and in such proportions or installments as they shall deem proper: *Provided,* That no single instalment shall be more than ~~-----~~ dollars on each share, nor any installment be called for oftener than once a month, under the penalty of forfeiture of their respective shares, and all previous payments made thereon to the said corporation, always giving at least thirty days' notice of such call and demand in the manner before mentioned.

SEC. 5. The stock or shares of each and every stockholder, shall be pledged and liable to the corporation for all debts and demands due, and owing from such stockholder to said corporation, whether overdue or due at a day future; whether the same shall arise from assessments or installments or in any other manner, and in case any stockholder shall refuse or neglect to pay such debt or demand within sixty days after the same shall become due and payable; then it shall be lawful for the treasurer to sell at public auction the share or shares of such delinquent stockholder, or so many thereof as may be necessary to satisfy the debt or demand with all incidental expenses, first giving notice of the time

and place of sale, with the sum due from such stockholder, for which his stock shall be pledged or liable, once a week for thirty days prior to the day of sale, in a newspaper nearest to the place of business of this corporation, or by written notice sent to the delinquent stockholder or his assigns, and if the proceeds of such sale be not sufficient to discharge such debt or demand, the corporation may have the action against the debtor for the balance due.

SEC. 6. The stockholders of said corporation shall be personally and individually liable for all debts due from said corporation, to the amount of stock or shares he or she may hold in said corporation, and any person holding shares in said corporation, shall be personally and individually liable for all debts contracted by said corporation, while he or she held the same, to the amount thereof.

SEC. 7. Said corporation shall have a place of business in Placerville, and in all proceedings in law or equity, in which said corporation shall be a party, the leaving an attested copy of the writ of summons or other process, with the president of the board of directors, or agent of said corporation, or at such place of business shall be a sufficient service thereof.

SEC. 8. The directors shall at all times keep or cause to be kept at their place of business, proper books of accounts, in which shall be regularly entered, all the dealings and transactions of said corporation which books shall, at all business hours, be subject to the inspection of the stockholders of the company.

SEC. 9. On the first Monday of May, and the first Monday of November in each year, the directors shall submit to the stockholders a written statement of the capital stock actually paid in, and the amount of all existing debts against the company, and the debts of said corporation shall at no time be suffered to exceed the amount of the capital stock actually paid in.

SEC. 10. The validity of this act shall not be impaired by the failure of said corporation to hold their annual meeting aforesaid, but the business of such meeting aforesaid, may be transacted at any legal meeting of the corporation held thereafter.

SEC. 11. William McMillan, David Alderson, and Frank Moore, or the majority of them, are hereby authorized to call the first meeting of stockholders for the election of officers and for organization, and any other business of the corporation hereby formed, by forwarding by mail or otherwise, a written notice of the time and place of said meeting, at

least thirty days previous thereto, directed to each of the persons named in the first section of this act.

SEC. 12. This act shall continue in force for twenty years, and take effect immediately after the passage thereof.

PASSED January 27th, 1863.

AN ACT

TO INCORPORATE THE LEWISTON AND CLEARWATER BOOM COMPANY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That John C. Holgate, Hill Beachy, A. H. Robie, and their associates in the association, known as the "Lewiston and Clearwater Boom Company," and their successors, are hereby declared a body corporate and politic, under the name and style of the "Lewiston and Clearwater Boom Company," for the purposes of erecting and maintaining sheer booms, pocket and distributing booms, with sufficient piers on either side or across Clearwater river. The said boom or booms to be located on Clearwater river, within three miles of the junction of said river, with Lewis or Snake river.

SEC. 2. Said company shall have the exclusive right, within the limits aforesaid, to construct booms, &c., for the purpose of stopping logs, square timber, shingles, cord-wood and drift-wood, for ten years; *Provided*, That the booms erected shall not obstruct the passage of boats or rafts, at such times as the water may be sufficient for the floating of such crafts.

SEC. 3. Said corporation shall have power to purchase and receive in all lawful ways, own and possess, lands, goods, chattels and effects of every kind; the same to use and dispose of in all lawful ways at pleasure; to contract and be contracted with, to implead and be impleaded, sue and be sued in all courts, to have a common seal, and the same to use and change at pleasure, and to ordain and establish such by-laws and regulations as it may deem expedient for its own government, and efficient management of its own affairs, consistent with the constitution and laws of the United States, and the laws of this territory.

SEC. 4. Said corporation may receive, possess and enjoy all the property, interests and rights of said association, and shall hold and

have, and may enforce by legal remedies, all claims and obligations due, or to become due, given, or that may be given to said association, and for the debts of said corporation, each member thereof shall be personally responsible, to the extent of the amount of stock owned, held or subscribed for by him, for any debts contracted while he was such member.

SEC. 5. Each member of this association shall be held responsible for any damage that may accrue to any raft, boat or other craft, in their passage up or down said rivers, by any neglect of the corporation or any of its members.

SEC. 6. This act to be in force from and after its passage: *Provided*, That any future legislative assembly shall have the power to alter, amend, or repeal said act. *And provided further*, That this act shall not be so construed as to interfere with any vested rights of persons owning a ferry or ferries, nor to prevent any person from landing at the city of Lewiston, or in its vicinity, with rafts of logs, lumber or fire-wood; or with flat-boats or other crafts, whether laden or not.

PASSED January 22d, 1863.

AN ACT

TO INCORPORATE THE MEADOW CREEK QUARTZ MINING COMPANY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That E. W. Tracy, J. C. Hawthorn, John Creighton, Alonzo Leland, — Jesse, — Hyde, their associates, and all such persons as shall hereafter become stockholders in said company hereby incorporated, shall be a body politic, by the name and style of the Meadow Creek Quartz Mining Company, with continued succession, for the time herein specified, and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and equity, in all courts in this territory: may make and use a common seal and alter the same at pleasure: purchase, hold, sell and convey such real estate and personal property as the purposes of the corporation may require: appoint such officers, agents and servants, as the business of the corporation may require, to define their powers and duties and fix their compensation: to make by-

laws not inconsistent with the laws of this territory, for the complete organization of the company, the management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company.

SEC. 2. The said corporation is hereby authorized and empowered to erect such buildings, construct machinery and all other suitable apparatus, as may be necessary and requisite for successfully carrying on the business of quartz mining at the point selected on Meadow creek in the county of Idaho, Washington territory: and to survey, locate, mark out, and designate the boundaries of the claims of the corporation, and to make all needful regulations for their care, government and protection.

SEC. 3. The capital stock of said corporation shall be divided into one hundred shares, and shall consist of such nominal value per share as the stockholders may determine upon at their first meeting under the provisions of this act, which value shall be stated by resolution entered upon the record book of the corporation. The immediate government and direction of the company shall be vested in a board of trustees, consisting of at least three members, who shall be chosen by the stockholders of the company, and whose powers, duties, and terms of office shall be regulated by the by-laws of the company. A majority of the trustees shall form a quorum for the transaction of business, and shall elect one of their number to be president of the company, and the said trustees shall have power to elect or appoint a secretary and treasurer and such other officers as may be deemed advisable and proper to facilitate the business of the company.

SEC. 4. The first meeting of the company under the provisions of this act shall be called by a majority of the stockholders herein mentioned, who shall give twenty days' notice by publication in one or more newspapers published in this territory, nearest to the business location of the company, which notice shall distinctly state the objects of the meeting and the time and place to be held.

SEC. 5. Each stockholder shall be individually liable for his proportion of all the debts and liabilities of the company, contracted or incurred during the time he was stockholder. No person holding stock as an executor, administrator, guardian or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder, but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly.

SEC. 6. The franchise granted by the provisions of this act shall continue for the period of twenty years, unless sooner annulled by the voluntary dissolution of the company: *Provided*, That the incorporated

body created by this act shall be subject to the same laws, regulations and restrictions that other persons are, or hereafter may be by the laws of this territory prescribing the manner in which quartz mining claims are located, governed and held, and none of the provisions of this act shall be so construed as to interfere with any rights that may have accrued to any person or parties prior to the location of the said company's mining claims.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED, January 21st, 1863.

AN ACT

TO AUTHORIZE JOHN CARSON, HIS ASSIGNS OR HEIRS, TO CONSTRUCT
AND KEEP A BRIDGE ACROSS THE PUYALLUP RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That John Carson, his heirs or assigns, be, and they are hereby are hereby authorized to construct and keep a bridge across the Puyallup river at the point where the military, territorial, and county roads cross between Steilacoom and Seattle, and at the point where the old bridge built by said Carson, and carried away by the late freshet stood; and the said John Carson shall have the exclusive privilege of constructing and maintaining a bridge at the aforesaid point for the term of ten years from the passage of this act: *Provided,* That said bridge, when so constructed, shall be subject to the same regulation as other bridges are or may be by the laws of this territory prescribing the manner in which bridges shall be kept and regulated: *And provided further,* That the county of Pierce shall, at any time before the expiration of said period of ten years, have a right to take said bridge upon payment to said Carson, his heirs or assigns, a fair valuation therefor, and thereafter all and singular the rights hereinbefore granted to said Carson, his heirs, or assigns, shall pass and vest in the said county.

SEC. 2. That it shall be lawful for the said John Carson, his heirs, or assigns, to receive and collect the following rates of toll for crossing upon said bridge:

For one man and horse,.....	25
For a horse and carriage,.....	50
For footmen, each,.....	10
For one yoke of cattle, or span of horses, and wagon,.....	50
For crossing each additional span of horses or yoke of cattle,..	25
For crossing loose stock other than sheep and hogs, each,.....	10
For crossing sheep and hogs, each,.....	5

Provided, That the county commissioners of the county of Pierce, at any regular term of said commissioners' court, shall have power to alter the above rates of toll, and when so altered, it shall be lawful for said John Carson, his heirs, or assign, to collect and receive toll only according to the rates of toll fixed by said commissioners.

SEC. 3. That no courts or board of county commissioners shall authorize any person, except as hereinafter provided in this act, to construct, or keep and maintain a bridge at the point hereinbefore designated: *Provided*, That the said John Carson, his heirs or assigns, shall, within one year after the passage of this act, construct and complete a good, substantial, and safe bridge, and should the laws regulating the construction of bridges, and establishing ferries now, or such as may hereafter be in force, be violated by the said John Carson, his heirs, or assigns, or if no good and sufficient bridge be constructed and completed within the time specified in this act, upon proof thereof being made to the satisfaction of the board of county commissioners of the county of Pierce, then this act shall be void.

SEC. 3. All acts or parts of acts conflicting with this act, be, and the same are hereby repealed.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 15th, 1863.

AN ACT

TO AMEND AN ACT ENTITLED, AN ACT TO AUTHORIZE JOHN A. PACKARD TO CONSTRUCT AND KEEP A BRIDGE ACROSS THE NISQUALLEY RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the act to which this is amendatory be amended

by adding after the ninth line of the second section, and before the proviso to the same, the words: For crossing each footman, ten cents.

SEC. 2. This act to take effect and be force from and after its passage.

PASSED January 10th, 1863.

AN ACT

TO AUTHORIZE C. P. HIGGINS TO ESTABLISH A BRIDGE ACROSS THE
BIG BLACKFOOT RIVER, IN MISSOULA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That C. P. Higgins and his associates be, and they are hereby authorized to establish a bridge across the Big Blackfoot river, in said territory, at or near the point where the military road crosses said stream, and that said C. P. Higgins and his associates shall have the exclusive right for a bridge on said stream for one mile each way up and down from said point for the period of six years: *Provided*, That the said bridge, when so established, shall be subject to the same regulations and under the same restrictions as other bridges are, or may be by the laws of this territory, prescribing the manner in which licensed bridges shall be kept and regulated.

SEC. 2. The following shall be the rates of toll which the said C. P. Higgins and his associates are hereby authorized to collect, viz:

For each wagon, with four animals attached,.....	4 00
“ “ “ two “ “	3 00
“ man and horse,.....	1 50
For each animal packed,.....	1 00
For each footman,.....	75
For each animal loose,.....	25

Provided, That immigrants coming from the east by this route shall be charged but half of above mentioned rates.

SEC. 3. That C. P. Higgins and his associates shall, within two years from and after the passage of this act, have completed a good and substantial bridge, and until such time as said bridge shall be completed said Higgins and his associates shall keep a ferry at said point with rates of toll as above mentioned.

SEC. 3. This act shall take effect and be in force from and after its passage.

PASSED January 19th, 1863.

AN ACT

TO AUTHORIZE F. L. WORDEN AND HIS ASSOCIATES TO ESTABLISH A BRIDGE ACROSS THE HELL GATE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That F. L. Worden and his associates be and they are hereby authorized to establish a bridge across the Hell Gate river in said territory at or near the point known as the Medicine Tree Crossing of said river, and that said Worden and his associates shall have the exclusive right for a bridge on said stream for one mile each way up and down from said point, for the period of six years. *Provided,* That the said bridge, when so established, shall be subject to the same regulations and under the same restrictions as other bridges are or may be by the laws of this territory prescribing the manner in which licensed bridges shall be kept and regulated.

SEC. 2. The following shall be the rates of toll which the said Worden and his associates are hereby authorized to collect, viz :

For each wagon, with four animals attached,.....	4 00
For each wagon with two animals attached,.....	3 00
For each man and horse,.....	1 50
For each animal packed,.....	1 00
For each footman,.....	75
For each animal loose,.....	25

Provided, That immigrants from the east by this route shall be charged but half of the above mentioned rates.

SEC. 3. That F. L. Worden and his associates shall, within two years from and after the passage of this act, have completed a good and substantial bridge, and until such time as said bridge shall be completed, said Worden and his associates shall keep a ferry at said point, with rates of toll as above mentioned.

SEC. 4. The said F. L. Worden and his associates shall, before collecting any money for ferriage as provided in this act, pay into the county treasury of the county in which said ferry may be located, as an annual tax, a sum of twenty-five dollars for the use of said county.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 19th, 1863.

AN ACT

TO AUTHORIZE G. W. THATCHER AND H. KNIGHT TO BUILD A BRIDGE
ACROSS THE EAST FORK OF PAYETTE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That G. W. Thatcher and H. Knight, their heirs or assigns, be and they are hereby authorized to construct and keep a bridge across the East Fork of Payette river about five miles above the forks, and said G. W. Thatcher and R. Knight, their heirs or assigns, shall have the exclusive privilege of constructing and maintaining a bridge at the aforesaid point for the distance of one mile up, and one mile down said stream on each side of said point, for the term of five years from the passage of this act: *Provided*, That said bridge, when so constructed, shall be subject to the same regulations, and under the same restrictions as other bridges are, or may be by the laws of this territory prescribing the manner in which bridges shall be kept and regulated.

SEC. 2. That it shall be lawful for the said G. W. Thatcher and H. Knight, their heirs or assigns to receive and collect the following rates of toll for crossing upon said bridge :

For each footman,.....	50
For man and horse,.....	1 00
For each animal packed,.....	1 00
For each loose animal,.....	50
For wagon with two animals attached,.....	2 50
For wagon with four animals attached,.....	3 50
And for each additional span of horses, or yoke of oxen,.....	1 00
For sheep or hogs,.....	15

Provided, That the county commissioners of Boise county, at a regular term of commissioner's court, shall have power to alter the above rates of toll, and when so altered, it shall be lawful for the said G. W. Thatcher and H. Knight, their heirs or assigns, to collect and receive toll only according to the rates fixed by said commissioners.

SEC. 3. That no court or board of county commissioners shall authorize any person, except as hereinafter provided in this act, to construct a bridge within the limits set out in this act: *Provided*, That the said G. W. Thatcher and H. Knight, their heirs or assigns, shall, within twelve months after the passage of this act, have constructed and

completed a good, strong, substantial and safe bridge, and should the laws regulating the construction of bridges and establishing ferries now, or such as hereafter be in force be violated by the said G. W. Thatcher and H. Knight, their heirs or assigns, or if no good and sufficient bridge be constructed and completed within the time specified in this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Boise county, then this act shall be void.

SEC. 4. That the said G. W. Thatcher and H. Knight, their heirs or assigns, shall, within four months after the passage of this act, provide and keep a good and sufficient boat at said point sufficient to accommodate all travel until such time as they are required by this act to complete said bridge, and said ferry shall be under the same rules and regulations as is provided by law for the government of ferries in this territory, and the toll of said ferry shall not exceed that allowed for said bridge.

SEC. 5. This act shall take effect and be in force from and after its passage.

PASSED January 23d, 1863.

AN ACT

TO AUTHORIZE JOHN BROWNLEE AND HIS ASSOCIATES TO CONSTRUCT AND MAINTAIN A BRIDGE AT THE CROSSING OF WEISER RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That John Brownlee and his associates, their heirs and assigns, be, and are hereby authorized to construct and maintain a bridge on Weiser river, at the crossing of the road leading from Tykel's pass of Snake river cañon to the Boise mines, to have the exclusive privilege of said crossing for a distance of one mile each side hereof, for a period of ten years.

SEC. 2. It shall be lawful for said granted parties to collect the following rates of toll thereon:

For each person,	50
Pack and animal,	1 00
Animals other than sheep or hogs,	50
Sheep and hogs,	15

Vehicle adapted for one horse,	1 00
For additional horse, in addition,	0 50
Ton of freight,	3 00

Provided, That the county commissioners of Idaho county, at any regular term of said court, shall have power to alter and change the above rates of toll, after which when the rates so established shall be the lawful rates to be collected.

SEC. 3. That the said parties under this grant, shall, within twenty months from the passage of this act, have constructed a good strong and substantial bridge over the aforesaid river. A failure to comply with the above requirements shall work a forfeiture of the privileges herein granted.

SEC. 4. Within six months from the passage of this act, said John Brownlee and his associates, shall provide and keep a ferry boat at the above said point selected for a bridge, sufficient to accomodate all travel until such time, as the terms of this charter requires the completion of a bridge, and the toll of said ferry shall not exceed the rates allowed for crossing said bridge.

PASSED January 20th, 1863.

AN ACT

TO COMPLETE THE MILITARY ROAD FROM SEATTLE TO WHATCOM.

WHEREAS, In accordance with appropriation made by congress, a military road has been made from the town of Seattle toward the town of Whatcom, leaving about thirty-five miles yet to be completed, to open a road extending from Monticello to British Columbia, as a great thoroughfare through this entire territory, for conveyance of stock cattle to Northern markets, and

WHEREAS, The completion of said road will work great advantage to the agricultural and stock raising community, and tend to open up for cultivation a large extent of prairie land on the northern portion of said road, therefore,

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* For the purpose of facilitating the intercourse by land between the Columbia river country and British Columbia, there shall be, and is hereby created, a company with corporate powers under the

name and style of the Whatcom military road company of the territory of Washington.

SEC. 2. The said company shall consist of Nelson F. Young, James A. Patterson, M. H. Offutt, F. C. Ferguson, John A. Tennant, Wm. Moody, H. L. Yesler, C. C. Terry and Henry Roeder, and their heirs and successors, who shall be, and are hereby declared a body corporate and politic in fact, by name of the Whatcom Military Road Company of the territory of Washington, and by that name they and their successors and assigns shall, and may have continued succession, and shall be a body corporate in law capable of suing and being sued, pleading and being impleaded, defending and being defended, in all places and courts whatsoever, and shall have power to make and use a common seal, and the same at pleasure to alter, and they and their successors, by the same name and style, be capable of having authority to purchase, hold and convey any lands, tenements, vessels, steamers, wagons, goods and chattels necessary or expedient to the object for which the said company is formed a corporation, and are hereby clothed with all of the rights, powers and privileges pertaining to corporate bodies, requisite for the purpose aforesaid.

SEC. 3. The capital stock of said company shall consist of twenty-thousand dollars, divided into equal shares between the before named stockholders severally, to be paid in such manner and at such times as a majority in amount of shares of stock may determine, after at least thirty days' previous notice; and any default in paying in, whether by labor or money, as required aforesaid, shall work a forfeiture of the share or shares of stock held by defaulting stockholders: *Provided*, That for the more fully carrying out the intentions of this act, the said company shall adopt and be governed by rules and by-laws necessary to a strict and careful conduct, and not inconsistent with the laws of this territory.

SEC. 4. The said company are hereby empowered to complete the military road from the point where the United States ceased to make the road in Snohomish county, to the terminus thereof in Whatcom county, by the line of survey of said road made by the United States or by any other way from and to the points before named in this section, and the right of way over the public lands and all other lands is hereby granted therefor, subject to the laws of the United States and of this territory.

SEC. 5. The powers hereby granted shall extend to the building and conducting of all necessary ferries and bridges upon said route, which shall be erected and conducted by the said company or their assigns whenever necessary to the speedy transportation of cattle or pack-trains across rivers, bogs or places necessary, to put wooden structures

thereon: *Provided*, That it shall be lawful for the said company to collect and receive such tolls and pay from cattle or other matters, or things, or persons crossing said ferries or bridges, as may annually be severally rated to be paid therefor by the county commissioners of the several counties in which the said toll-gate, ferry or bridge may be situated. And it shall not be lawful for the county commissioners to license, nor for any person to establish a bridge, bridges or ferries, or either or any of them, within two miles above or below any of the said ferries or bridges established by the said company, under penalty in damages to be paid to the said company by any person so infringing upon their rights as herein defined, of one hundred dollars for every day that such unlawful ferry or bridge may be publicly used.

SEC. 6. The privileges and immunity hereby granted to said Whatcom Military Road Company of the territory of Washington, are granted to the said company, their successors, heirs and assigns, for the term of twenty years from the first day of July, one thousand eight hundred and sixty three: *Provided nevertheless*, That should the same road not be completed within three years from said first of July, then and in such case the right and privileges hereby granted, shall revert to the territory of Washington, for such uses as may be provided by law.

PASSED January 19th, 1863.

AN ACT

TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM A POINT KNOWN AS THE PORT DISCOVERY MILL, AT THE HEAD OF PORT DISCOVERY BAY, TO THE ELWHA VALLEY, IN THE COUNTIES OF CLALM AND JEFFERSON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That D. F. Brownfield, Wm. Irving, and Joseph Newell, be, and are hereby appointed and constituted a board of commissioners to view and establish a territorial road from the head of Port Discovery Bay, running west until said line strikes the county road at Sequim prairie, following said county road as far as it is built and laid out, until it reaches the Elwha valley in the county of Clalm.

SEC. 2. Said commissioners, or a majority of them, shall meet at the residence of Wm. Irving, at Sequim prairie, in Clalm county, on

the first of February, 1863, or as soon thereafter as circumstances will permit, and after being duly sworn to faithfully view and locate said road on the line above mentioned, or on what they deem the most direct and practicable route to the Elwha valley. Said road commissioners shall have authority to administer any oath necessary and proper to carry this act into effect.

SEC. 3. The commissioners aforesaid shall cause a true report of their proceedings to be made, and a copy of the same to be delivered to the county auditor of the county of Clalm, who shall file and preserve the same. And said road shall be in every respect a territorial road, and shall be opened and kept in repair as other territorial roads.

SEC. 4. The board of county commissioners above named shall be entitled to the sum of three dollars per day, for such time as they may be engaged in revising and locating such road; providing, no more than seven days be allowed to perform such labor; and further, that the board of county commissioners, on the part of the county of Clalm, be, and are hereby required to pay to said road commissioners the above named sum when said labor has been performed.

PASSED January 27th, 1863.

AN ACT

TO LOCATE A TERRITORIAL ROAD FROM OAKLAND, IN SAWAMISH COUNTY, TO SEABECK IN KITSAP COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Edward Miller and Joseph Sherwood, both of Sawamish county, and W. K. Temple of Kitsap county, or any two of them, be, and they are hereby constituted a board of commissioners to view and establish a territorial road from Oakland in Sawamish county, to Seabeck on Hood's canal.

SEC. 2. Said commissioners shall meet at Oakland, on or before the first Monday in April, 1863, and after being duly sworn by any officer authorized to administer an oath, faithfully to perform the duties assigned to them, shall proceed to view, locate, and mark out a road between the points designated, on the nearest and most practicable route.

SEC. 3. Said commissioners shall make out a true report of their proceedings, and cause a certified copy thereof to be filed with the sec-

retary of the territory, and also with the county auditors of Kitsap and Sawamish counties, within sixty days from the completion of their labors; and when said report is so filed, the said road shall be considered a territorial road, and shall be opened and kept in repair as other territorial roads.

SEC. 4. If from any cause, one or more of said commissioners, shall fail to qualify and act, the remaining members shall appoint some suitable person or persons, who shall have all the powers granted in this act.

SEC. 5. No charge shall be made against either county for services performed under this act, by said commissioners.

SEC. 6. This act to take effect and be in force from and after its passage.

PASSED January 20th, 1863.

AN ACT

TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM WHERE THE STEILACOOM MILITARY ROAD INTERSECTS THE COUNTY ROAD ON GRAND MOUND PRAIRIE, THURSTON COUNTY, TO INTERSECT THE MILITARY ROAD AT OR NEAR LEWIS RIVER IN CLARKE COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Jackson Barton, J. C. Davis of Lewis county, and Wm. Brattan of Clarke county, be, and they are hereby appointed to constitute a board of commissioners to view and establish a territorial road from Grand Mound prairie, in Thurston county, by way of Cowlitz, and Davis', and Layton prairies in Lewis county, to intersect the military road at or near Lewis river in Clarke county.

SEC. 2. Said commissioners, or a majority of them, shall meet at Grand Mound prairie on the first Monday in May, 1863, or as soon thereafter as practicable, and after being duly sworn by any officer authorized to administer an oath faithfully to perform the duties assigned to them, shall proceed to view, and locate, and mark out a road on the nearest and most practicable route as described in section first.

SEC. 3. Said commissioners shall make out a true report of their proceedings and cause a certified copy thereof to be filed with the coun-

ty auditors of Thurston, Lewis and Clarke, within sixty days from the completion of their labors, and when said report is so filed, the said road shall be considered a territorial road, and shall be opened and kept in repair as other territorial roads are.

SEC. 4. If from any cause one or more of said commissioners shall fail to qualify and act, the remaining members shall appoint some suitable person or persons who shall have all the powers granted in this act.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 24th, 1863.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT TO AUTHORIZE GILBERT REYNOLDS AND SOLOMON DODGE TO OPEN AND ESTABLISH A ROUTE FROM SHOALWATER BAY TO BAKER'S BAY, FOR THE TRANSPORTATION OF FREIGHT AND PASSENGERS, PASSED JANUARY 18th, 1861.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act to which this is amendatory shall be amended by striking out the name of Solomon Dodge, wherever it occurs in said bill.

SEC. 2. Section two of said act shall be so amended in the first line, to read three years instead of twelve months, and in the fifth line, to read two and one-half tons, instead of five tons.

SEC. 3. This act shall be in force from and after its passage.

PASSED January 15th, 1863.

AN ACT

TO AUTHORIZE J. W. ROORK G. W. THATCHER AND J. J. STANDIFER TO ESTABLISH A PACK TRAIL AND WAGON ROAD FROM PAYETTE RIVER TO GRIME'S CREEK.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That J. W. Roork, G. W. Thatcher and J. J. Stan-

difer, their heirs or assigns, be, and they are hereby authorized to construct a pack trail and wagon road, commencing at Sanford Owen's ferry, on Payette river: thence up said river to what is known as Horse-Shoe Bend, and thence in an easterly direction to Grimes' Creek. The above named parties, their heirs or assigns are to select the nearest and most practicable route or routes.

SEC. 2. Said J. W. Rook, G. W. Thatcher and J. J. Standifer, their heirs or assigns, shall construct a good and practicable pack trail and wagon road, and keep them in good repair at their own expense and cost, along the route herein designated, and when the pack trail or wagon road is commenced and constructed as aforesaid, any person or persons who shall willfully obstruct the same shall be liable to the same penalties and punishment as are prescribed in the laws now in force relating to roads and highways, and said J. W. Rook, G. W. Thatcher and J. J. Standifer, their heirs or assigns, shall have the exclusive privilege over the route or routes when located, for the term of ten years: *Provided*, They shall construct a good pack trail within one year from the passage of this act, and the wagon road within two years, and they may locate the pack trail and wagon road on the same route, or on different routes as they may deem best, and this charter shall not be forfeited because of the non-use of any of the privileges granted herein, and the failure to construct one of the roads shall not be a forfeiture of the other.

SEC. 3. It shall be lawful for the said J. W. Rook, G. W. Thatcher, J. J. Standifer, their heirs or assigns, to collect the following rates of toll from those who travel said trail or road, to-wit:

For each man and horse.....	1 00
For each animal packed,.....	1 00
For each head of animals other than sheep or hogs,.....	50
For sheep or hogs, each,.....	15
For each wagon with two animals attached,.....	2 00
For wagon with four animals attached,.....	3 00
For additional pair of horses, mules or oxen,.....	1 00
For man and horse,.....	1 00
For each animal packed,.....	1 00
For each head of animals other than sheep or hogs,.....	50
For sheep or hogs, each,.....	15

SEC. 4. That no court or board of county commissioners shall authorize any person, except as herein provided in this act, to construct or keep and maintain a road so as to conflict with this act, for ten years:

Provided, That said road, when so established, shall be subject to the same regulations and under the same restrictions as other roads are, or may hereafter be by law of this territory prescribing the manner in which licensed roads shall be kept and regulated.

SEC. 5. That the county commissioners of the county in which said road may be located, may at any regular meeting alter the rates of toll, after which the rates so established shall be the lawful rates of such road.

SEC. 6. All acts and parts of acts in conflict herewith are hereby repealed.

PASSED January 23, 1863.

AN ACT

TO AUTHORIZE J. S. McITEENY, JAMES HAYS AND THEIR ASSOCIATES
TO CONSTRUCT A TRAIL FROM LEWISTON TO BOISE MINES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That J. S. McIteeny, James Hays and their associates be and they are hereby authorized to construct a trail over the most practicable and accessible route they may select, leading from Lewiston across Salmon river to the Boise mines, and to establish a ferry across Salmon river at the point selected for the crossing of said river, and to have the exclusive privilege of ferriage for a distance of one mile above and below the site so selected for said ferry, for the term of five years: *Provided*, That the privileges herein granted shall not encroach upon the rights and privileges of any other previously granted, and that said trail and ferry shall be subject to the same regulations and under the same restrictions as other toll roads and ferries are or may hereafter be by the laws of this territory prescribing the manner in which licensed roads and ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said J. S. McIteeny, James Hays and their associates to collect the following rates of toll, to include the travel and ferriage fees:

For each person crossing,.....	50
For horse and rider,.....	1 00
For pack animal,.....	1 00
For horse or mule,.....	50

For each head of cattle,.....	50
For each head of sheep, hogs or goats,.....	15

SEC. 3. The said J. S. McIteeny and James Hays and their associates shall, within six months after the passage of this act, complete the constructing of said trail, and procure and keep a good boat or boats, having the same well and skillfully managed, with the requisite number of hands for the safe and expeditious transportation of persons and property over said Salmon river, and any failure of the said J. S. McIteeny and James Hays and their associates to comply with the conditions herein specified, shall be sufficient cause of forfeiture of all the rights and privileges herein granted.

SEC. 4. This act to take effect and be in force from and after its passage.

SEC. 5. The county commissioners of the county in which said ferry is situated shall have have the power to alter the above rates of toll, and when so altered, it shall be lawful for the said parties herein named to collect and receive ferriage only according to the rates fixed by said commissioners.

PASSED January 12th, 1863.

AN ACT

TO AMEND AN ACT TO GRANT TO WM. PACKWOOD AND HEIRS A FERRY ACROSS THE NISQUALLY RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That eighteen months be struck out in section 2, and two years and six months be inserted.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 21st, 1863.

AN ACT

TO AUTHORIZE JAMES BAKER AND M. E. HARTSOCK TO CONSTRUCT A TRAIL FROM FLORENCE CITY TO WARREN'S DIGGINGS, AND TO ESTABLISH A FERRY ACROSS SALMON RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That James Baker, M. E. Hartsock and their associates be and they are hereby authorized to construct a trail over the most practicable and accessible route they may select, leading from Florence City across Salmon river to Warren's Diggings, in Idaho county, and to establish a ferry across Salmon river, at the point selected for the crossing of said river, and to have the exclusive privilege for a distance of one mile above and below the site so selected for said ferry, for the term of three years: Provided, That the privileges herein granted shall not encroach upon the rights and franchises of any other persons previously granted, and that said trail and ferry shall be subject to the same regulations, and under the same restrictions as other toll roads and ferries are, or may hereafter be by the laws of this territory prescribing the manner in which licensed ferries shall be kept and regulated: Provided, That this franchise shall not interfere with the trail now used leading from Florence to H. Deiffenbacher's Ferry, nor his ferry franchise.*

SEC. 2. It shall be lawful for the same James Baker and his associates to collect the following rates of toll, to include the trail and ferryage fees:

For each person crossing,.....	50
For each horse and rider,.....	1 00
For pack animal,.....	1 00
For horse, mule, or cattle, each,.....	50
For sheep, hogs, or other small animals, each,.....	15

SEC. 3. The said James Baker, M. E. Hartsock, and their associates, shall, within six months after the passage of this act, complete the construction of said trail, and procure and keep a good and sufficient boat or boats, having the same well and skillfully managed, with the requisite number of hands for the safe and expeditious transportation of persons and property over said Salmon river, and any failure of the said James Baker, M. E. Hartsock and their associates to comply with the conditions herein specified, shall be sufficient cause of forfeiture of all the rights and privileges herein granted.

SEC. 4. This act to take effect and be in force from and after its passage.

PASSED, January 15th, 1863.

AN ACT

TO AUTHORIZE GEO. A. TYKLE AND ASSOCIATES TO CONSTRUCT A
PACK TRAIL LEADING FROM TYKLE'S PASS, ON SNAKE RIVER, TO
FLORENCE CITY, WITH A FERRY AND BRIDGES AT THE CROSSING
OF STREAMS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That George A. Tykle and his associates, their heirs and assigns, be and are hereby authorized to construct a pack trail leading from Tykle's Pass, on Snake river, to Florence City, *via* the North Forks of Weiser river: thence across the dividing mountain, in a north-easterly direction, to the valley of Swift river: thence down said Swift river valley, to its junction with the main Salmon river: thence across said Salmon river, and over the mountains into Florence City, by the most practicable pass they may select, to establish a ferry and bridges at its crossings of streams, and to collect toll thereon as herein-after specified: to have the exclusive right for a distance of forty rods on each side thereof for a period of ten years from its completion: *Provided*, That nothing within this act shall be so construed as to prevent any other road or trail from crossing the same at their intersection.

SEC. 2. It shall be lawful for the said parties herein granted to collect toll thereon as follows:

For traveling on said trail:	
For each person,	50
For each animal packed,	1 50
For loose stock other than sheep and hogs, each,	1 00
For sheep and hogs, each,	25
For each ton of freight,	3 00
To collect fees for crossing ferry on Snake river:	
For footmen, each,	50
For each animal packed,	1 50
For each animal loose,	1 00
For each sheep or hog,	20
To collect toll for crossing each bridge over streams, exceeding forty feet span:	
For each footman,	25
For animal with pack,	75

For each animal loose,..... 50
 For each sheep or hog,..... 10
 All other bridges less than forty feet span shall be free crossing.

SEC. 3. The county commissioners of Idaho county, at any regular term of their court, shall have power to alter or change the foregoing rates and establish instead thereof any other rates of toll that may be just and reasonable, and to make any other rules and regulations concerning thereto that may be deemed necessary.

SEC. 4. The aforesaid trail shall be completed within ten months from the passage of this act, by having all timber removed therefrom to a width of four feet, to bring the mountain passes to a practicable grade for packed animals: to construct safe and strong bridges over the several crossing of streams and miry swamps, and on the crossing of main Salmon river provide a boat or boats with hands sufficient for the safe and expeditious transportation of persons and property.

PASSED January 29th, 1863.

AN ACT

TO AUTHORIZE A. B. RABBESON, J. G. DENNIS, AND A. B. C. DENNIS,
 TO ESTABLISH A FERRY ACROSS COLUMBIA RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That A. B. Rabbeson, J. G. Dennis and A. B. C. Dennis, their heirs and assigns, be, and they are hereby authorized to construct and keep a ferry across Columbia river where McDonal's trail leading from Puget Sound to Fort Colville crosses the Columbia river, and that said A. B. Rabbeson, J. G. Dennis and A. B. C. Dennis, their heirs and assigns shall have the exclusive privilege of ferrying upon Columbia river within the following limits: a distance up and down said river one mile from the point designated, for the term of six years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulation, and under the same restrictions as other ferries are, or may hereafter be by the laws of this territory prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That no court or board of county commissioners shall authorize any person other than is herein mentioned, to keep a ferry within the prescribed limits of this act.

SEC. 3. It shall be lawful for the said A. B. Rabbeson J. G. and A. B. C. Dennis, their heirs and assigns, to collect and receive the following rates of toll :

For each wagon, with four animals attached,.....	5 00
For each pleasure wagon with two animals attached,.....	4 00
For each additional animal,.....	50
For each cart, wagon, or carriage, with one horse,.....	3 00
For each man and horse,.....	1 50
For each animal packed,.....	1 50
For each footman,.....	75
For all loose animals other than sheep and hogs, each,.....	50
For sheep and hogs, each,.....	15

SEC. 4. The said A. B. Rabbeson, J. G. Dennis and A. B. C. Dennis, their heirs and assigns, shall, within one year from and after the passage of this act, procure and keep on said ferry, a good and sufficient ferry boat, with a sufficient number of hands to work the same, for the transportation of all persons and their property with safety and without unnecessary delay. The failure to comply with all and singular the conditions hereinbefore specified and enumerated, shall render void the provisions of this act.

SEC. 5. This act to take effect and be in force from and after its passage, provided that nothing herein contained shall conflict with any rights granted previous to the date of the passage of this act.

PASSED January 19th, 1863.

AN ACT

TO AUTHORIZE JOHN M. SILCOTT, ANDREW CROWLEY AND SAMUEL D. SMITH, TO CONSTRUCT A WAGON ROAD ON THE NORTH SIDE OF SNAKE RIVER, AND TO ESTABLISH FERRIES ON THE SNAKE AND CLEARWATER RIVERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That John M. Silcott, Andrew Crowley, Samuel D. Smith, and such others as may be associated with them, their heirs and assigns, be, and they are hereby authorized to build and construct a wagon road, commencing at a point on Snake river, where the Indian trail to Lewiston from Walla Walla crossed said river, thence by the

north branch of Snake river, to a point on the Clearwater opposite the town of Lewiston, Nez Perce county, W. T., for the term of six years from the passage of this act: *Provided*, That the said John M. Silcott, Andrew Crowley and Samuel D. Smith, their associates, heirs and assigns, shall within six months from the passage of this act, construct and build a good and practicable wagon road and keep it in good repair, at their own expense and cost, along the route herein designated, and when a road is made and constructed as aforesaid, any person or persons who shall wilfully or maliciously obstruct the same, shall be liable to the same penalties and punishments as are prescribed in the laws now in force relative to roads and highways.

SEC. 2. The said John M. Silcott, Andrew Crowley and Samuel D. Smith, their associates heirs and assigns, shall have the privilege of establishing ferries on Snake and Clearwater rivers, in connection with said wagon road, with the exclusive privilege of one mile each way from the sites selected for said ferries: *Provided*, That when said road is constructed and ferries established, they shall be subject to the same regulations and restrictions as other roads and ferries are, or may be by the laws of this territory prescribing the manner in which such shall be kept and regulated.

SEC. 3. That it shall be lawful for the said John M. Silcott, Andrew Crowley and Samuel D. Smith, their associates, heirs and assigns, to receive and collect the following rates of toll upon said ferries, but they shall be allowed to collect but one rate of toll for crossing both ferries.

For each wagon or carriage, with one span of horses, or mules,	
or one yoke of cattle attached,	\$4 00
For each additional span or yoke,	1 00
Man and horse,	1 50
Pack animals each,	1 50
Foot passengers,	50
Loose animals other than sheep and hogs, each,	50
Sheep and hogs each,	20

SEC. 4. No court or board of county commissioners shall authorize any person or persons to keep a ferry within the prescribed limits of this act, but the county commissioners of the county in which said ferries are located, shall have the power to change the above rates of toll at any regular term of court, after which, the rates so established shall be the lawful rates of said ferries.

SEC. 5. The said John M. Silcott, Andrew Crowley, Samuel D.

Smith, and their associates shall, within six months from the passage of this act, procure and keep at said ferries, a sufficient number of flat boats and the necessary number of hands to work them, to transport persons and their property without delay.

SEC. 6. The said Silcott, Crowley and Smith, shall, before receiving any money for ferriage under this act, and annually thereafter, pay into the county treasury of the county in which said road and ferries are located, as an annual tax, a sum not to exceed thirty dollars, for the use and benefit of the county.

SEC. 7. This act to take effect and be in force from and after the date of its passage.

PASSED January 13th, 1863.

AN ACT

TO AUTHORIZE E. C. HARDY, AND OTHERS, TO OPEN A TRAIL AND MAKE A WAGON ROAD, IN CLARKE AND SKAMANIA COUNTIES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That E. C. Hardy, his heirs and assigns, are hereby authorized and empowered to open a trail, and construct a wagon road, from a point near Benjamin Tanner's on Cape Horn Mountain, near the line between Clarke and Skamania counties, to intersect the U. S. military road at the Cascades, said trail and road to be opened, laid out and constructed, upon the most accessible, best and level route between the points designated: *Provided,* That the same shall be, in all places, opened and built above high water mark: *Provided,* Said trail shall not interfere with the trail now used.

SEC. 2. The said E. C. Hardy shall, within one month after the passage of this act, commence to open, and within four months shall complete a good and practicable trail on said route, of not less than eight feet in width, clear from all obstructions, so as to enable heavily laden pack animals to pass over said trail without danger or serious inconvenience.

SEC. 3. The said E. C. Hardy shall, within eighteen months after the passage of this act, construct and build along and upon the said trail, a good and sufficient wagon road, of not less than sixteen feet in

width, so that wagons and teams can pass over and along said road with safety and convenience, with the necessary bridges and crossings thereon.

SEC. 4. It shall be lawful for the said E. C. Hardy, heirs and assigns, to collect tax, and receive for tolls, for traveling on said trail, until the time for finishing the wagon road expires, the following sums :

For each pack animal,	37½
For each head of other animals, excepting hogs, sheep or goats,	25
For sheep, goats, or hogs each,	5

And it shall be lawful for the said E. C. Hardy, as soon as the said wagon road is completed, to charge, collect and receive the following rates of toll for travel upon said road, for the term of five years, from and after said road is completed :

For each man and horse,	
For each pack animal,	37½
For each wagon with two horses, mules or oxen,.....	1 00
For each horse and buggy,	75
For each head of other animals, excepting sheep, hogs and goats,	
For sheep, hogs and goats, each,	5

SEC. 5. The said E. C. Hardy, his heirs and assigns, shall put up in two conspicuous places, at each terminus of said trail and road, a guide board, whereon shall be stated in legible characters, the rates of toll, as fixed upon by the provisions of this act.

SEC. 6. This act shall take effect and be in force from and after its passage.

PASSED January 26th, 1863.

AN ACT

TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM WALLA WALLA TO FORT HALL.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That John Martin, Sanford Owens, and L. Morris, be, and they are hereby appointed to constitute a board of commissioners, to view and establish a territorial road from Walla Walla, in Walla Walla county, to Fort Hall in Boise county.

SEC. 2. Said commissioners, or a majority of them, shall meet at

Moore's ferry on Snake river, on the first Monday of June, 1863, or as soon thereafter as circumstances will permit, and after being duly sworn faithfully to view and locate said road, on the nearest and most practicable route, as described in section first.

SEC. 3. Said commissioners shall have authority to adjourn from time to time, and from place to place, to fill any vacancy that may occur in said board, and after their first meeting, as provided in section two, the said commissioners shall have authority to administer any oath necessary and proper, to carry into effect the provisions of this act.

SEC. 4. And the commissioners aforesaid shall cause a true report of their proceedings to be made, and a true copy of the same to be deposited with the county auditors of Walla Walla and Boise counties, who shall file and preserve the same; after which, said road shall be in every respect a territorial road, and shall be opened and kept in repair as other territorial roads.

SEC. 5. Said commissioners shall make their report to the county commissioners of Walla Walla and Boise counties, immediately after they shall have completed their commissions, and the said commissioners shall receive a compensation of three dollars per day for their services, while actually employed in the viewing and locating of said road, to be paid out of the county treasuries of their respective counties.

SEC. 6. This act to take effect and be in force from and after its passage.

PASSED January 19th, 1863.

AN ACT

TO AUTHORIZE JOHN CARSON AND J. P. STEWART TO ESTABLISH A FERRY ACROSS PUYALLUP RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That John Carson and J. P. Stewart, their heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across the Puyallup river near the residence of J. P. Stewart, where the lower military road crosses said river, and that they have the exclusive privilege of a ferry for one and one-half miles up and down said river, from the crossing aforesaid, for the term of ten years from the passage of this act: *Provided,* That said ferry, when established, shall

be subject to the same regulations, and under the same restrictions as other ferries are or may be by the laws of this territory prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said John Carson and J. P. Stewart, their heirs and assigns to receive and collect the following rates of toll for crossing upon said ferry :

For wagon with two animals attached,.....	75
For each additional span,.....	25
For man and horse,.....	37
For crossing horse and vehicle,.....	62
Animals other than sheep or hogs,	18
Sheep and hogs,	5
For each footman,.....	25

SEC. 3. The county commissioners of the county in which said ferry is or may be situated, may, at any regular term of said commissioners' court, regulate and fix the rates of ferriage to be received by said John Carson and J. P. Stewart, their heirs or assigns, after which he or they shall only be allowed to receive the rate of ferriage so fixed by said commissioners' court.

SEC. 4. This act to take effect and be in force from and after its passage.

PASSED January 19th, 1863.

AN ACT

AUTHORIZING MATTHIAS BECKER AND WILLIAM WEGNER TO ESTABLISH AND KEEP A FERRY CROSS THE NISQUALLY RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Matthias Becker and William Wegner, their heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across the Nisqually river at Yelm Prairie, Thurston county, where the county road crosses said river, to Steilacoom ; and that the said Matthias Becker and William Wegner, their heirs and assigns, have the exclusive privilege of ferrying upon said river within the following limits, to-wit: One mile above, and one mile below the point selected for said ferry, on each side of said river, and that the said Matthias

Becker and William Wegner, their heirs and assign, have the exclusive privilege of ferrying across said river within the above limits, for the term of five years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions as other ferries are, or may hereafter be by laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said Matthias Becker and William Wegner, their heirs and assigns, to receive and collect the following rates of toll for passage upon said ferry:

For wagon with two animals attached,.....	50
And for each additional span of animals,.....	25
For horse and carriage,.....	50
For man and horse,.....	25
For each animal packed,.....	25
For each head of sheep, goats or hogs,.....	5
For loose stock, other than sheep or hogs,.....	
For each footman,.....	25

But the county commissioners of the county in which said ferry is or may be situated, may, at any regular term of their court, change said rates of toll, and when so altered, it shall be lawful for said Matthias Becker and William Wegner, their heirs and assigns, to collect and receive ferriage only according to rates fixed by said county commissioners.

SEC. 3. The said Matthias Becker and William Wegner, their heirs and assigns, shall, at all times keep at said ferry a good and sufficient flat boat, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river, without unnecessary delay, and, upon proof being made to the county commissioners of said county, that the said Matthias Becker and William Wegner, their heirs and assigns have failed to keep a good and sufficient boat or boats, with sufficient hand or hands to work the same as required in the foregoing, then this act shall be void.

SEC. 4. This act to take effect and be in force from and after its passage.

PASSED, January 21st, 1863.

AN ACT

TO AUTHORIZE PAUL K. HUBBS, JR., AND H. C. BARKHOUSEN, TO ESTABLISH A FERRY ACROSS LUMMI OR NOOTSACK RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Paul K. Hubbs, Jun., and H. C. Barkhousen, their heirs or assigns, be, and they are hereby authorized to keep a ferry across the Lummi, or Nootsack river, in Whatcom county, at the point where the road from Whatcom to Fort Hope crosses, or may cross said river, to the opposite shore, commencing at a point in the centre of said river, where it strikes said river, and to land and deposit on each shore of said river, and extending from said point up and down said river on each side thereof, two miles each way; and that the said Paul K. Hubbs, Jun., and H. C. Barkhousen, their heirs and assigns, have the exclusive privilege of ferrying in Whatcom county, within the above limits, for the term of ten years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions, as other ferries are, or may hereafter be, by laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said Paul K. Hubbs, Jun., and H. C. Barkhousen, their heirs and assigns, to receive and collect the following rates of toll for ferriage upon said river:

For crossing a footman,.....	50
For crossing a man and horse,.....	1 00
For crossing horse and carriage,.....	1 50
For crossing two horses and carriage,.....	2 00
For crossing each additional span of horses, or pair of cattle,	1 00
For crossing loose stock, other than sheep and hogs, each,.....	50
For sheep and hogs, each,.....	12

SEC. 3. That no court, or board of county commissioners, shall authorize any person, except as hereafter provided by this act, to keep a ferry, within the limits set out in this act: *Provided*, That the said Paul K. Hubbs, Jun., and H. C. Barkhousen, their heirs or assigns, shall, within six months after the passage of this act, procure for said ferry, a good and sufficient flat boat or boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be

violated by the said Paul K. Hubbs, Jun., and H. C. Barkhousen, their heirs and assigns, or if no good and sufficient flat boat, or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Whatcom county, affirmed by the district court of Port Townsend, then this act shall be void.

SEC. 4. This act to take effect and be in force from and after its passage.

PASSED January 15th, 1863.

AN ACT

TO AUTHORIZE J. T. HICKLIN TO ESTABLISH A FERRY ON YAKIMA RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That J. T. Hicklin, his heirs or assigns be and they are hereby authorized to establish and keep a ferry across the Yakima river at a point commencing three miles below the mouth of the Naches river and up the Yakima river to the mouth of the Wenas, and that the said J. T. Hicklin, his heirs and assigns, have the exclusive privilege of ferrying upon said river within the above limits for the term of ten years from the passage of this act, provided, that said ferry, when so established, shall be subject to the same regulations, and under the same restrictions as other ferries are or may hereafter be by the laws of this territory prescribing the manner in which ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said J. T. Hicklin, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said ferry :

For each wagon with two animals,.....	2 00
For hack or sulkey, with one horse,.....	1 50
For each man and horse,.....	75
For animal packed,.....	50
For each footman,.....	25
For horses, mules and cattle, each,.....	25
Sheep, goats, and hogs, each,.....	8

SEC. 3. The failure of the said J. T. Hicklin, his heirs and as-

signs, to comply with all the conditions hereinbefore specified, will render void the provisions of this act.

SEC. 4. This act shall take effect and be in force from and after its passage.

PASSED January 13th, 1863.

AN ACT

TO AUTHORIZE W. TIDD TO ESTABLISH AND KEEP A FERRY ON WHITE RIVER, PIERCE COUNTY.

SEC. 1. To authorize William Tidd, his heirs and assigns, to establish and keep a ferry on White river, Pierce county, at the point where the trail from South Prairie, in Pierce county, W. T., through the Nachess Pass crosses, and that the said W. Tidd, his heirs and assigns, have the exclusive privilege of ferrying on said river, within the following limits: Te wit—

Two miles above, and two miles below the point selected for said ferry: *Provided*, That said ferry when so established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may hereafter be by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That no court or board of county commissioners shall authorize any persons than herein authorized, to keep a ferry within the prescribed limits of this act.

SEC. 3. It shall be lawful for the said W. Tidd, his heirs and assigns, to collect and receive the following rates of toll:

For each footman,	50
Man and horse,	1 00
Wagon and span of horses, or yoke of oxen,	1 50
Each additional span or yoke,	50
Pack animals,	50
Loose stock other than sheep, hogs, or goats,	50
Sheep or hogs each,	25

But the county commissioners of the county within which said ferry may be located, at any regular term of court, shall have the power to change the above rates of toll, and when so changed, it shall be lawful

for said Wm. Tidd, his heirs and assigns, to collect and receive ferriage only according to rates of toll fixed by said commissioners.

SEC. 4. This act to take effect and be in force from and after its passage.

PASSED January 28th, 1863.

AN ACT

TO AUTHORIZE WESLEY VAN SCHUYVER TO ESTABLISH A FERRY
ACROSS THE COLUMBIA RIVER, NEAR VANCOUVER, IN CLARKE
COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Wesley Van Schuyver, his heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across the Columbia river, at, and within the limits herein described; To wit— Commencing at a point on the bank of the said river, known as the south-west corner of the city limits of Vancouver, and thence extending up said river one-half mile above the south-east corner of the city limits. The landings of said ferry, on the Washington side, to be upon the land claim of said Van Schuyver, at a point nearly opposite the ferry landing on the Oregon side of said river, and when necessary, at any point within said limits: *Provided,* Said landing shall not interfere with the vested rights of any other person or persons.

SEC. 2. The said Wesley Van Schuyver, shall, within three months from the passage of this act, procure and keep on said ferry a sufficient number of boats, which shall be properly and skillfully manned, so as to transport persons and property across said river with safety and dispatch.

SEC. 3. The county commissioners of Clarke county, shall, on or before their next regular session, upon the application of said Wesley Van Schuyver, fix upon and establish the rates of toll that it shall be lawful for said Van Schuyver to collect and receive for ferriage.

SEC. 4. This act shall take effect from and after the time of its passage, and shall continue of full force and virtue for the term of two years therefrom, and no longer.

PASSED January 19th, 1863.

AN ACT

TO AUTHORIZE B. R. STONE TO ESTABLISH AND KEEP A FERRY
ACROSS THE COLUMBIA RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That B. R. Stone, his heirs or assigns, be, and they are hereby authorized to establish and keep a ferry across the Columbia river, at a point known as Rockland, in Klickitat county, opposite the city of the Dalles, in Oregon, and the said B. R. Stone, his heirs or assigns, to have the exclusive privilege of ferrying on said river within the following limits: To wit—One mile above and one mile below the point where the military road from Fort Simcoe, now strikes the Columbia river, for the period of ten years from and after the passage of this act.

SEC. 2. It shall be lawful for the said B. R. Stone, his heirs or assigns, to receive and collect the following rates of toll, for ferrying on said ferry:

For each wagon and span of horses, mules or yoke of oxen,.....	3 00
Additional span of animals,	1 00
Man and horse,	1 00
For horse and pack,	1 00
Loose animals, other than sheep and hogs, each,	50
Sheep and hogs, each,	15

SEC. 3. The said B. R. Stone, his heirs or assigns, shall, within three months from the first day of February, 1863, procure and keep on said ferry a sufficient ferry boat, with a sufficient number of hands to work the same, for the transportation of all persons and their property without unnecessary delay.

SEC. 4. This act to take effect and be in force from and after its passage.

PASSED January 20th, 1863.

AN ACT

TO ESTABLISH A FERRY ACROSS THE COLUMBIA RIVER, AT WALLULA,
W. T.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That J. C. Newell, of the county of Walla

Walla, his heirs and assigns, be, and they are hereby authorized to establish a ferry across the Columbia river, at the town of Wallula, in said county of Walla Walla, for the term of ten years, and the said J. C. Newell shall have the exclusive right of ferrying upon said Columbia river for a distance of two miles above and below the said town of Wallula.

SEC. 2. Said J. C. Newell, his heirs and assigns, shall, on or before the first day of June, 1864, construct and keep at the said ferry, a good and sufficient ferry boat, to be propelled by steam power, with such other boats as may be deemed necessary for the speedy and safe transportation of passengers, teams, horses, cattle and other animals, as well as goods and effects; and such boat shall be furnished with men of sufficient strength and skill to manage them.

SEC. 3. That from and after the first day of June, A. D. 1864, the said J. C. Newell, his heirs or assigns, shall be required to run said ferry at all times during the day time, when the transportation of passengers, teams, animals, or freight may require it, except when the river may be closed by ice, or when it would be impracticable or dangerous to do so.

SEC. 4. It shall be lawful for the said J. C. Newell to receive and collect the following tolls for ferriage over said river:

For each wagon, with two animals attached,	4 00
For each pleasure, do., with two animals attached,	3 00
For each hack or sulky with one horse,	2 00
For each man and horse,	1 50
For each animal, packed,	1 50
For each head of horses or mules, loose,	75
For each footman,	50
For loose cattle, each,	50
For sheep, goats or hogs, each,	10

Except to emigrants crossing the plains, with the intention of settling in this territory, who shall only be charged one-half the above rates.

SEC. 5. The said J. C. Newell, his heirs and assigns, after having established their places of landing, shall report the same in writing to the county commissioners' court of Walla Walla county, after which, no license shall hereafter be granted during said term of ten years, to any other person or persons, or body corporate to keep or run a ferry and land at said landing, or within two miles above and below.

SEC. 6. That the said J. C. Newell, heirs and assigns, shall, before they commence operating said ferry under this act, file a bond with the clerk of the county commissioners' court of Walla Walla county, in a penalty of one thousand dollars, with security, to be approved by said clerk, payable to the people of the territory of Washington, and conditioned that they will keep and maintain said ferry, and in all things conform to, and comply with the provisions of this act.

SEC. 7. It shall be the duty of the said J. C. Newell, at the end of each year, to make out a written statement to be filed with the territorial auditor, of the proceeds and expenses of said ferry, the same to be sworn to by said party or the person running the ferry, and the said J. C. Newell shall pay into the territorial treasury, two and one-half per cent. of the net proceeds of said ferry, as shown by said statement.

SEC. 8. *Be it further enacted,* That all taxes assessed on said ferry by the county of Walla Walla, shall be expended and laid out in the construction and improvement of a road on the west side of the river, opposite the town of Wallula, from high water mark to the top of the bluffs, under the direction of the parties owning the ferry, whose duty it shall be to see that the tax so assessed is faithfully applied to the purpose specified.

SEC. 9. This act to be in force from and after the date of its passage.

PASSED January 20th, 1863.

AN ACT

TO AUTHORIZE J. G. DENNIS AND A. B. RABBESON, TO ESTABLISH AND KEEP A FERRY ACROSS THE OUTLET OF LAKE CHELAN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington.* That J. G. Dennis and A. B. Rabbeson, their heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across the outlet of Lake Chelan, at or near that part where the Similkameen pack trail crosses the same, and that the said J. G. Dennis, A. B. Rabbeson, their heirs and assigns, have the exclusive privilege of ferrying on said outlet, within the following limits: To wit—One mile above and one mile below the point selected for said ferry.

for the period of five years from and after the passage of this act: *Provided*, That said ferry when so established, shall be subject to the same regulations and under the same restrictions as other ferries are or may hereafter by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That no court or board of county commissioners shall authorize any person other than is herein mentioned, to keep a ferry within the prescribed limits of this act.

SEC. 3. It shall be lawful for the said J. G. Dennis and A. B. Rabbeson, their heirs and assigns, to collect and receive the following rates of toll :

For each footman,	25
Man and horse,	1 00
Pack animal,	75
Wagon and span of horses, mules, or yoke of oxen,	2 50
Additional span of animals,	1 00
Loose animals other than sheep or hogs,	50
Sheep and hogs, each,	10

But the county commissioners of the county in which said ferry is situated, shall have power to alter the above rates of toll, and when so altered, it shall be lawful for the said J. G. Dennis and A. B. Rabbeson, their heirs and assigns, to collect and receive ferriage only according to the rates fixed by said commissioners.

SEC. 4. The said J. G. Dennis and A. B. Rabbeson, shall within eight months from the passage of this act, procure and keep on said ferry a sufficient ferry boat, with a sufficient number of hands to work the same, for the transportation of all persons and their property without unnecessary delay.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 12th, 1863.

AN ACT

TO AUTHORIZE DAVID WILLIAMSON TO ESTABLISH ON SPOKANE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That David Williamson, and his associates, be.

and the same are hereby authorized to establish and keep a ferry across Spokane river, at a point two and a quarter miles above Colonel Wright's crossing of the same, with the privilege of two miles each way up and down from said point, and the said David Williamson and his associates shall have the exclusive privilege of ferrying across said river within the above limits for the term of six years from and after the passage of this act: *Provided*, That said ferry when so established, shall be subject to the same regulations and under the same restrictions as other ferries are or may hereafter be, by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said David Williamson and his associates to receive and collect the following rates of toll for ferrying upon said ferry: To wit—

For each wagon with four animals attached,	4 00
For each wagon with two animals attached,	3 00
For each man and horse,	1 50
For each animal, packed,	1 50
For each animal loose,	50
For each footman,	50
For each sheep or hog,	15

SEC. 3. That no court or board of county commissioners shall authorize any person, except as hereinafter provided in this act, to keep a ferry within the limits set out in this act, *Provided*, That the said David Williamson and his associates shall, within one year after the passage of this act, procure for said ferry a good and sufficient flat boat or flat boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said David Williamson and his associates, or if no good and sufficient flat boat or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Spokane county, then this act shall be void.

SEC. 4. The county commissioners of the county in which said ferry is or may be situated, may at any regular term of their court, change said rates of toll, after which the rates so established shall be the lawful rates of said ferry.

SEC. 5. The said David Williamson and his associates, shall, be-

fore collecting any money for ferrirge, as provided in this act, pay into the county treasury of the county in which said ferry is, or may be located, as an annual tax, a sum of twenty-five dollars for the use of said county.

SEC. 6. This act shall take effect and be in force from and after its passage.

PASSED January 27th, 1863.

AN ACT

TO AUTHORIZE A. B. RABBESON, J. G. DENNIS, AND A. B. C. DENNIS,
TO ESTABLISH A FERRY ACROSS COLUMBIA RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That A. B. Rabbeson, J. G. Dennis and A. B. C. Dennis, their heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across Columbia river at or near that part where the Rock creek wagon road crosses the same, and that said J. G. Dennis, A. B. C. Dennis and A. B. Rabbeson, their heirs and assigns, shall have the exclusive privilege of ferrying upon said river within the following limits: two miles above and two miles below the point selected for said ferry, for the term of five years from the passage of this act: *Provided,* That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions as other ferries are, or may hereafter be by the laws of this territory prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That no court or board of county commissioners shall authorize any person other than is herein mentioned, to keep a ferry within the prescribed limits of this act.

SEC. 3. It shall be lawful for the said A. B. Rabbeson J. G. and A. B. C. Dennis, their heirs and assigns, to collect and receive the following rates of toll:

For each footman,.....	50
For each man and horse,.....	1 50
For each wagon with one span of mules, horses, or yoke of oxen,	5 00
For each additional span of animals,.....	1 50
For each animal packed,.....	1 00

For all loose animals other than sheep and hogs, each,.....	75
For sheep and hogs, each,.....	25

But the county commissioners of the county in which said ferry is situated, shall have power to alter the above rates of toll, and when so altered, it shall be lawful for J. G. Dennis, A. B. C. Dennis and A. B. Rabbeson, their heirs and assigns, to collect and receive ferriage only according to the rates fixed by said commissioners.

SEC. 4. The said A. B. Rabbeson, J. G. Dennis and A. B. C. Dennis, their heirs and assigns, shall, within eight months from the passage of this act, procure and keep on said ferry, a good and sufficient ferry boat, with a sufficient number of hands to work the same, for the transportation of all persons and their property with safety and without unnecessary delay.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 19th, 1863.

AN ACT

TO AUTHORIZE W. C. COMPTON AND HENRY CARNES TO ESTABLISH A FERRY ACROSS THE PEN D'OREILLE RIVER AT SINGUACKWATEEN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That A. W. Compton and Henry Carnes, their heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across the Pen d'Oreille river, at Singuackwateen, in the county of Spokane, and that said W. A. Compton, Henry Carnes, his heirs and assigns, have the exclusive privilege of ferrying in Spokane county, one mile up and down said Pen d'Oreille river from the points upon said river, for the term of five years.

SEC. 2. It shall be lawful for the said A. W. Compton, Henry Carnes, their heirs and assigns, to receive and collect the following rates of toll for ferriage upon said river :

For crossing a footman,.....	50
For crossing a man and horse.....	1 00
For crossing horse and carriage,.....	1 50
For each animal packed,.....	1 00

For crossing two horses and carriage,	2 00
For each extra horse attached thereto,.....	25
For one yoke of oxen and wagon,.....	2 00
For each extra horse attached thereto,.....	25
For loose stock other than sheep and hogs,.....	25
For sheep or hogs, each,.....	10

SEC. 3. That no court, or board of county commissioners, shall authorize any person, except as hereafter provided by this act, to keep a ferry, within the limits set out in this act: *Provided*, That the said W. A. Compton, Henry Carnes, their heirs or assigns, shall, within six months after the passage of this act, procure for said ferry, or ferries, a good and sufficient flat boat or boats, which shall be kept at said ferry, with sufficient hands to work the same, for the transportation of all persons and their property across said river without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said W. A. Compton, his heirs and assigns, or if no good and sufficient flat boat, or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Spokane county, then this act shall be void.

SEC. 4. Nothing in this act shall be so construed as to prevent the county commissioners of the said county in which the said ferry is located, from regulating and fixing the rates of ferriage, and when the rates are thus fixed, it shall be lawful for the said W. A. Compton, Henry Carnes, their heirs and assigns, to receive pay for crossing on said ferries according to those rates only.

PASSED, December, 23d, 1862.

AN ACT

TO AUTHORIZE GEORGE MELVILLE TO ESTABLISH A FERRY ACROSS
THE KOOTENAY RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That George Melville and his associates, heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across the Kootenay river, at a point where the boundary commissioners' trail crosses said river, known as Chelemta, and that the said George

McLville shall have the exclusive privilege of ferrying upon the Kootenay river within the following limits, a distance up and down said river one mile from the point designated on said river, for the term of six years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions, as other ferries are, or may hereafter be, by laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That no court or board of county commissioners shall authorize any person other than is herein mentioned, to keep a ferry within the prescribed limits of this act.

SEC. 3. It shall be lawful for the said George A. Melville, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said ferry:

For each wagon with two animals,.....	3 00
For each additional animal,.....	50
For each man and horse,.....	1 50
For animal packed,.....	1 50
For each footman,.....	50
For all loose stock other than sheep or hogs,	50
For sheep or hogs each,	15

But the county commissioners of the county of Spokane, at any regular term, shall have jurisdiction over said ferry, and may change the above rates of toll, and when so changed, it shall be lawful for said George Melville, his heirs and assigns, to collect and receive ferriage only according to rates of toll fixed by said commissioners.

SEC. 4. The said George Melville, his heirs and assigns, shall, within six months after the passage of this act, procure and keep on said ferry a good and sufficient ferry boat, with a sufficient number of hands for the transportation of all persons and their property with safety and without unnecessary delay. The failure to comply with all and singular the conditions hereinbefore specified and enumerated will render void this act.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 12th, 1863.

AN ACT

TO AUTHORIZE N. B. DUTRO TO KEEP A FERRY ACROSS THE
NORTH FORK OF CLEARWATER RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That N. B. Dutro, his heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across the North Fork of Clearwater river, up and down one mile each way from the point selected for said ferry, for the term of six years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations as other ferries are or may hereafter be by the laws of this territory prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said N. B. Dutro, his heirs and assigns, to collect and receive the following rates of toll for ferriage on said ferry:

For crossing each footman,.....	25¢
For crossing man and horse,.....	1 00
For crossing pack animals,.....	1 00
For crossing loose animals, other than sheep, goats and hogs,...	50¢
For crossing sheep, or hogs, each,.....	10¢

But the county commissioners of the county within which said ferry may be located, at any regular term of court, shall have the power to change the above rates of toll, and when so changed, it shall be lawful for said Dutro, his heirs and assigns, to collect and receive ferriage only according to the rates of toll fixed by said commissioners.

SEC. 3. The said N. B. Dutro, his heirs and assigns, shall, before receiving any ferriage, and annually thereafter, pay into the county treasury of the county in which said ferry is located, the sum of twenty dollars for the use of said county, and shall, at all times after six months from the passage of this act, keep a good and sufficient flat boat or boats with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river without delay.

SEC. 4. This act to take effect and be in force from and after the date of its passage.

PASSED January 10th, 1862.

AN ACT

TO AUTHORIZE S. D. REINHART AND WHITFIELD KIRTLEY TO ESTABLISH A FERRY ON CLEARWATER RIVER, IN NEZ PERCES COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That S. D. Reinhart and Whitfield Kirtley, their heirs and assigns, are hereby authorized to establish and keep a ferry on the Clearwater river, at a point near where the Lapwai empties into said Clearwater river, and shall have the exclusive privilege of ferrying for the distance of one mile above, and one mile below the mouth of the Lapwai, for the term of ten years from the passage of this act: *Provided*, Said ferry, when so established, shall be under the direction of the county commissioners of Nez Perces county, who may make such regulations relative to ferriage fees as they may deem best.

SEC. 2. It shall be lawful for said S. D. Reinhart and Whitfield Kirtley, their heirs and assigns, to receive and collect the following rates of toll for ferriage:

For each wagon or carriage with two animals attached,.....	2 50
For each additional animal attached thereto,.....	50
For man and horse,.....	1 50
For each animal packed,.....	1 00
For each footman,.....	50
For each head of loose animals except sheep, goats and hogs,...	25
For each head of sheep, goats and hogs,.....	10

SEC. 3. That said S. D. Reinhart and Whitfield Kirtley, their heirs and assigns, shall, within six months from the passage of this act, have constructed good and sufficient boats, for ferrying safely all persons, animals and property. Said boats shall be skillfully manned by the requisite number of hands, for the expeditious transportation of all persons, animals and freight over said ferry. And any failure on the part of said S. D. Reinhart and Whitfield Kirtley, their heirs and assigns, to comply with any of the provisions of this act, shall be sufficient cause for a forfeiture of this franchise.

SEC. 4. This act shall take effect and be in force from and after its passage.

PASSED January 16th, 1863.

AN ACT

TO AUTHORIZE JOHN H. RATHBUN, LEVI W. NELSON AND THEIR ASSOCIATES, TO ESTABLISH A FERRY AT TACOUPA, BETWEEN THE MOUTH OF SALMON AND POWDER RIVERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That John H. Rathbun, Levi W. Nelson, and their associates, are hereby authorized to establish a ferry across Snake river, at Tacoupa, between the mouth of Salmon and Powder rivers, and that the said Rathbun, Nelson, and their associates, have the exclusive privilege of ferrying upon Snake river within the following limits, to-wit: a distance of one mile above, and one mile below the point selected for the ferry, for the period of five years from the passage of this act: *Provided,* That they shall pay annually into the county treasury the sum of thirty dollars, one-half to be paid into the territorial treasury: *And provided further,* That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions as other ferries are, or may be by the laws of this territory prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said John H. Rathbun, Levi W. Nelson, and their associates, to receive and collect the following tolls for ferriage over said river:

For crossing a footman,.....	50
For crossing man and horse,.....	1 00
For crossing packed animal,	1 00
For crossing horses and cattle in bands, each,.....	50
For crossing wagon with two horses, mules or oxen,.....	2 50
For crossing wagon with four animals attached,	3 50
For crossing wagon with six animals attached,.....	4 50
For crossing a horse and buggy,.....	2 50
For crossing sheep or hogs, each,	15

Provided, That the county commissioners of Idaho county, at their regular November term of said commissioners' court, shall have power to alter the above rates of toll, and when so altered, it shall be lawful for the said J. H. Rathbun, Levi W. Nelson, their associates, or assigns, to collect and receive toll only according to the rates fixed by said commissioners.

SEC. 3. That said John H. Rathburn, Levi W. Nelson, and their associates, shall, within six months from the passage of this act, have good and sufficient boats constructed for safely ferrying persons, animals and property, which said boats shall be properly and skillfully manned

by the requisite number of hands to expedite transportation over said ferry.

SEC. 4. The failure of the said Rathbun, Nelson, and their associates, to comply with the conditions hereinbefore specified, will render void the provisions of this act.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 22d, 1863.

AN ACT

TO AUTHORIZE HENRY DEIFENBACKER TO ESTABLISH AND KEEP A
FERRY ACROSS SALMON RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Henry Deiffenbacker, his heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across Salmon river at the mouth of the first creek above Meadow creek, on the north side of said Meadow creek, in Idaho county, on the trail leading from Florence City to Warren's Diggings, and that the said Henry Deiffenbacker, his heirs and assigns, have the exclusive privilege of ferrying on said river within the following limits, to-wit: one and one-half miles above, and one and one-half miles below the point selected for said ferry, for the period of six years from the passage of this act.

SEC. 2. It shall be lawful for the said Henry Deiffenbacker his heirs and assigns, to collect and receive the rates of ferriage now established by the board of county commissioners of Idaho county.

SEC. 3. The county commissioners of Idaho county may, at any regular term of said board, alter the rates of toll, and the rates so fixed, may be collected by the said Henry Deiffenbacker, his heirs and assigns.

SEC. 4. That no court or board of county commissioners shall authorize any person, except as hereinafter provided in this act, to keep a ferry within the limits set out in this act: *Provided,* That the said Deiffenbacker, his heirs and assigns, shall pay the annual license fee as fixed by the board of county commissioners of Idaho county, and comply with the law now in force regulating ferries, then this act shall be void.

SEC. 5. This act to take effect and be force from and after its passage.

PASSED January 10th, 1863.

AN ACT

TO AUTHORIZE CHARLES N. MULLAN TO ESTABLISH A FERRY ON THE PEN D'ORIELLE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Charles N. Mullan and his associates, be, and they are hereby authorized to establish and keep a ferry across the Pen d'Orielle river, at or near a point opposite to the St. Ignatius Mission, and that the said Charles N. Mullan and his associates have the exclusive privilege of ferrying upon said river, within the following limits: A distance up and down said river of one mile from said ferry, for the term of six years, from the passage of this act: *Provided,* That said ferry when so established, shall be subject to the same regulations as other ferries are, or may hereafter be by the laws of this territory prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for said Charles N. Mullan and his associates, to receive and collect the following rates of toll, for ferriage upon said ferry:

For each wagon with four animals attached,	4 00
For each wagon with two animals attached,	3 00
For each additional animal,	50
For each man and horse,	1 50
For each animal packed,	1 50
For each footman,	50
For loose animals,	25
For sheep or hogs, each,	10

SEC. 3. Said Charles N. Mullan and his associates, shall within one year from and after the passage of this act, procure and keep on said ferry a sufficient number of hands to work the same, for the transportation of all persons and their property without unnecessary delay.

SEC. 4. The said Charles N. Mullan and his associates, shall, before collecting any money for ferriage as provided in this act, pay into the county treasury of the county in which said ferry may be located, as an annual tax, a sum of twenty-five dollars for the use of said county.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 15th, 1863.

AN ACT

TO AUTHORIZE DAVID H. FOGUS TO ESTABLISH A FERRY ON SNAKE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That David H. Fogus and his associates, be, and they are hereby authorized to establish a ferry across Snake river, at or near a point opposite the mouth of Birch Creek, and that he have the exclusive right for a distance of two miles above and two miles below the point selected for ferrying on said river, for the period of ten years from and after the passage of this act: *Provided,* That said ferry when so established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may hereafter be, by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said David H. Fogus and his associates, to receive and collect the following rates of toll for ferrying upon said ferry: To wit—

For each wagon with two animals attached,	4 00
For each wagon with four animals attached,	5 00
For each man and horse,	1 50
For each animal packed,	1 50
For each head of horses and cattle,	50
For each footman,	50
For hogs or sheep, each, per head,	15

SEC. 3. That no courts or board of county commissioners shall authorize any person, except as hereinafter provided in this act, to keep a ferry within the limits set out in this act: *Provided,* That the said David H. Fogus and his associates shall, within one year after the passage of this act, procure for said ferry a good and sufficient flat boat, or flat boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river, without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said David H. Fogus and his associates, or if no good and sufficient flat boat or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Idaho county, then this act shall be void.

SEC. 4. The county commissioners of the county in which said ferry is, or may be situated, may at any regular term of their court change said rates of toll, after which, the rates so established shall be the lawful rates of said ferry.

SEC. 5. This act to go into effect and be in force from and after its passage.

PASSED January 23d, 1863.

AN ACT

TO AUTHORIZE GEORGE MESSESEE AND HIS ASSOCIATES, TO ESTABLISH A FERRY AT SALMON FALLS, ON SNAKE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That George Messegee and his associates, are hereby authorized to establish and keep a ferry across Snake river, at a place known as Salmon Falls, and that the said Messegee and his associates shall have exclusive privilege of one mile above and below the aforesaid point, for the term of ten years from the passage of this act.

SEC. 2. It shall be lawful for the said George Messegee and his associates to collect and receive the following rates of toll for ferriage upon said ferry:

For each footman,	50
For each pack animal,	1 50
For each sheep, hog, or goat,	10
For horses, mules, or cattle, each,	50
For each wagon,	3 00
For freight, per ton,	5 00

SEC. 3. The said Messegee and his associates shall, within eight months from the passage of this act, keep on said ferry a sufficient number of boats and hands to work them, to transport persons and property over said river without delay.

SEC. 4. The county commissioners of Boise county may, at any regular term of a commissioners' court, alter the rates of toll, and the rates so fixed may be collected by the said Messegee and his associates.

SEC. 5. The failure of the said Messegee and his associates, within eight months from the passage of this act, to comply with its provisions, shall render this act null and void.

SEC. 6. This act to be in force, from and after its passage.

PASSED, January 24th, 1863.

AN ACT

TO AUTHORIZE B. P. STANDIFER, AND H. M. CHASE, AND THEIR ASSOCIATES TO ESTABLISH A FERRY ON SNAKE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That B. P. Standifer, H. M. Chase and their associates, be, and they are hereby authorized to establish and keep a ferry across Snake river, at or near Fort Boise, and that the said B. P. Standifer, H. M. Chase, and their associates, have the exclusive privilege of ferrying upon Snake river, within the following limits: A distance up and down said river each way, of three miles from said ferry, for the term of six years from the passage of this act: *Provided,* That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions as other ferries are, or may hereafter be by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said B. P. Standifer, H. M. Chase and their associates, to receive and collect the following rates of toll for ferriage upon said ferry.

For each wagon with four animals attached,	5 00
For each wagon with two animals attached,	3 50
For each additional animal,	50
For each man and horse,	1 50
For each animal, packed,	1 50
For each footman,	50
For loose animals,	50
For sheep or hogs, each,	15

SEC. 3. Said B. P. Standifer, H. M. Chase and their associates shall, within one year from and after the passage of this act, procure and keep a sufficient ferry boat, with a sufficient number of hands to work the same, for the transportation of all persons and their property without unnecessary delay.

SEC. 4. The said B. P. Standifer, H. M. Chase, and their associates, shall, before collecting any money for ferriage as provided in this act, pay into the county treasury of the county in which said ferry may be located, as an annual tax, a sum of twenty-five dollars for the use of said county.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 23d, 1863.

AN ACT

AUTHORIZING J. M. MORE TO ESTABLISH A FERRY ON SNAKE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That J. M. More, his heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across Snake river, between the mouth of Payette river, and Weiser Creek tributaries of said Snake river, and that he have the exclusive right to ferry over said river, between the points indicated, for the term of ten years from and after the passage of this act: *Provided*, That the said ferry when so established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may hereafter be by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said J. M. More, to receive and collect the following rates of toll, for ferrying upon said ferry: To wit—

For each wagon with two animals attached,	4 00
For each wagon with four animals attached,	5 00
For each man and horse,	1 50
For each animal packed,	1 50
For each loose animal, other than hogs or sheep,	50
For each footman,	50
For hogs and sheep, per head,	15

SEC. 3. That no court or board of county commissioners shall authorize any person, except as hereinafter provided in this act, to keep a ferry within the limits set out in this act: *Provided*, That the said J. M. More, his heirs and assigns, shall, within one year after the passage of this act, procure for said ferry a good and sufficient flat boat, or flat boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river, without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said J. M. More, his heirs and assigns, or if no good and sufficient flat boat or boats, with sufficient hands to work them, be provided within the time required in this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Boise county, and their decision approved by the district court, then this act shall be void.

SEC. 4. The county commissioners of the county in which said

ferry is or may be situated, may, at any regular term of their court change said rates of toll, after which, the rates so established, shall be the lawful rates of said ferry.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 23d, 1863.

AN ACT

TO AUTHORIZE D. H. ALDERSON AND HIS ASSOCIATES TO ESTABLISH
AND KEEP A FERRY ACROSS BOISE RIVER, AT OR NEAR THE
POINT KNOWN AS THE UPPER CROSSING IN 1862.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That D. H. Alderson, his associates, their heirs and assigns, be, and they are authorized to establish and keep a ferry across Boise river, at a point to be selected between the upper crossing of the emigrant road and the foot of the mountains, and shall have the exclusive privilege of ferrying for the distance of two miles up and two miles down the said river, from the point selected for said ferry, for the term of five years from the passage of this act: *Provided,* That said ferry, when so established, shall be under the direction of the county commissioners of the county within which the same may be situated, who may make such regulations relating to ferriage fees as they may deem best and right.

SEC. 2. It shall be lawful for the said D. H. Alderson and his associates, heirs and assigns, to collect and receive the following rates of toll:

For wagon, with two horses attached,	3 00
For carriage, with two horses attached,	3 00
For cart or buggy, with one horse,	2 00
For each man and horse,	1 25
For loose animals, other than sheep or hogs,	50
For sheep and hogs, per head,	15
For footman,	50

SEC. 3. That said D. H. Alderson and his associates, shall, within one year from and after the passage of this act, have constructed a good

and sufficient boat or boats, for ferrying persons and their property safely, and said boat or boats shall be properly and skilfully manned by the requisite number of hands to expedite transportation over said ferry.

SEC. 4. This act to be in force from and after its passage.

PASSED January 23d, 1863.

AN ACT

TO AMEND AN ACT ENTITLED AN ACT TO AUTHORIZE GEORGE A. TYKEL AND ASSOCIATES TO GRADE THE BLUFF ON SNAKE RIVER, AND TO ESTABLISH A FERRY ON SAID SNAKE RIVER, PASSED JANUARY 28th, 1862.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the second section of the act of which this is amendatory shall be made to read as follows: It shall be lawful for said George A. Tykel and his associates to collect the following rates of toll as ferriage fees :

For crossing each person,.....	1 00
For “ each animal with pack,.....	1 50
For “ each horse, mule, or cattle,.....	1 00
For “ each sheep, hog, or other small animal,.....	20
For each wagon or carriage and span of horses, mules and oxen,	3 00
For each additional span of animals,.....	1 00
For each ton of freight not in wagons or packs,.....	4 00

Provided, This act shall in no way abridge the rights of the county commissioners to alter said tolls at any time.

SEC. 2. This act shall take effect and be in force from and after its passage.

PASSED January 27th, 1863.

AN ACT

TO AUTHORIZE J. K. SHAFER, HIS HEIRS AND ASSIGNS, TO ESTABLISH AND KEEP A FERRY ACROSS SALMON RIVER IN IDAHO COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That J. K. Shafer, his heirs and assigns, be, and

they are hereby authorized to establish and keep a ferry across Salmon river, in Idaho county, at a point on said river, about three miles above the mouth of John Day's creek, and at or near the place where the trail crosses Salmon river, with the exclusive privilege of ferrying and landing on said river for the distance of two miles up, and two miles down said river, from the point selected for said ferry, for the term of five years from and after the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions as other ferries are or may be by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said J. K. Shafer, his heirs and assigns, to collect and receive the following rates of ferriage upon said river:

For each wagon with two animals attached,	3 00
For each wagon with four animals attached,	4 00
For each wagon with six animals attached,	5 00
For each buggy with two animals,	2 50
For each buggy with one animal,	2 00
For each man and horse,	1 50
For each pack mule,	1 00
For each footman,	50
For loose cattle in bands, per head,	50
For sheep, goats or hogs, per head,	20

SEC. 3. The county commissioners of the county in which said ferry is or hereafter may be situated, may at any regular session of the said board of commissioners, regulate and fix the rates of toll, to be received by the said J. K. Shafer, his heirs and assigns, after which he or they shall only be authorized to receive the rate of toll so fixed by the said board of commissioners.

SEC. 4. This act shall take effect and be in force from and after the date of its passage.

PASSED January 10th, 1863.

AN ACT:

TO AUTHORIZE A. CALEWAY, AND HIS ASSOCIATES TO ESTABLISH AND KEEP A FERRY ACROSS SNAKE RIVER NEAR FORT HALL.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That A. Caleway and his associates, their heirs and assigns, be, and they are authorized to establish and keep a ferry across Snake river at the point where the immigrant road crosses above Fort Hall, leading to Boise river, and shall have the exclusive privilege of ferrying for the distance of three miles up, and three miles down said river, from the point selected for said ferry, for the term of five years from the passage of this act: *Provided,* That in two months after said ferry is put in operation, that said A. Caleway and his associates, their heirs or assigns, shall pay into the county treasury, the sum of fifty dollars, and each year thereafter, fifty per cent. of which shall be paid to the territory.

SEC. 2. It shall be lawful for the said A. Caleway, and his associates, heirs or assigns, to collect and receive the following rates of toll or ferriage:

For wagon with two horses attached,.....	3 50
For carriage with two horses attached,.....	3 50
For cart or buggy, with one horse,.....	2 00
For each additional animal,.....	50
For man and horse,	1 50
For pack animals loaded,.....	1 50
For footmen,	50
For sheep or hogs,	15
For other loose animals,.....	50

SEC. 3. The said A. Caleway, and his associates, shall, within one year from the passage of this act, have constructed a good and sufficient boat or boats for ferrying safely persons, animals and property, and said boat or boats shall be properly and skillfully manned by the requisite number of hands to expedite transportation over said ferry.

SEC. 4. That the county commissioners of the county in which said ferry may be located, may, at any regular meeting, alter the rates of toll, after which the rates of toll as established, shall be the lawful rates of such ferry.

SEC. 5. This act to be in force from and after its passage.

PASSED January 23d, 1863.

AN ACT

TO AUTHORIZE LYMAN SHAFFER AND JOHN C. SMITH TO ESTABLISH
A FERRY ACROSS SNAKE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Lyman Shaffer, John C. Smith, and their associates, be, and they are hereby authorized to establish a ferry across Snake river at a point opposite the mouth of Powder river, and extending from said point up and down the river one mile each way, and that the said Lyman Shaffer, John C. Smith and their associates, have the exclusive privilege of ferrying across said river within the above limits, for the term of six years from the passage of this act: *Provided*, That said ferry, when so established shall be subject to the same regulations, and under the same restrictions as other ferries are or may hereafter be, by the laws of this territory prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said Lyman Shaffer, John C. Smith and their associates, to receive and collect the following rates of toll, for ferrying upon said ferry, to-wit:

For each wagon with two animals attached,.....	3 00
For each pleasure wagon with two animals attached,.....	2 00
For each hack or sulkey with one horse,.....	1 50
For each man and horse,.....	1 00
For each loose animal, other than sheep or hogs,.....	25
For each animal packed,	1 00
For each footman,.....	1 50
For each sheep, hog, or goat,.....	10

SEC. 3. That no court or board of county commissioners shall authorize any person, except as hereinafter provided in this act, to keep a ferry within the limits set out in this act: *Provided*, That the said Lyman Shaffer, John C. Smith and their associates, shall, on or before the first day of July, 1863, procure for said ferry a good and sufficient flat boat, or flat boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said ferry, without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said Lyman Shaffer, John C. Smith, and their associates, or if no good and sufficient flat boat or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being

made to the satisfaction of the board of county commissioners of Idaho county, then this act shall be void.

SEC. 4. The county commissioners of the county in which said ferry is, or may be situated, may, at any regular term of their court, change said rates of toll, after which the rates so established, shall be the lawful rates of said ferry. That they shall pay annually into the county treasury the sum of thirty dollars, one-half to be paid into the territorial treasury.

PASSED January 13th, 1863.

AN ACT

AUTHORIZING A. D. SAUNDERS AND HIS ASSOCIATES, TO ESTABLISH
A FERRY ACROSS SNAKE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That A. D. Saunders and his associates, be, and they are hereby authorized to establish a ferry across Snake river, at a point about five miles above the mouth of the Malheur river, near More's old Crossing, and extending from said point up and down the river one mile each way, and that the said A. D. Saunders and his associates have the exclusive privilege of ferrying across said river within the above limits, for the term of six years from the passage of this act: *Provided,* That said ferry, when so established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may hereafter be, by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for said A. D. Saunders and his associates, to receive and collect the following rates of toll, for ferrying upon said ferry, to-wit:

For each wagon with four animals attached,	5 00
For each wagon with two animals attached,	4 00
For each man and horse,	1 50
For each animal packed,	1 50
For each animal loose,	50
For each footman,	50
For each sheep or hog,	15

SEC. 3. That no court, or board of county commissioners, shall authorize any person, except as hereinafter provided in this act, to keep a ferry, within the limits set out in this act: *Provided*, That the said A. D. Saunders and his associates, shall, within one year after the passage of this act, procure for said ferry a good and sufficient flat boat, or flat boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said A. D. Saunders and his associates, or if no good and sufficient flat boat or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Boise county, then this act shall be void.

SEC. 4. The county commissioners of the county in which said ferry is or may be situated, may, at any regular term of their court change said rates of toll, after which the rates so established, shall be the lawful rates of said ferry.

SEC. 5. This act shall take effect and be in force from and after the passage of this act.

PASSED January 15th, 1863.

AN ACT

TO AUTHORIZE J. C. SMITH TO KEEP A FERRY ON BOISE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That J. C. Smith and his associates, be, and they are hereby authorized to establish and keep a ferry across Boise river, at or near a point where the trail leading down the divide between More's creek and the North Fork of Boise river, strikes the main Boise river, up and down said Boise river two miles above, and two miles below the place selected for said ferry exclusively, for the term of five years from the passage of this act: *Provided*, That said ferry, when so established, shall be under the direction of the county commissioners of the county within which the same may be situated, who may make such regulations relating to ferriage fees as they may deem best.

SEC. 2. It shall be lawful for the said J. C. Smith and his associates, to collect and receive the following rates of toll at said ferry: to-wit:

For each wagon or carriage with two horses attached,.....	3 50
For each additional animal,.....	50
For each animal packed,.....	1 50
For each man and horse,.....	1 50
For each footman,.....	50
For each animal loose,.....	50
For each sheep or hog,.....	15

SEC. 3. That said J. C. Smith and his associates, shall, within twelve months from the passage of this act, have constructed good and sufficient boats for ferrying safely persons, animals and property, which said boats shall be properly and skillfully manned by the requisite number of hands to expedite transportation over said ferry.

SEC. 4. This act shall take effect and be in force from and after its passage.

PASSED January 27th, 1863.

AN ACT

TO AUTHORIZE WILLIAM M. POWERS AND HIS ASSOCIATES TO ESTABLISH A FERRY ON THE NORTH FORK OF PAYETTE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That William M. Powers and associates, their heirs and assigns, be and they are hereby authorized to establish a ferry at the crossing of the North Fork of Payette river, by the trail under construction; leading from the Weiser river valley, across the Payette valley, near its northern end, below the lakes, to the Warren diggings; to have the exclusive right for a distance of one mile each side, above and below said ferry, for a term of five years from its completion.

SEC. 2. It shall be lawful for said Wm. M. Powers and associates to collect the following rates of toll thereon:

For crossing each person,.....	50
For crossing each animal with pack,	1 00

For crossing each animal without pack,..... 50
 For crossing each sheep or hog,..... 15

SEC. 3. The said ferry shall be completed within seven months from the passage of this act, by having provided a sufficient number of boats, with hands to manage the same, for the safe and speedy transportation of persons and property, and when so established, shall be under the control of the county commissioners of Idaho county, to make any necessary rules and regulations thereto, and to alter the above rates of toll, by establishing other rates in lieu thereof, at any regular term of their commissioners' court.

PASSED January 28th, 1863.

AN ACT

TO AUTHORIZE SANFORD OWEN TO ESTABLISH A FERRY ACROSS
 PAYETTE RIVER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Sanford Owen, be, and hereby is authorized to establish and keep a ferry across the Payette river, at a point three miles above Goodall's crossing on said river, and that he have the exclusive right to ferry on said river for a distance of four miles, two above and two below the point selected for his said ferry, for the term of ten years from and after the passage of this act: *Provided,* That said ferry, when so established, shall be subject to the same restrictions as other ferries are, or may be hereafter, by the laws of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said Sanford Owen to receive and collect the following rates of toll for ferriage upon said ferry:

For crossing a footman,	50
For crossing man and horse,	1 50
For crossing animal, packed,	1 50
For crossing horses, each, loose,	50
For crossing wagon, four animals attached,.....	5 00
For crossing wagon, two animals attached,.....	3 50
For crossing wagon, one animal attached,.....	2 50
For crossing loose cattle, each,.....	50
For crossing hogs or sheep, per head,	15

SEC. 3. That no court or board of county commissioners shall authorize any person, except as is hereinafter provided in this act, to keep a ferry within the limits set out in this act: *Provided*, That the said Sanford Owen shall, within eight months after the passage of this act, procure and keep a good and sufficient flat boat or flat boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river, without delay, and should the laws regulating ferries now, or such as may hereafter be in force, be violated by the said Sanford Owen, or if no good and sufficient flat boat or boats, with sufficient hands to work them, be provided within the time prescribed in this act, upon proof thereof being made to the satisfaction of the board of county commissioners of Boise county, then this act shall be void.

SEC. 4. The county commissioners of the county in which said ferry is, may at any regular term of their court, change said rates of toll, after which, the rates so established shall be the lawful rates of said ferry.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED January 23d, 1863.

AN ACT

TO AUTHORIZE J. M. MORE, J. C. SMITH, AND THEIR ASSOCIATES, TO
CUT A DITCH OR CANAL.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That J. M. More, J. C. Smith, and their associates, shall have power to open a canal or ditch, for the purpose of conveying water from Grimes' Creek along the side hills and gulches bordering said stream, for the distance of fifteen miles in length, by twenty-four feet in width.

SEC. 2. It shall be the duty of the said J. M. More, J. C. Smith, and their associates, after the completion of said ditch or any part thereof, to furnish the miners with water as far as practicable, at prices reasonable and uniform: *Provided*, there be a surplus over the wants of the said J. M. More, J. C. Smith, and their associates, in working their own mining claims along the line of said ditch or canal.

SEC. 3. It shall be lawful for the said J. M. More, J. C. Smith, and their associates to purchase and hold real estate, to construct reservoirs, aqueducts, to lay pipes or whatever else may be necessary to supply their canal or ditch with water, adequate for mining purposes.

SEC. 4. If any person or persons obstruct the passage of water in said ditch or canal, by cutting the embankment or otherwise, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not to exceed the sum of five hundred dollars, or by imprisonment at hard labor for one year, or both: *Provided*, Such criminal prosecution shall not impair the right of the said J. M. More, J. C. Smith and their associates, to sue such offenders for damages in the civil courts.

SEC. 5. That the ditches or canals established by this act, shall be subject to the same laws, regulations and restrictions as other ditches or canals are, or may hereafter be, by the laws of this territory, prescribing the manner in which ditches are located, governed, and held.

SEC. 6. This act shall go into effect immediately after its passage.

PASSED January 13th, 1863.

AN ACT

TO AUTHORIZE J. BRANSTUTER, D. H. FOGUS, AND THEIR ASSOCIATES, TO CUT A CANAL TO CONVEY WATER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That J. Branstuter and D. H. Fogus and their associates, shall have power to open a canal or ditch, for the purpose of conveying water from Moore's Creek, along the side hills and gulches bordering said stream, for the distance of fourteen miles in length, by twenty-four feet in breadth.

SEC. 2. It shall be the duty of the said J. Branstuter, D. H. Fogus, and their associates, after the completion of said ditch, or any part thereof, to furnish the miners with water as far as practicable, at prices reasonable and uniform: *Provided*, There be a surplus over the wants of the said J. Branstuter, D. H. Fogus, and their associates, in working their own mining claims, along the line of said ditch or canal.

SEC. 3. It shall be lawful for the said J. Branstuter, D. H. Fogus

and their associates, to purchase and hold real estate, to construct reservoirs and aqueducts, to lay pipes, or whatever else may be necessary to supply their canal or ditch with water adequate for mining purposes.

SEC. 4. If any person or persons obstruct the passage of water in said ditch or canal, by cutting its embankments or otherwise, shall be guilty of a misdemeanor, and on conviction, shall be fined not to exceed the sum of five hundred dollars, or by imprisonment at hard labor for one year, or both: *Provided*, Such criminal prosecution shall not impair the right of the said J. Branstuter, D. H. Fogus and their associates, to sue such offenders for damages in civil courts.

SEC. 5. That the ditches or canals established by this act, shall be subject to the same laws, regulations and restrictions as other ditches or canals are, or may hereafter be, by the laws of this territory, prescribing the manner in which ditches are located, governed and held.

SEC. 6. This act shall go into effect immediately after its passage.

PASSED, January 13th, 1863.

AN ACT

TO AUTHORIZE LAVE LINDSAY AND HIS ASSOCIATES TO CUT A CANAL TO CONVEY WATER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Lave Lindsay and his associates shall have power to open a canal or ditch for the purpose of conveying water from the East Ford of Yinnes Creek, along the side hills and gulches bordering said stream, for the distance of five miles in length, and twenty-four feet in width.

SEC. 2. It shall be the duty of the said Lave Lindsay and his associates, after the completion of said ditch, or any part thereof, to furnish the miners with water as far as practicable, at prices reasonable and uniform: *Provided*, There be a surplus over the wants of the said Lave Lindsay and his associates, in working their own mining claims along the line of said ditch or canal.

SEC. 3. It shall be lawful for the said Lave Lindsay and his associates to purchase and hold real estate, to construct reservoirs and aque-

ducts, to lay pipes or whatever else may be necessary to supply their canal, or ditch with water adequate for mining purposes.

SEC. 4. If any person or persons obstruct the passage of water in said ditch or canal, by cutting its embankments or otherwise, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not to exceed the sum of five hundred dollars, or by imprisonment at hard labor for one year or both: *Provided*, Such criminal prosecution shall not impair the right of the said Lave Lindsay and his associates, to sue such offenders for damages in the civil courts.

SEC. 5. That the ditches or canals established by this act, shall be subject to the same laws, regulations and restrictions as other ditches or canals are, or may hereafter be, by the laws of this territory prescribing the manner in which ditches are located, governed and held.

SEC. 6. This act shall go into effect immediately after its passage.
PASSED January 13th, 1863.

AN ACT

TO AUTHORIZE A. D. SAUNDERS, CHARLES MILLER AND J. J. STANDEFER, TO CUT A CANAL TO CONVEY WATER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That A. D. Saunders, Charles Miller, and J. J. Standefer, shall have power to open a canal or ditch for the purpose of conveying water from Elk creek along the side hills and gulches bordering said stream, for the distance of eight miles in length, by twenty-four feet in width.

SEC. 2. It shall be the duty of the said A. D. Saunders, Charles Miller, and J. J. Standefer, after the completion of said ditch, or any part thereof, to furnish the miners with water as far as practicable, at prices reasonable and uniform: *Provided*, There be a surplus over the wants of the said A. D. Saunders, Charles Miller, and J. J. Standefer, in working their own mining claims.

SEC. 3. It shall be lawful for the said A. D. Saunders, Charles Miller, and J. J. Standefer to purchase and hold real estate, to construct reservoirs, aqueducts, to lay pipes or whatever else may be necessary, to supply their canal or ditch with water adequate for mining purposes.

SEC. 4. If any person or persons obstruct the passage of water in said ditch or canal by cutting its embankment or otherwise, they shall be guilty of a misdemeanor, and, on conviction, shall be fined not to exceed the sum of five hundred dollars, or by imprisonment at hard labor for one year or both: *Provided*, Such criminal prosecution shall not impair the right of the said A. D. Saunders, Charles Miller, and J. J. Standefer, to sue such offenders in the civil courts for damages.

SEC. 5. That the ditches or canals established by this act shall be subject to the same laws, regulations and restrictions, as other ditches or canals are, or may hereafter be, by the laws of this territory prescribing the manner in which ditches are located, governed and held.

SEC. 6. This act shall go into effect immediately after its passage.

PASSED January 13th, 1863.

AN. ACT

FOR THE RELIEF OF ANDREW J. MOSES FOR CERTAIN SERVICES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the sum of two hundred dollars be, and the same is hereby appropriated out of any money in the territorial treasury not otherwise appropriated, to pay Andrew J. Moses for his services as enrolling clerk of the legislative assembly, session 1858-59, being for services forty days at five dollars per diem.

SEC. 2. The territorial auditor be, and he is hereby authorized to draw a warrant upon the territorial treasurer in favor of Andrew J. Moses for the sum of two hundred dollars, and the said treasurer is hereby authorized to pay the same out of any funds not otherwise appropriated.

PASSED January 27th, 1863.

AN ACT

APPOINTING J. W. GRANT ENROLLING CLERK FOR THE PRESENT SESSION OF THE LEGISLATIVE ASSEMBLY, AND PROVIDING PAYMENT FOR HIS SERVICES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That J. W. Grant, be, and he is hereby appointed enrolling clerk of the legislative assembly of the territory of Washington, for its present session.

SEC. 2. At the close of the present session, it shall be the duty of the president of the council, and the speaker of the house, to make, and deliver to J. W. Grant, a certificate of the number of days he may have served the legislative assembly as enrolling clerk.

SEC. 3. Upon the presentation of the certificate provided for in the preceding section, to the territorial auditor, it shall thereupon be his duty, to draw his warrant upon the territorial treasurer, in favor of Mr. Grant, for what time he may have served as enrolling clerk, as shown by said certificate, at the rate of five dollars per diem.

SEC. 4. Upon the presentation of the warrant, authorized to be drawn by the foregoing section, to the treasurer, it shall be his duty to pay the same from any money in the treasury not otherwise appropriated.

SEC. 5. This act to take effect and be in force from and after its passage.

PASSED December 20th, 1862.

AN ACT

TO PAY A. J. LAWRENCE FOR CERTAIN SERVICES.

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 A. J. Lawrence for services as clerk of the joint committee, appointed by council and house of representatives, to prepare and report certain laws of Washington territory.

SEC. 2. The territorial auditor is hereby required to draw a warrant upon the territorial treasurer, in favor of A. J. Lawrence for the amount appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED January 20th, 1863.

AN ACT

TO PAY JOHN R. BERGEN FOR CERTAIN SERVICES.

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 R. Bergen for services as clerk of the joint committee, appointed by the council and house of representatives, to prepare and report certain laws.

SEC. 2. The territorial auditor is hereby required to draw a warrant upon the territorial treasurer in favor of the said John R. Bergen, for the amount above appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

PASSED January 20th, 1863.

AN ACT

TO PAY RICHARD LANE CERTAIN CLERK'S FEES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That there be, and hereby is appropriated, the sum of ninety-two dollars, for the payment of services rendered by Richard Lane, clerk of the supreme court of W. T., in rendering the opinions of the supreme court, amounting to forty-six thousand folios, and that the auditor of the territory is hereby authorized to issue his warrant therefor, which warrant the treasurer of the territory is hereby authorized to pay out of any funds in the treasury, not otherwise appropriated.

PASSED January 27th, 1863.

AN ACT

TO COMPENSATE W. H. POPE FOR COPYING DECISIONS OF THE SUPREME COURT OF WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of seventy-five dollars is hereby appropriated out of the territorial treasury to the payment of W. H. Pope, for services rendered in copying the decisions of the supreme court of this territory.

SEC. 2. It shall be the duty of the territorial auditor to draw a warrant on the territorial treasurer, for the said sum of seventy-five dollars, in favor of the said W. H. Pope, and the territorial treasurer is hereby authorized and directed to pay the same out of any moneys in the treasury, not otherwise appropriated.

SEC. 3. This act to take effect from and after its passage.

PASSED January 12th, 1863.

AN ACT

FOR THE RELIEF OF WILLIAM UTTER AND ABNER DUNN, OF WHATCOM COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That William Utter and Abner Dunn are hereby released from all claims on the part of the territory against them, as security for William Kelly on his official bond, as late sheriff of Whatcom county, in this: That the said Kelly was drowned while in the discharge of his official duties as collector of territorial poll tax, having upon his person at the time, one hundred blank poll tax receipts, for which he had receipted to the treasurer of the county of Whatcom, as required by law, the said treasurer being responsible to the territory for the same.

SEC. 2. The auditor of the territory is hereby directed to credit the said treasurer of Whatcom county, with one hundred poll tax receipts, as lost on the person of said sheriff at the time of his death.

PASSED January 10th, 1863.

AN ACT

TO PAY LYCURGUS JACKSON CERTAIN FEES, FOR SERVICES AND EXPENSES IN THE CUSTODY OF A CONVICT TO THE PENITENTIARY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there be, and hereby is appropriated, the sum of two hundred and thirty six dollars and fifty cents, for the payment of Lycurgus Jackson, late sheriff of Walla Walla county, for his fees as allowed by the district judge, in the case of the territory of Washington vs. James McCarten, convicted of a penitentiary offense, and sentenced to the penitentiary at the term of the district court in Walla Walla, held in June, 1859, and that the auditor of the territory is hereby directed to issue his warrant therefor, which warrant, the treasurer of the territory is hereby directed to pay out of any funds in the treasury not otherwise appropriated.

PASSED, January 26th, 1863.

AN ACT

TO PAY DR. J. B. COLE FOR PROFESSIONAL SERVICES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there be, and hereby is appropriated, the sum of seventy-five dollars in payment for medical services rendered to territorial prisoners confined in the prison at Vancouver, by the said Dr. J. B. Cole, and that the territorial auditor is hereby authorized to issue his warrant therefor, which warrant the treasurer of the territory is hereby authorized to pay out of any funds in the treasury not otherwise appropriated.

PASSED January 23d, 1863.

AN ACT

TO PROVIDE FOR THE PAYMENT OF THE CLAIM OF WM. B. KELLY
FOR STORING TERRITORIAL ARMS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the territorial treasurer be, and is hereby authorized to pay to Wm. B. Kelly, out of any moneys in the treasury not otherwise appropriated, the sum of six dollars, the same being for expenses incurred in storing territorial arms from the fourth day of October, 1860, to the fourth day of October, 1862, and also, for amount paid Vansyckle & Co., for commission and storage.

SEC. 2. This act to be in force from the date of its passage.

PASSED January 23th, 1863.

AN ACT

TO PROVIDE FOR THE PAYMENT OF THE CLAIM OF GEORGE W. SHOEMAKER
FOR TRANSPORTING TERRITORIAL ARMS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the territorial treasurer be, and is hereby authorized to pay to Geo. W. Shoemaker, out of any money in the territorial treasury not otherwise appropriated, the sum of sixty-five dollars, the same being for services rendered by said Shoemaker, in transporting territorial arms from Wallula to Walla Walla.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 21st, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BEEWEEN J W.
McCULLOUGH AND ISABELLA, HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony existing between

J. W. McCullough and Isabella McCullough, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 24th, 1863.

AN ACT

DISSOLVING THE BONDS OF MATRIMONY BETWEEN GEORGE MCKAHN AND HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony existing between George McKahn and Mary E. McKahn, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 20th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY HERETOFORE EXISTING BETWEEN WARREN RICH AND HARRIET RICH, HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony heretofore existing between Warren Rich and Harriet Rich, his wife, be, and are hereby dissolved, and that the said Harriet be restored her maiden name of Reed, by which she may be hereafter known and designated.

SEC. 2. This act to take effect and be in force from and after the time of its passage.

PASSED January 24th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY NOW EXISTING BETWEEN
WM. N. SAVAGE AND ELIZABETH, HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony now existing between Wm. N. Savage and his wife, Elizabeth, be, and the same are hereby dissolved.

SEC. 6. This act to take effect and be in force from and after its passage.

PASSED, January 24th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN CHAS.
AND CAROLINE SEBERT, HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony existing between Charles Sebert and Caroline Sebert, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to take effect from and after its passage.

PASSED January 12th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN JOHN SMITH
AND MARY ANN SMITH.

SECTION 1. *Be it enacted by the Legislative Assembly of the territory of Washington,* That the bonds of matrimony heretofore existing between John Smith and Mary Ann Smith be, and the same are hereby dissolved.

SEC. 2. That the said Mary Ann Smith have the sole care and control of the children.

SEC. 3. This act to be in force from and after its passage.

PASSED January 28th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN GEO. W. AND LIZZIE KLINK.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony heretofore existing between George W. Klink and Lizzie Klink be, and the same are hereby dissolved.

SEC. 2. This act to take effect from and after the date of its passage.

PASSED January 28th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY NOW EXISTING BETWEEN JARED C. BROWN AND JOSEPHINE BROWN, HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony heretofore existing between Jared C. Brown and Josephine Brown, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to be in force and effect from and after its passage.

PASSED January 27th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN THOMAS FORD AND MARY FORD, HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony heretofore existing

between Thomas Ford and wife, Mary Ford, be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 24th, 1863,

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN FREDERICK H. HAMLIN AND ELIZA E. HAMLIN, HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony existing between Frederick H. Hamlin and Eliza Ellen Hamlin, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be force from and after its passage.

PASSED January 26th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY HERETOFORE EXISTING BETWEEN THOMAS B. HENDLEY AND MARGARET C. HENDLEY, HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony heretofore existing between Thomas B. Hendley and Margaret C. Hendley, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force, from and after its passage.

PASSED January 24th, 1863.

AN ACT

DISSOLVING THE BONDS OF MATRIMONY HERETOFORE EXISTING BETWEEN SILAS HOADLEY, AND JENNIE HOADLEY, HIS WIFE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony heretofore existing between Silas Hoadley and Jennie Hoadley, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after the time of its passage.

PASSED January 27th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY NOW EXISTING BETWEEN JOHN STOUT AND ELIZA STOUT.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony now existing between John Stout and Eliza Stout, his wife, are hereby dissolved.

SEC. 2. This act to take effect from and after its passage.

PASSED, January 28th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN SMITH WEED AND ABIGAIL WEED.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony existing between Smith Weed and Abigail Weed, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED, January 12th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN BENJAMIN WHITING AND MARY WHITING.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony heretofore existing between Benjamin Whiting and his wife, Mary Whiting, be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 28th, 1863.

AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY EXISTING BETWEEN LEWIS YOUNGLOVE AND HENRIETTA A. YOUNGLOVE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bonds of matrimony existing between Lewis Younglove and Henrietta A. Younglove be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

PASSED January 24th, 1863.

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ERRATUM.

Page 7, Local Laws, Section 1, transpose lines four and five, to read as follows :

* * * * "Commencing at the corner of townships
seventeen and eighteen north, range three and four west, thence east to
the corners of sections thirty-three and thirty-four, and three and four,
and thence due north, &c."

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