

STATUTES

OF THE

TERRITORY OF WASHINGTON,

MADE AND PASSED

AT A SESSION OF THE LEGISLATIVE ASSEMBLY BEGUN AND HELD AT OLYMPIA
ON THE FOURTH DAY OF OCTOBER, 1869, AND ENDED ON THE
SECOND DAY OF DECEMBER, 1869.

NINETY-FOURTH YEAR OF INDEPENDENCE.

PUBLISHED BY AUTHORITY.

OLYMPIA:

JAMES RODGERS, PRINTER.

1869.

STATUTES
OF THE
TERRITORY OF WASHINGTON

AN ACT

TO REGULATE THE PRACTICE AND PROCEEDINGS IN CIVIL ACTIONS.

CHAPTER I.

OF THE FORM OF CIVIL ACTIONS AND OF THE PARTIES THERET

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 prosecuted in the name

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 prommissory note or bill of exchange transferred in good faith and upon good consideration before due.

SEC. 5. An executor or administrator, or guardian of a minor or lunatic, a trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the suit is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

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

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

SEC. 8. The widow, or widow and children, or child or children if no widow, of a man killed in a duel, shall have a right of action against the person killing him, and against the seconds, and all aiders and abettors, and shall recover such a sum as to the jury shall seem reasonable.

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

SEC. 10. A father, or in case of his death or desertion of

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

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

SEC. 12. When an infant is a party, he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act.

SEC. 13. The guardian shall be appointed as follows:

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

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

SEC. 14. All persons interested in the cause of action, or necessary to the complete determination of the question involved, shall, unless otherwise provided by law, be joined as plaintiffs when their interest is in common with the party making the complaint, and as defendants when their interest is adverse to the plaintiff: *Provided*, That where good cause exists, which shall be made to appear in the complaint, why a party who should be a plaintiff cannot, from a want of consent on his part or otherwise, be made such complainant, he shall be made a defendant.

SEC. 15. When the question is one of common or general interest to many persons, or where the parties are numerous and

it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

SEC. 16. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the plaintiff.

SEC. 17. No action shall abate by the death, marriage or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his representatives or successors in interest.

SEC. 18. No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine by reason of such death if he have a wife and child living, but such action may be prosecuted, or commenced and prosecuted in favor of such wife, or in favor of the wife and children, or if no wife, in favor of such child or children.

SEC. 19. In any action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not the plaintiff, may be made a party, and the court in a final judgment may order the interest of 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. 20. The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall cause them to be brought in.

SEC. 21. When a new party is introduced into an action as a representative or successor of a former party, such new party is entitled to the same notice, to be given in the same manner as required for defendants in the commencement of an action.

SEC. 22. A defendant against whom an action is pending upon a contract or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may in its discretion make the order.

SEC. 23. Any person shall be entitled to intervene in an action who has an interest in the final determination thereof. An intervention takes place when a third person is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant.

SEC. 24. The intervention shall be by petition or complaint filed in the court in which the action is pending, and must set forth the grounds on which it is based, and a copy thereof be served upon the party or parties against whom anything is demanded, who shall thereupon be required to answer it as if it were an original complaint in the action. The court shall determine upon the intervention at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention: *Provided*, That no intervention shall be cause for delay in the trial of an action between the original parties thereto beyond the term to which the action is brought.

CHAPTER II.

LIMITATION OF ACTIONS.

SEC. 25. Actions can only be commenced within the periods herein prescribed after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute; but in the district court the objection that the action was not commenced within the time limited, can only be taken by answer.

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

Within twenty years:

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

SEC. 27. Within six years:

1. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States.

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

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

SEC. 28. Within three years:

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

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

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

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

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

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

SEC. 29. Within two years.

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

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

SEC. 30. Within one year.

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

SEC. 31. An action upon a statute for a penalty given in whole or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offense, and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter in behalf of the Territory by the prosecuting attorney of the district in which the county is situated where the offense was committed.

SEC. 32. An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

SEC. 33. In an action brought to recover a balance due upon a mutual, open and current account where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side, but whenever a period of more than one year shall have elapsed between any of a series of items or demands, they are not to be deemed such an account.

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

SEC. 35. An action shall be deemed commenced as to each defendant when the complaint is served on him or on a co-defendant who is a joint contractor or otherwise united in interest with him.

SEC. 36. An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the complaint and notice is delivered, with the intent that it shall be actually served, to the sheriff or other officer of the county in which the defendants or one of them usually or last resided; or if a corporation be defendant, to the sheriff or other officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business; but such an attempt shall be followed by the first publication of the notice or the service thereof within six weeks.

SEC. 37. If when the cause of action shall accrue against any person who shall be out of the Territory or concealed therein, such action may be commenced within the terms herein respectively limited after the return of such person into the Territory, or the time of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this Territory or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

SEC. 38. If a person entitled to bring an action mentioned

in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either within the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action.

SEC. 39. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time and within one year after the issuing of letters testamentary or of administration.

SEC. 40. When a person shall be an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

SEC. 41. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

SEC. 42. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he die and the cause of action survives, his heirs or representatives may commence a new action within one year after the reversal.

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

SEC. 44. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

SEC. 45. No acknowledgment or promise shall be sufficient

evidence of a new or continuing contract whereby to take the case out of the operation of this chapter, unless the same is contained in some writing signed by the party to be charged thereby, but this section shall not alter the effect of any payment of principal or interest.

SEC. 46. Whenever any payment of principal or interest has been or shall be made upon any existing contract, whether it be a bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from time the last payment was made.

SEC. 47. When the cause of action has arisen in another State, Territory or country between non-residents of this Territory, and by the laws of the State, Territory or country where the action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this Territory.

CHAPTER III.

OF VENUE OF CIVIL ACTIONS.

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

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

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

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

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

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

SEC. 50. An action against a corporation may be brought in any county where the corporation has an office for the transaction of business, or any person resides upon whom process may be served against such corporation, unless otherwise provided in this act.

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

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

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

2. That the judge is a party to, or directly interested in the event of the action, or connected by consanguinity or affinity within the third degree with the adverse party or those for whom he prosecutes or defends; or

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

of the jury to try such cases, jurors from the counties named in the affidavit shall be excluded, and the jury shall be constituted from the inhabitants of the other counties.

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

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

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

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

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

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

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

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

CHAPTER IV.

MANNER OF COMMENCEMENT OF CIVIL ACTIONS.

SEC. 59. Civil actions in the several district courts of this Territory shall be commenced by the 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 _____ }

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. 60. 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. 61. 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, endorsed upon the notice and signed by the party making them. The notice shall be returned to the office of the district clerk with the return of the sheriff or his deputy endorsed thereon; or if served by a person specially appointed, his affidavit.

SEC. 62. The notice shall be served by delivering a copy thereof, together with a certified copy of the complaint as follows:

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

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

3. If 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.

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

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

SEC. 63. When service of notice cannot be made as prescribed in the last preceding section, and the defendant after due diligence cannot be found within the Territory, and when that fact appears by affidavit, and it in like manner appears that a

cause of action exists against the defendant, or that he is a proper party to an action relating to real property in this Territory, service may be made by publication in either of the following cases:

1. When the defendant is a foreign corporation and has property within the Territory, or the cause of action arose therein.

2. When the defendant, being a resident of this Territory, has departed therefrom with intent to defraud his creditors or to avoid the service of process, or shall keep himself concealed therein with the like intent, or has departed from the Territory and remained absent therefrom for the period of six months.

3. When the defendant is not a resident of the Territory but has property therein, and the court has jurisdiction of the subject of the action.

SEC. 64. Publication may be made in a newspaper published in the same county where the action is commenced, and if there be no newspaper published in the same, then in a newspaper most likely to give notice to the person to be served, and for not less than once a week for six successive weeks. In case of publication, a copy of the notice and complaint shall be forthwith deposited in the post office, and directed to the defendant at his place of residence, unless it shall appear that such residence is neither known to the party making the application nor can with reasonable diligence be ascertained by him. When publication is made, personal service of a copy of the notice and complaint out of the Territory shall be equivalent to publication and deposit in the post office. In either case the defendant shall appear and answer by the first day of the term following the expiration of the time prescribed in the notice of publication, and if he does not, judgment may be taken against him for want thereof.

SEC. 65. The defendant against whom publication is made, or his personal representatives, on application and sufficient cause shown at any time before judgment, shall be allowed to defend the action; and the defendant against whom publication is made, or his representatives, may in like manner upon good cause shown and upon such terms as may be proper be allowed to defend after

judgment, and within one year after the entry of such judgment on such terms as may be just; and if the defense be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct. But the title to property sold upon execution issued on such judgment to a purchaser in good faith, shall not be thereby affected.

SEC. 66. Whenever it shall appear by the return of the sheriff, his deputy or other person appointed to serve the notice, that the defendant is not found, the plaintiff may deliver another notice to be served, and so on until service be had; or the plaintiff may proceed by publication as in this act provided, at his election. Said notice may be substantially as follows:

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

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

To ———: You are hereby notified that ——— has filed a complaint against you in said court, which will come on to be heard at the first term of the court which shall commence more than six weeks 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.)

SEC. 67. 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. 68. Proof of the service of the notice of the complaint shall be as follows:

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

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

3. 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

4. The written admission of the defendant.

5. 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 affidavit or admission must state the time, place and manner of service.

SEC. 69. 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. 70. 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.

SEC. 71. All the forms of pleadings heretofore existing in civil actions inconsistent with the provisions of this act are abolished, and hereafter the forms of pleading and the rule by which the sufficiency of the pleadings is to be determined, shall be as herein prescribed.

SEC. 72. The only pleadings on the part of the plaintiff shall be:

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

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

SEC. 74. The complaint shall contain:

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

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

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

SEC. 75. The defendant may demur to the complaint, when it shall appear upon the face thereof, either

1. That the court has no jurisdiction of the person of the defendant or the subject matter of the action.

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

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

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

5. That several causes of action have been improperly united.

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

SEC. 76. 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. 77. When any of the matters enumerated in section seventy-five do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 78. If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by

the court; and if he omit to do so, the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

SEC. 79. If no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting always the objection that the court has not jurisdiction, or that the complaint does not state facts sufficient to constitute a cause of action, which objection can be made at any stage of the proceedings, either in the district or supreme court.

SEC. 80. The answer of the defendant shall contain:

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

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

SEC 81. The counter claim mentioned in the preceding section, must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action :

- 1: A cause of action arising out of the contract, or transaction set forth in the complaint, as the foundation of the plaintiffs claim.

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

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

SEC. 82. The defendant may demur to one or more of several causes of actions stated in the complaint, and answer the residue.

SEC. 83. Sham, frivolous and irrelevant answers and de-

fenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.

SEC. 84. When the answer contains new matter, constituting a defense or counter claim, the plaintiff may reply to such new matter, denying specifically each allegation controverted by him, on any knowledge or information thereof sufficient to form a belief ; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer.

SEC. 85. The plaintiff may demur to an answer containing new matter, when it appears upon the face thereof, that such new matter does not constitute a defense or counter claim, or he may for like cause demur to one or more of such defenses or counter claims, and reply to the residue.

SEC. 86. If the answer contain a statement of new matter constituting a defense or counter claim, and the plaintiff fail to reply or demur thereto within the time prescribed by law, the defendant may move the court for such judgment as he is entitled to on the pleadings, and if the case require it he may have a jury called to assess the damages.

SEC. 87. The defendant may demur to any new matter contained in the reply, when it appears upon the face thereof that such new matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous and irrelevant replies, may be stricken out in like manner and on the same terms as like answers and defenses.

SEC. 88. The court shall establish the rules prescribing the time in which pleadings subsequent to the complaint shall be filed.

CHAPTER VI.

VERIFICATION OF PLEADINGS.

SEC. 89. Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, if there be several parties united in interest and pleading together, by one at least of such parties, if such party be within the county and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action or defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney, it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer thereof, upon whom service of a notice might be made; and when the Territory, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known.

SEC. 90. When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering, to a criminal prosecution, the verification of the answer to such allegation may be omitted. No pleading shall be used in a criminal prosecution against the party, as evidence of a fact alleged in such pleading.

CHAPTER VII.

GENERAL RULES OF PLEADING.

SEC. 91. It shall not be necessary for a party to set forth in a pleading a copy of the instrument of writing, or the items of an account therein alleged; but unless he file a verified copy thereof with such pleadings, and serve the same on the adverse party, he shall, within ten days after a demand thereof, in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or judge thereof, may order a further account, when the one delivered is defective; and the court may, in all cases, order a bill of particulars of the claim of either party to be furnished.

SEC. 92. In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

SEC. 93. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment, or may dismiss the same.

SEC. 94. 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. 95. In pleading the performance of conditions prece-

dent 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. 96. 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. 97. 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. 98. 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. 99. 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. 100. The plaintiff may unite several causes of action in the same complaint, when they all arise out of

1. Contract, express or implied; or,
2. Injuries, with or without force, to the person; or,
3. Injuries, with or without force, to property; or,
4. Injuries to character; or,

5. Claims to recover real property, with or without damages, for the withholding thereof; or,

6. Claims to recover personal property, with or without damages, for the withholding thereof; or,

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

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

SEC. 101. Every material allegation of the complaint, not specifically controverted by the answer, and every material allegation of new matter in the answer, not specifically controverted by the reply, shall, for the purpose of the action, be taken as true; but the allegation of new matter in a reply, is to be deemed controverted by the adverse party, as upon a direct denial or avoidance, as the case may require.

SEC. 102. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

CHAPTER VIII.

MISTAKES IN PLEADINGS: AMENDMENTS.

SEC. 103. No variance between the allegation in a pleading, and the proof, shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled, and thereupon the court may order the pleading to be amended upon such terms as shall be just.

SEC. 104. 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. 105. 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. 106. Where the plaintiff in an action to recover the possession of personal property on a claim of being the owner thereof, shall fail to establish on trial, such ownership, but shall prove that he is entitled to the possession thereof, by virtue of a special property therein, he shall not thereby be defeated of his action, but shall be permitted to amend, on reasonable terms, his complaint, and be entitled to judgment according to the proof in the case.

SEC. 107. 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. 108. When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself, without reference to the original, or any proceeding amended one.

SEC. 109. Any pleading not duly verified and subscribed, may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be stricken out of the case.

When a motion to strike out is allowed, the court may, upon such terms as may be proper, allow the party to file an amended pleading; or, if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over.

SEC. 110. When the plaintiff shall be ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

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

CHAPTER IX.

OF ARREST AND BAIL.

SEC. 113. No person shall be arrested or held to bail in any civil action, except upon the order of the court where the action is brought, or a judge of the Supreme Court.

SEC. 114. The defendant may be arrested in the following cases:

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

2. In an action for a fine or penalty, or on a promise to mar-

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

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

4. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which, the action is brought.

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

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

7. On the final judgment or order of any court in this Territory, while the same remains in force, when the defendant, having no property subject to execution, or not sufficient to satisfy such judgment, has money which he ought to apply in payment upon such judgment, 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. 115. The court or judge making the order of arrest, shall first be satisfied by the affidavit of the party, or his agent or attorney, and other proof, that the case is one in which an

arrest is provided for in section one hundred and fourteen, and that one or more of the prescribed causes exist, which proof shall be in writing, and, together with the order, be filed with the clerk, before he shall issue any warrant for the arrest.

SEC. 116. 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. 117. 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. 118. The defendant may, on motion, apply to the court to vacate the order of arrest, on the ground of insufficiency of the proof, or he may show that the facts alleged, upon which the order issued, are untrue, or he may apply to have the amount of bail reduced. If the court, upon any such motion, shall vacate the order, the defendant shall be discharged from the arrest, and any bond he may have given shall be 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. 119. When an order of arrest is granted prior to the filing of the complaint, the warrant shall not issue until the

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

SEC. 120. The warrant must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy thereof.

SEC. 121. 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 defendant out of custody.

SEC. 122. The defendant may give bail by causing a bond to be executed by two or more sufficient sureties, stating their places of residence and occupations, conditioned that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment rendered therein; or, if he be arrested for the cause mentioned in the third subdivision of section one hundred and fourteen, it shall be further conditioned that the specific article of property, or instrument of writing which is the subject matter of the writ, shall be forthcoming, to abide any order which shall be made therein; or, if he be arrested for the cause mentioned in the sixth subdivision of said section, it shall be further conditioned that he will not commit the injury or destruction alleged to be threatened in the affidavit or proofs on which the arrest is ordered.

SEC. 123. 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. 124. At any time before a failure to comply with their bonds, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

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

2. Upon the production of a copy of the bail bond and sheriff's certificate, a judge of the district court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on such application, they shall be exonerated accordingly. But this section does not apply to an arrest for the cause mentioned in the sixth subdivision of section one hundred and fourteen.

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

SEC. 127. The bail may be exonerated either by the death of the defendant or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in exoneration thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the court.

SEC. 128. 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. 129. On the receipt of notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same, or other bail, (specifying the places of residences and occupations of the latter), before judgment of the court or justice of the peace, at a specified time and place, the time to be not less than five days nor more than ten thereafter. In case other bail be given, there must be a new bond in the form prescribed in section one hundred and twenty-two.

SEC. 130. The qualifications of the bail shall be as follow:

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

2. Each of the bail shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced, as provided in this chapter, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge or justice, on justification, may allow more than two sureties to justify, severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 131. For the purpose of justification, each of the bail must attend before the judge or justice of the peace at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his sufficiency, in such manner as the judge or justice of the peace, in his discretion, may think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff.

SEC. 132. If the judge or justice find the bail sufficient, he shall annex the examination to the bond, endorse his allowance thereon, and cause them to be filed with the clerk, and the sheriff shall thereupon be exonerated from liability.

SEC. 133. The defendant may at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff must thereupon give the defendant a certificate of deposit, and the defendant shall be discharged from custody.

SEC. 134. The sheriff shall within ten days after the deposit, pay the same into court, and take from the officer receiving the same two certificates of such payment, the one of which he must deliver to the plaintiff and the other to the defendant. For any default in making such payment, the same proceeding may be had on the official bond of the sheriff to collect the sum deposited, as in cases of delinquency.

SEC. 135. 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. 136. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in the satisfaction thereof, and, after satisfying 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. 137. 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. 138. If the judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned

unsatisfied, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency.

SEC. 139. The bail taken on arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff, by action, for the damages which he may sustain by reason of such omission.

CHAPTER X.

CLAIM TO RECOVER PERSONAL PROPERTY.

SEC. 140. 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. 141. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.
2. That the property is wrongfully detained by the defendant.
3. That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment, against the property of the plaintiff; or if so seized, that it is by law exempt from such seizure. And,
4. The actual value of the property.

SEC. 142. 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. 143. 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. 144. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a bond executed by one or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and forty-nine.

SEC. 145. The defendant's sureties, upon a notice to the plaintiff or his attorney, of not less than two, or more than six

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

SEC. 146. The qualification of sureties and their justification shall be as prescribed in respect to bail upon an order of arrest.

SEC. 147. If the property or any part thereof be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession, and if necessary he may call to his aid the power of his county.

SEC. 148. 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. 149. 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. 150. The sheriff shall file the affidavit, with the proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein; or if the clerk reside in another county, shall mail or forward the same within that time.

CHAPTER XI.

INJUNCTIONS AND RESTRAINING ORDERS.

SEC. 151. 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. 152. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great injury to the plaintiff; or when during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property.

SEC. 153. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment in that proceeding.

SEC. 154. 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. 155. On the hearing of an application for an injunction, each party may read affidavits.

SEC. 156. 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. 157. No injunction or restraining order shall be granted until the party asking it shall enter into bond, in such a sum as shall be fixed by the court or judge granting the order, with surety to the satisfaction of the clerk of the district court, to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify in like manner as bail upon an arrest, and until they so justify, the clerk shall be responsible for their sufficiency.

SEC. 158. 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. 159. 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. 160. 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. 161. An order of injunction shall bind every person and officer restrained from the time he is informed thereof.

SEC. 162. 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. 163. 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. 164. Whenever it shall appear to any court granting an order of injunction, or judge thereof in vacation, by affidavit, that any person has wilfully disobeyed the order after notice thereof, such court or judge shall award an attachment for contempt against the party charged, or a rule to show cause why it should not issue. The attachment or rule shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by him.

SEC. 165. 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. 166. 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. 167. 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. 168. 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. 169. 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. 170. 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. 171. The judge of the district court shall have power to make every order in vacation which, by the provisions of this chapter, may be made by the court in term time.

CHAPTER XII.

ATTACHMENT.

SEC. 172. In an action for the recovery of money or liquidated damages, the plaintiff, at any time after the commence-

ment of the action, and before judgment, may have the property of the defendant attached in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 173. A writ of attachment shall be issued by the clerk of the court in which the action is pending, whenever the plaintiff, or any one on his behalf, shall make and file an affidavit, that a cause of action exists against the defendant, and the grounds thereof, and that the defendant is either:

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

SEC. 174. Upon filing the affidavit with the clerk, the plaintiff shall be entitled to have the writ issue as soon thereafter as he shall file with the clerk his bond, with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plaintiff demands judgment, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, if the same be wrongful, oppressive, or without sufficient cause, not exceeding the sum specified in the bond. With the bond, the plaintiff shall also file the affidavits of the sureties, from which affidavits it must appear that such sureties are qualified, and that taken together they are worth the amount of the sum specified in the bond, over all debts and lia-

bilities, and property exempt from execution. No person not qualified to become bail upon an arrest, is qualified to become surety in a bond for an attachment.

SEC. 175. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and shall require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses. Several writs may be issued at the same time, to the sheriffs of different counties.

SEC. 176. The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest, and profits thereon, and all other property in this Territory of such defendant not exempt from execution, shall be liable to be attached. The sheriff shall note upon the writ the date of its delivery to him, and shall make a full inventory of the property attached, and return the same with the writ.

SEC. 177. The sheriff to whom the writ is directed and delivered, shall execute the same without delay, as follows:

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

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

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

4. Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under

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

SEC. 178. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession or under his control any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

SEC. 179. All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

SEC. 180. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff, on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property containing the amount and description thereof.

SEC. 181. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To ena-

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

SEC. 182. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

SEC. 183. If any personal property attached be claimed by a third person as his property, the sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon with the like effect as in case of a claim after levy upon execution.

SEC. 184. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or a claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

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

2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to

satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

SEC. 185. If after selling all the property attached by him remaining in his hands and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 186. If the execution be returned unsatisfied in whole or in part, the plaintiff may proceed as in other cases upon the return of an execution.

SEC. 187. If the defendant recover judgment against the plaintiff, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

SEC. 188. Whenever the defendant shall have appeared in the action he may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, or to the judge thereof, for an order to discharge the same upon the execution of the bond mentioned in the next section; and if the application be granted, all the proceeds of sales and moneys collected by the sheriff, and all the property attached remaining in his hands shall be released from the attachment and delivered to the defendant upon the justification of the sureties on the bond, if required by the plaintiff.

SEC. 189. Upon such application the defendant shall deliver to the court or judge a bond, executed by at least two sureties, residents and freeholders or householders in the county, to the effect that the sureties will on demand pay to the plaintiff

the amount of any judgment that may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the bond, which shall be sufficient to satisfy the amount claimed by the plaintiff in his complaint, and the costs. The sureties may be required to justify on such application before the judge or court, and the property attached shall not be released from an attachment without their justification, if the same be required.

SEC. 190. The defendant may at any time before the time for answering expires, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the attachment be discharged on the ground that the writ was improperly issued.

SEC. 191. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the order of attachment was made.

SEC. 192. If upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

SEC. 193. The sheriff shall return the writ of attachment with the complaint and notice, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings endorsed thereon, or attached thereto.

SEC. 194. Whenever property has been taken by an officer, under a writ of attachment, in pursuance of the provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court, to abide the judgment in the action. Such order shall be made only upon notice to the adverse party or his attorney, in case such party have been personally served with a notice in the action.

SEC. 195. The judge of the district court shall have power to make every order in vacation which, by the provisions of this chapter, may be made by the court in term time.

CHAPTER XIII.

OF RECEIVERS AND DEPOSITS IN COURT.

SEC. 196. A receiver may be appointed by the court in the following cases:

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

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

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

4. In an action by a mortgagee for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had.

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

6. And in such other cases as may be provided for by law, or when, in the discretion of the court it may be necessary to secure ample justice to the parties.

SEC. 197. No party or attorney, or other person interested in an action, shall be appointed receiver therein.

SEC. 198. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court, execute a bond to such person as the court may direct, conditioned that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

SEC. 199. When it is admitted by the pleading or exam-

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

SEC. 200. Whenever in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or thing and deposit or deliver it in conformity with the direction of the court.

SEC. 201. Money deposited or paid into court in an action, shall not be loaned out, unless with the consent of all parties having an interest in, or making claim to the same.

SEC. 202. The receiver shall have power, under control of the court, to bring and defend actions, to take and keep possession of the property, to receive rents, collect debts, and generally to do such acts respecting the property, as the court may authorize.

SEC. 203. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order by execution or attachment.

CHAPTER XIV.

OF ISSUES IN CIVIL ACTIONS.

SEC. 204. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party, and controverted by the other, and are of two kinds:

1. Of law; and
2. Of fact.

SEC. 205. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

SEC. 206. An issue of facts arises:

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

SEC. 207. Issues both of law and of fact may arise upon different parts of the pleading in the same action. In such cases, the issues of law shall be first tried, unless the court otherwise direct.

CHAPTER XV.

OF THE TRIAL OF CIVIL ACTIONS.

SEC. 208. An issue of law shall be tried by the court, unless referred upon consent, as provided in this act. An issue of fact shall be tried by a jury, unless a jury trial be waived, or a reference be ordered, as provided in this act. The waiver of a jury, or agreement to refer, shall be by stipulation of the parties filed, or the oral consent of parties given in open court and minuted in the records.

SEC. 209. A motion to continue a trial on the ground of the absence of evidence, shall only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the

trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.

SEC. 210. When the action is called for trial, the clerk shall prepare separate ballots containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the sheriff, under the direction of the court, shall summon from the bystanders, citizens of the county or district, as many qualified persons as may be necessary to complete the jury. Whenever it shall be requisite for the sheriff to summon more than one person at a time from the bystanders or body of the district or county, the names of the talesmen shall be returned to the clerk, who shall thereupon write the names upon separate ballots and deposit the same in the trial jury box, and draw such ballots separately therefrom, as in the case of the regular panel. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three, and such consent shall be entered by the clerk on the minutes of the trial.

SEC. 211. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and be peremptory or for cause. Each party shall be entitled to three peremptory challenges.

SEC. 212. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

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

1. General; that the juror is disqualified from serving in any action; or

2. Particular; that he is disqualified from serving in the action on trial.

SEC. 214. General causes of challenge are:

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

SEC. 215. Particular causes of challenges are of two kinds:

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

SEC. 216. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

1. Consanguinity or affinity within the fourth degree to either party.
2. Standing in the relation of guardian and ward, attorney and client, master and servant or landlord and tenant, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages, of the adverse party, or being surety or bail in the action called for trial, or otherwise, for the adverse party.
3. Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the Territory against either party, upon substantially the same facts or transaction.
4. Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always the

interest of the juror as a member or citizen of the county or municipal corporation.

SEC. 217. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section two hundred and fifteen. But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

SEC. 218. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

SEC. 219. The jurors having been examined as to their qualifications, first by the plaintiff and then by defendant, and passed for cause, the peremptory challenges shall be conducted as follows, to-wit:

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

SEC. 220. The challenges of either party shall be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

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

SEC. 221. The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true.

The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the facts.

SEC. 222. Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if determined or found otherwise, it shall be disallowed.

SEC. 223. The challenge, the exception and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side.

SEC. 224. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

SEC. 225. When the jury has been sworn, the trial shall proceed in the following order:

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

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

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

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

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

6. The court shall then charge the jury upon the law in the case. If no request has been made for said charge to be in writing, or if no instructions have been requested, said charge may be oral; but either party at any time before the jury return their verdict, may except to the same or any part thereof; but no exception shall be regarded by the supreme court, unless the same shall embody the specific parts of said charge to which exception is taken. In charging the jury, the court shall state

to them all matters of law necessary for the information of the jury in finding a verdict; and if it become necessary to allude to the evidence, it shall also inform the jury that they are the exclusive judges of all questions of fact.

SEC. 226. Any party may, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or at the option of the court, oral, and entered in the judge's minutes.

SEC. 227. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it.

SEC. 228. All questions of fact other than those mentioned in the section preceding, shall be decided by the jury, and all evidence thereon addressed to them.

SEC. 229. Whenever in the opinion of the court it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place which shall be shown to them by the judge or by a person appointed by the court for that purpose. While the jury are thus absent, no person, other than the judge or person so appointed, shall speak to them on any subject connected with the trial.

SEC. 230. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

SEC. 231. If after the formation of the jury, and before verdict, a juror become sick, so as to be unable to perform his

duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn and the trial begin anew; or the jury may be discharged and a new jury then or afterwards formed.

SEC. 232. A juror may be examined by either party as a witness, if he be otherwise competent. If he be not so examined, he shall not communicate any private knowledge or information that he may have of the matter in controversy, to his fellow jurors, nor be governed by the same in giving his verdict.

SEC. 233. After hearing the charge, the jury may either decide in the jury box or retire for deliberation. If they retire, they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury thus separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself, unless by the order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on.

SEC. 234. If while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county.

SEC. 235. Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial, (except depositions,) or copies of such parts of public records or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

SEC. 236. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law aris-

ing in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the information required shall be given in the presence of or after notice to the parties or their attorneys.

SEC. 237. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

SEC. 238. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action shall be continued to the next term, without both parties demand an immediate trial, in which case it shall go to the foot of the trial list.

SEC. 239. While the jury are absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

SEC. 240. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear, the rest shall be discharged without giving a verdict.

SEC. 241. If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the foreman answer in the affirmative, he shall on being required, declare the same.

SEC. 242. When a verdict is given and before it is filed, the jury may be polled at the request of either party, for which purpose each shall be asked whether it be his verdict; if any juror answer in the negative the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out.

SEC. 243. When the verdict is given and is such as the court may receive, and if no juror disagree or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given.

CHAPTER XVI.

THE VERDICT.

SEC. 244. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounces 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. 245. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property if their verdict be in favor of the plaintiff, or if they find in favor of the defendant and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

SEC. 246. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon.

The special verdict or finding shall be filed with the clerk and entered in the minutes.

SEC. 247. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

SEC. 248. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a set-off for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court give judgment for the plaintiff on the answer.

CHAPTER XVII.

TRIAL BY THE COURT.

SEC. 249. Trial by jury may, with the assent of the court, be waived by the several parties in the manner following:

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

SEC. 250. Upon the trial of an issue of fact by the court, its decisions shall be given in writing and filed with the clerk. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

SEC. 251. The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the facts shall be deemed a verdict, and may be set aside in the same manner and for the same reason as far as applicable, and a new trial granted.

CHAPTER XVIII.

TRIAL BY REFEREES.

SEC. 252. All or any of the issues in the action, whether of fact or law, or both, may be referred upon the written consent of the parties.

SEC. 253. When the parties do not consent the court may upon the application of either, or of its own motion, direct a reference in the following cases:

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

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

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

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

SEC. 254. A reference may be ordered to any person or persons not exceeding three, agreed upon by the parties. If the parties do not agree the court or judge may appoint one or more, not exceeding three.

SEC. 255. When the appointment of referees is made by the court or judge, each referee shall be:

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

SEC. 256. When the referees are chosen by the court each party shall have the same right of challenge as to such referees, to be made and determined in the same manner and with like

effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge.

§EC. 257. Subject to the limitations and directions prescribed in the order of reference, the trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, to preserve order and punish all violations thereof upon such trial, and to compel the attendance of witnesses, and to punish them for non-attendance or refusal to be sworn or testify as is possessed by the court.

SEC. 258. The report of the referees shall state the facts found, and when the order of reference includes an issue of law it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial and the party offering the same except to the decision rejecting such evidence at the time, the exception shall be noted by the referees and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous and inadmissible, require the party at whose instance it was taken and reported, to pay all costs and disbursements thereby incurred.

SEC. 259. The report shall be filed with the clerk. If it be filed in term time either party may within such time as may be prescribed by the rules of the court or by special order move to set the same aside or for judgment thereon, or such order or proceeding as the nature of the case may require. If the report be filed in vacation the like proceedings may be had at the next term following.

SEC. 260. The court may affirm or set aside the report either in whole or in part. If it affirms the report it shall give judgment accordingly. If the report be set aside either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside, to the original referees or others, or it may find the facts and determine the law itself

and give judgment accordingly. Upon a motion to set aside a report the conclusions thereof shall be deemed and considered as the verdict of the jury.

CHAPTER XIX.

EXCEPTIONS.

SEC. 261. An exception is an objection taken at the trial to a decision upon matter of law, whether such trial be by jury or court or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exceptions shall be regarded on a motion for a new trial or on an appeal, unless the exception be material and affect the substantial rights of the parties.

SEC. 262. The point of the exception shall be taken at the time when the decision is made and be particularly stated, and may be delivered in writing to the judge or entered in his minutes, and at the time or afterwards be corrected until made conformable to the truth. If an objection is made to any ruling of the court in the progress of a trial, and the truth of the statement thereof is not agreed upon between the counsel and the court, the counsel may verify his statement thereof by his own oath and that of two respectable and disinterested bystanders, and file the same as an exception to the ruling objected to. Such statement must be filed within the day that the objection is made and not otherwise. Within one day thereafter the adverse party may file a statement of the objection as prepared or approved by the court, together with the affidavits of not more than three respectable and disinterested bystanders concerning the truth or falsity of the statement of the exception as filed by the counsel and prepared or approved by the court. Each statement of the

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

SEC. 263. 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. 264. The statement of the exception, when settled and allowed, shall be signed by the judge and filed with the clerk, and thereafter it shall be deemed and taken to be a part of the record of the cause. No exception need be taken or allowed to any decision upon a matter of law, when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

SEC. 265. When a cause has been tried by the court or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on a motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

CHAPTER XX.

ARBITRATION AND AWARD.

SEC. 266. 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. 267. 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. 268. The said arbitrators shall be duly sworn to try and determine the cause referred to them, and a just award make out under the hands and seals of a majority of them, agreeably to the terms of the submission. Said award, together with the written agreement to submit, shall be sealed up by the arbitrators and delivered to the party in whose favor it shall be made, who shall deliver the same, without breaking the seal, to the clerk of the district court of the district including the county wherein said arbitration is held, who shall enter the same on record in his office. A copy of the award, signed by said arbitrators, or a majority of them, shall also be delivered to the party in whose favor it is so rendered, who shall, if the matter be not settled, serve a copy of the same on the adverse party at least twenty days before the commencement of the next term of the said district court, and if no exceptions be filed against the same by or before the second day of said term, the judgment of the court shall be entered upon said award with like effect as though said award were the verdict of a jury, and execution may issue therefor and the same proceedings had as in civil actions.

SEC. 269. The arbitrators chosen under the provisions of this chapter shall each be allowed three dollars per day, to be taxed with other costs of suit; but if either party fail to appear on the day agreed upon for the arbitrators to meet, said party shall be liable for all costs accruing that day, unless his absence was unavoidable, and shall be so established to the satisfaction of said arbitrators. And any arbitrator failing to attend on the day appointed, unless delayed by sickness or unavoidable accident, shall forfeit and pay the sum of five dollars to the school fund of the county, to be recovered by action before a justice of the peace in the name of the county commissioners of the county.

SEC. 270. The party against whom an award may be made may except in writing thereto for either of the following causes:

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

SEC. 271. If upon exceptions filed it shall appear to the said district court that the arbitrators have committed error in fact or law, the court may refer the cause back to said arbitrators, directing the amendment of said award forthwith, returnable to the current term of said court, and on the failure so to correct said proceedings, the court shall be possessed of the case and proceed to its determination.

SEC. 272. Arbitrators, or a majority of them, shall have power:

1. To compel the attendance of witnesses duly notified by either party, and to enforce from either party the production of all such books, papers and documents as they may deem material to the cause.
2. To administer oaths or affirmations to witnesses.
3. To adjourn their meetings from day to day, or for a longer time, and also from place to place, if they think proper.
4. To decide both the law and the fact that may be involved in the cause submitted to them.

SEC. 273. The laws in force in this Territory relating to evidence and the manner of procuring the attendance of witnesses, shall govern in arbitrations.

SEC. 274. 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. 275. 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. 276. Such award when so affirmed shall be in all respects like any other judgment of the district court, and a

transcript of such judgment or execution issued thereon, recorded in the county auditor's office in the same manner as other judgments, shall be a lien upon real estate in said county.

CHAPTER XXI.

NEW TRIAL.

SEC. 277. 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. 278. The former verdict or other decision may be vacated and a new trial granted on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

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

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

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

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

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

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

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

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

SEC. 279. A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor in any other action where the damages shall equal the actual pecuniary injury sustained.

SEC. 280. When the motion is made for a cause mentioned in the first, second, third and fourth subdivisions of the last preceding section, the facts upon which it is based shall be made to appear by affidavit. For any other cause it shall be made upon a written statement.

SEC. 281. Notice of an intended motion for a new trial shall be given on the day when the verdict or other decision in term is rendered, and the motion with the affidavits, if any in support thereof, shall be filed within two days thereafter. When the adverse party is entitled to oppose the motion by counter affidavits he shall file the same within one day after the filing of the motion. The motion shall be heard and determined during the term unless the court continue the same for advisement or want of time to hear it. When not so heard and determined, or continued, it shall be deemed withdrawn and may be disregarded.

SEC. 282. Upon a trial by the court when the decision is given in vacation, a motion for a new trial shall be filed within twenty days from the time of filing such decision. If the next regular term of said court shall commence within less than twenty days from the time of filing such decision, then such motion shall be filed by the first day of said term. In either case the adverse party may within four days after the filing of the motion, file counter affidavits where the same are allowed.

SEC. 283. In all cases of motion for a new trial, the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court.

SEC. 284. If the motion be supported by affidavits, counter affidavits may be offered by the adverse party, and if the

cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be, shall be produced, or good reasons shown for their non-production.

CHAPTER XXII.

JUDGMENT IN GENERAL.

SEC. 285. A judgment is the final determination of the rights of the parties in the action.

SEC. 286. Judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants; and it may when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

SEC. 287. In an action against several defendants the court may, in its discretion, render judgment against one or more of them whenever a several judgment is proper, leaving the action to proceed against the others.

CHAPTER XXIII.

JUDGMENT OF NON-SUIT.

SEC. 288. An action may be dismissed or a judgment of non-suit entered in the following cases:

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

2. By either party upon the written consent of the other.
3. By the court, when the plaintiff fails to appear on trial and the defendant appears and asks for a dismissal.
4. By the court, when upon the trial and before the final submission of the case the plaintiff abandons it.
5. By the court, on the refusal or neglect of the plaintiff to make the necessary parties after having been ordered by the court.
6. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.
7. By the court, for disobedience of the plaintiff to an order concerning the proceedings in the action.
8. By the court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient cause for the jury.

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

SEC. 290. When a judgment of non-suit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause.

CHAPTER XXIV.

JUDGMENT ON FAILURE TO ANSWER.

SEC. 291. Judgment may be had on proof of the service of the complaint and notice, if the defendant fail to answer the complaint as follows:

1. 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 plain-

tiff may direct the clerk to enter the default of the defendant and immediately thereafter enter judgment for the amount mentioned in the complaint, including the costs against the defendant, or against one or more of the several defendants, in the cases provided for in section sixty-seven of this act.

2. 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.

3. When the defendant has answered and admits the plaintiff's claim, but sets up a counter claim amounting to less than the plaintiff's claim, the plaintiff, on motion, shall have judgment for the excess of his claim over such counter claim, as for want of answer thereto.

4. 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 resti-

tution 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.

SEC. 292. The court may, in its discretion, before final judgment, set aside any default, upon affidavit showing good and sufficient cause, and upon such terms as may be deemed reasonable.

CHAPTER XXV.

JUDGMENT BY CONFESSION.

SEC. 293. On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint.

SEC. 294. When the action is against the Territory, a county or other public corporation therein, or a private corporation, or a minor, the confession shall be made by the person who at the time sustains the relation to such Territory, corporation, county or minor, as would authorize the service of a notice upon him; or in case of a minor, if a guardian for the action has been appointed, then by such guardian. In all other cases, the confession shall be made by the defendant in person.

SEC. 295. When the action is upon a contract and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants thus jointly liable, whether such defendants have been served or not, to be enforced only against their joint property and against the joint and separate property of the defendant making the confession.

SEC. 296. The confession and assent thereto shall be in writing and subscribed by the parties making the same, and

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

SEC. 297. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter.

SEC. 298. A statement in writing shall be made, signed by the defendant and verified by his oath to the following effect:

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

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

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

SEC. 299. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall indorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with ten dollars costs. The statement and affidavit, with the judgment endorsed, shall thereupon become the judgment roll.

CHAPTER XXVI.

SUBMITTED CASES.

SEC. 300. Parties to a question in difference which might be the subject of a civil action may, without action, agree upon

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

SEC. 301. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission and a copy of the judgment shall constitute the judgment roll.

SEC. 302. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER XXVII.

OF THE MODE OF TAKING AND ENTERING JUDGMENTS.

SEC. 303. 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. 304. 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. 305. 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. 306. 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. 307. All judgments shall be entered by the clerk, subject to the direction of the court, in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

SEC. 308. Immediately after entering the judgment the clerk shall attach all the papers in the case and keep them in his office.

SEC. 309. 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. 310. Within twenty days after the close of any term of the court the clerk shall enter in said execution docket a statement of each final judgment rendered at such term, and shall at the request of the judgment creditor or his attorney, upon the payment of costs of said transcript, furnish a transcript of said judgment to said judgment creditor, and upon the filing of said transcript in the office of the county auditor, it shall be a lien upon all real estate of said judgment debtor in the county where such transcript shall be filed for the period of five years from the date said judgment was rendered. And said lien shall have attached from the day of the date of said judgment if said transcript shall have been filed within the said twenty days. And in case where an attachment had been levied upon any real estate, then from the service of the attachment. The fees for making and filing such transcripts shall be paid by the judgment creditor and be taxed as costs against the judg-

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

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

SEC. 311. The clerk shall also enter in his execution docket a minute, in like manner, of any transcript of a judgment from the supreme court, or from any other district court of the Territory, or from a justice of the peace, when the same are presented to him for that purpose, as shall be provided by law. He shall in like manner, at the instance of the judgment creditor, furnish to any county auditor's office any certified transcript of said judgment for filing therein, the fees whereof shall be paid by the party requesting such transcript, but taxable as other costs in the case.

SEC. 312. He shall leave space on the same page, if practicable, with each case, in which he shall enter in the order in which they occur all the proceedings subsequent to the judgment in said case until its final satisfaction, including the time when and to what county the execution is issued and when returned, and the return or substance thereof. When the execution is levied on personal property which is returned unsold, the entry shall be: "Levied (noting the date) on property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate on any judgment, the minutes of which are entered in his execution docket, the entry shall be: "Levied upon real estate," noting the date, and shall refer to the page upon the book of levies where the same is entered, as is hereinafter provided. When any execution issued to any other county is returned, levied upon real estate in such county, the entry in the execution docket shall be: "Levied on real estate of —, in — county," noting the date, county, and defendant whose estate is levied upon, and when the money is made, or any part thereof, the amount and time when made shall be entered; also when a

writ of error has been taken or the judgment is appealed, modified, discharged or in any manner satisfied, the facts in respect thereto shall be entered. The parties interested may also assign or discharge such judgment on such execution docket. When the judgment is fully satisfied in any way, the clerk shall write the word "satisfied," in large letters across the face of the entry of such judgment.

SEC. 313. The clerk shall prefix to the execution docket a full and correct alphabetical index, both direct and inverse, containing the names of all persons parties to judgments, plaintiffs and defendants, in separate columns.

SEC. 314. The auditor of each county shall keep in his office a well bound book, which shall be a public record, open to inspection at all reasonable hours, in which he shall enter all transcripts of judgments from the supreme or district courts presented to him for that purpose, and when a judgment is satisfied he shall write across the face in large letters the word "satisfied."

SEC. 315. The clerk shall also keep in his office a well bound book, to be called a book of levies, which shall be a public record and open during the usual business hours to all persons desirous of inspecting the same, in which he shall enter all levies upon real estate in his county, when delivered to him by the sheriff, as provided by law. An alphabetical index shall be prefixed to the book of levies, containing the names of all persons upon whose real estate such levies have been made, and when such levies are discharged in any manner, an entry thereof shall be made in the margin of the book of levies where the levy is recorded.

CHAPTER XXVIII.

LIEN OF JUDGMENTS.

SEC. 316. Judgments shall bear the legal rate of interest from date thereof, except when rendered upon an express contract in writing wherein a different rate of interest is agreed upon by the parties, in which case the judgment shall, until paid and satisfied, bear the same rate of interest specified in such written contract.

SEC. 317. The real estate of any judgment debtor, and such as he may acquire, shall be held and bound to satisfy any judgment of the district or supreme court, or any judgment of a justice of the peace authorized by law to be levied upon real estate, for the period of five years from the day on which said judgment was rendered, said lien to commence as follows: On judgments of the district court of the district including the county or counties in which real estate of the judgment debtor is situated, from the date of the rendition, but within twenty days from the date of such rendition, a transcript thereof certified by the clerk of the said district court, shall be filed in the county auditor's office of the county where the said lands are situated, and if not so filed within said period of twenty days, the lien of said judgment shall be suspended until the filing of said transcript. From and after said filing of transcript by the county auditor of any county in the Territory, such judgment shall be a lien upon all real estate of the judgment debtor in such county for the period of five years, commencing from the date on which said judgment was rendered. In all other judgments which are by law a lien upon real estate, the lien upon lands in any particular county commences and attaches from the date of filing the transcript in the county auditor's office of said county, and continues for the period of five years from the date of rendition of the judgment.

SEC. 318. Nothing in the foregoing section contained shall be so construed as to prevent the revival of a judgment and continuance of the lien thereof after the expiration of said period of five years, by agreement of the parties filed in writing in term or vacation, and entered upon the proper docket, or a revival of the same upon notice and motion for leave to issue execution as hereinafter prescribed. The certified transcript of such proceedings shall be filed with the county auditor as hereinbefore prescribed, within twenty days from the date of such revival, or the lien shall be suspended until so filed, and said revived judgment shall be and continue a lien on the real estate of the judgment debtor for the period of five years from the date of the revival: Provided always, That nothing herein contained shall affect the rights of third parties who may have acquired liens during the period which may have intervened between the expiration of the lien of the original judgment and the filing of the certified transcript of its revival: And provided also, That parties may continue said lien by proceedings had before the expiration of said period of five years.

SEC. 319. An appeal to the supreme court, writ of error, or stay of execution shall not affect any existing lien; and in all cases of an appeal or writ of error, the date of final judgment in the supreme court shall be the time from which said five years shall commence to run. Personal property shall only be held from the time it is actually levied upon.

CHAPTER XXIX.

OF EXECUTIONS.

SEC. 320. The party in whose favor judgment is given may at any time within five years thereafter issue a writ of execution for its enforcement, as prescribed by law: Provided, however, That if the period of five years shall have elapsed without

an execution being issued on the judgment, an execution shall not issue thereafter, except as herein provided:

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

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

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

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

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

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

judgment, and a final record shall be made of the proceedings in the same manner as a judgment.

SEC. 321. Such leave shall not be given unless it be established by oath of the party or other satisfactory proof that the judgment, or some part thereof, remains unsatisfied. The order of court granting such leave shall operate as a revival of the judgment for the amount found due at the time of such revival, and the same shall be and continue a lien upon real estate of the judgment debtor for the period of five years from and after the date of such order, in like manner with the original judgment: Provided, That a transcript thereof shall within twenty days be filed in the office of the county auditor of the county where the lands lie of such judgment debtor, or said lien shall be suspended till such transcript be filed. Revived judgments shall be in all respects similar to original judgments, as to lien and enforcement or collection.

SEC. 322. 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. 323. There shall be four kinds of execution; one against the property of the judgment debtor, another against his person, the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same, and the fourth commanding the enforcement of or obedience to any special order of the court. And in all cases there shall be an order to collect the costs.

SEC. 324. 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:

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

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

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

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

SEC. 325. When the execution is against the property of the judgment debtor it may be issued to the sheriff of any coun-

ty 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. 326. The sheriff shall indorse upon a writ or execution the time when he received the same, and such execution shall be returnable within sixty days after its date, to the clerk who issued the same. And no sheriff shall retain any moneys collected on execution, more than twenty days before paying the same to the clerk of the court who issues the writ, under penalty of twenty per cent. on the amount collected, to be paid by the sheriff; the one-half to the party to whom the judgment is payable, and the other half to the county commissioners of the county wherein the action was brought, for the use of the school fund of said county. And the clerk shall immediately after the receipt of any moneys collected on any judgment, notify the party to whom the same is payable, and pay over the amount to the said party on demand. On failure to so notify and pay over, (without reasonable cause shown for delay), the clerk shall forfeit and pay the same penalty to the same parties as is above prescribed for the sheriff.

SEC. 327. 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. 328. A person arrested on execution shall be imprisoned within the jail or the liberties thereof, and kept at his own expense until satisfaction of the execution or his legal discharge; but the plaintiff shall be liable to the sheriff, in the first instance, for such expense as in other cases of arrest in the same manner, and to the same extent as therein prescribed.

SEC. 329. All property, real and personal, of the judgment debtor not exempt by law, shall be liable to execution.

SEC. 330. In all cases in which a judgment has been recovered in any of the courts of this Territory, which shall have been assigned to any person, execution may issue in the name of the assignee upon the assignment being recorded in the execution docket by the clerk of the court in which the judgment is recovered, and the provisions of this section shall extend to all judgments heretofore recovered as well as to those hereafter to be recovered.

CHAPTER XXX.

OF STAY OF EXECUTION.

SEC. 331. Stay of execution shall be allowed on judgments rendered in the supreme court and district courts as follows:

In the supreme court:

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

On judgments rendered in the district court:

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

SEC. 332. 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. 333. If the judgment is not satisfied at any time after the expiration of the period for which execution has been stayed, the plaintiff, at any subsequent term of the court from which the execution issued, may upon motion, supported by an affidavit that such judgment or any part thereof is unpaid, and stating how much still remains due thereon, have judgment against the sureties upon said bond for the balance remaining due, and have an execution therefor, upon which no stay shall be allowed.

SEC. 334. The sureties upon a bond for stay of execution shall possess the same qualifications, and justify in the same manner as bail upon arrest in civil actions.

SEC. 335. 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. 336. Bonds required by this act shall, when taken, be lodged with the clerk of the court where the judgment was rendered, and placed on file in his office.

CHAPTER XXXI.

EXEMPTION.

SEC. 337. 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. 338. There shall be also exempt from execution and attachment to every householder being the head of a family, a homestead not exceeding in value the sum of one thousand dollars, while occupied as such by the owner thereof, or his or her family. Said homestead may consist of a house and lot or lots in any city, or of a farm consisting of any number of acres, so that the value of the same shall not exceed the aforesaid sum of one thousand dollars; but to entitle a person to the benefits of this act, he or she shall cause the word "homestead" to be entered of record in the margin of his recorded title to the same.

SEC. 339. When any person dies seized of a homestead leaving a widow, or husband, or minor children, the survivors shall be entitled to the homestead, but in case there be neither surviving husband, widow or children, the said homestead shall be liable for the debts of deceased.

SEC. 340. Nothing herein contained shall be construed to prevent the owner of a homestead from voluntarily mortgaging the same; but no mortgage shall be valid against the wife of any mortgagor who may be occupying said homestead with him, unless she shall freely and voluntarily, separate and apart from her husband, sign and acknowledge said mortgage, and the officer taking the acknowledgement shall fully apprise her of her rights and the effect of signing such mortgage.

SEC. 341. When any creditor shall be of opinion that any homestead claimed under the provisions of this act is of greater value than one thousand dollars, on filing an affidavit to that effect with the clerk of the district court, the judgment creditor may proceed against said homestead as in other cases of real

estate, and if the said homestead shall sell for over one thousand dollars and costs, the surplus shall be applied to the payment of the judgment of said creditor, and in all such cases the sum of one thousand dollars, free of charge or expense, shall be paid to the owner of the homestead ; and in case the said homestead shall not sell for more than one thousand dollars and costs, the person instituting the proceeding shall pay all costs of such proceeding, and the said proceeding cease and not affect or impair the rights of the owner of the homestead.

SEC. 342. In case of the sale of said homestead, any subsequent homestead acquired by the proceeds thereof, shall also be exempt from attachment and execution, nor shall any judgment or other claim against the owner of such homestead be a lien against the same in the hands of a bona fide purchaser for a valuable consideration.

SEC. 343. The following property shall be exempt from execution or attachment, except as is hereinafter specially provided :

1. All wearing apparel of every person and family.
2. All private libraries, family pictures and keepsakes.
3. To each householder, one bed and bedding, and one additional bed and bedding for every two members of the family, and other household goods and utensils and furniture, not exceeding one hundred and fifty dollars coin in value.
4. To each householder, two cows with their calves, five swine, two stands of bees, twenty-five domestic fowls, and provisions and fuel for the comfortable maintenance of such householder and family for six months: Provided, That in case such householder shall not possess, or shall not desire to retain the animals named above, he may select from his property and retain other property not to exceed one hundred and fifty dollars coin in value.
5. To a farmer, one span of horses with harness, or two yoke of oxen with yokes and chains, and one wagon; also farming utensils actually used about the farm not exceeding in value two hundred dollars in coin.

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

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

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

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

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

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

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

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

SEC. 344. 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. 345. In all cases the defendant himself may select the property which is exempt.

SEC. 346. 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 XXXII.

CLAIM TO PROPERTY LEVIED UPON AND ATTACHED.

SEC. 347. 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. 348. 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. 349. The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution, defendants.

SEC. 350. If the claimant makes good his title to the property the bond shall be cancelled; if to a portion thereof, a like proportion of the bond shall be cancelled; but if he shall not maintain his title, judgment shall be rendered against him and his sureties for the value of the property, or for such less amount as shall not exceed the amount due on the original execution or attachment. Where the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs; where the claimant recovers all the property, judgment shall be given in favor of the claimant for costs; where the claimant recovers a portion of the property only, the costs shall be apportioned. When the plaintiff prevails, the costs may be taxed against the defendant who was plaintiff in the execution or attachment, or the court may, if it shall be of opinion that the sheriff attached or levied upon said property without the exercise of due caution, adjudge him to pay the costs or any portion thereof.

CHAPTER XXXIII.

SALES OF PROPERTY UNDER EXECUTION.

SEC. 351. When the writ of execution is against the property of the judgment debtor, it shall be executed by the sheriff as follows:

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

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

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

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

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

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

SEC. 352. In the case of property in the possession of or owing from any garnishee, the sheriff shall proceed as follows:

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

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

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

SEC. 353. When a sheriff with an execution levies upon any of the personal property mentioned in subdivision three of section one hundred and seventy-seven, and if the same is not delivered, paid or transferred to him at the time, he shall proceed thereafter in reference to such property as provided in the preceding section. Such property may be delivered, paid or transferred to the sheriff at the time of the levy, or sufficient thereof to satisfy the execution, and the sheriff's receipt to the person, association or corporation, as the case may be, shall be a sufficient discharge therefor.

SEC. 354. When the sheriff shall levy upon personal property by virtue of an execution, he may permit the judgment debtor to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written bond to the sheriff with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the sheriff

at the time and place of sale, and for non-delivery thereof, an action may be maintained upon such bond by the sheriff or the plaintiff in the execution; but the sheriff shall not thereby be discharged from his liability to the plaintiff for such property.

SEC. 355. Before the sale of property on execution, notice thereof shall be given as follows:

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

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

SEC. 356. All sales of property upon execution shall be made by auction between nine o'clock in the morning and four o'clock in the evening. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy, shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, association or corporation, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property and consisting of several known lots or parcels, they shall be sold separately or otherwise as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately. Sales of real property shall be made at the court house door.

SEC. 357. If at the time appointed for the sale the sheriff should be prevented from attending at the place appointed, or being present should deem it for the advantage of all concerned

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

SEC. 358. When the purchaser of any personal property capable of manual delivery and not in the possession of a third person, association or corporation, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property the sheriff shall give the purchaser a bill of sale with the like acknowledgment.

SEC. 359. The form and manner of sale of real estate by execution shall be as follows:

The sheriff shall proclaim aloud at the place of sale, in the hearing of all the bystanders: "I am about to sell the following tracts of real estate (here reading the description,) upon the following execution:" (here reading the execution.) He shall also state the amount which he is required to make upon the execution, which shall include damages, interests and costs up to the day of sale, and increased costs. He shall then offer the land for sale, the lots and parcels separately or together, as he shall deem most advantageous. All land except town lots shall be sold by the acre.

SEC. 360. 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. 361. 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. 362. The officer shall strike off the land to the highest bidder, who shall forthwith pay the money bid to the officer, who shall return the money with his execution and his doings thereon to the clerk of the court from which the execution issued, according to the order thereof: Provided, however, That when final judgment shall have been entered in the supreme court and the execution upon which sale has been made issued from said court, the proceedings on execution and return shall be docketed for confirmation in the district court in which the action was originally commenced, and like proceedings shall be had as though said execution had issued from the said district court.

SEC. 363. Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause on which the execution issued by its title in the docket of the term next after such return, and mark opposite the same "sale of land for confirmation," and the following proceedings shall be had:

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

2. If such objections be filed the court shall notwithstanding allow the order confirming the sale, unless on the hearing of the motion it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the prob-

able loss or injury of the party objecting. In the latter case the court shall disallow the motion and direct that the property be resold in whole or in part, as the case may be, as upon an execution received of that date.

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

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

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

SEC. 364. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid with interest and the costs and disbursements of the suit by which he was evicted, from the plaintiff in the writ of execution.

SEC. 365. When property liable to an execution against several persons is sold thereon, and more than a due proportion

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

SEC. 366. Upon a sale of real property, when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases, such property shall be subject to redemption, as hereinafter provided in this chapter. At the time of sale the sheriff shall give to the purchaser a certificate of the sale, containing:

1. A particular description of the property sold.
2. The price bid for each distinct lot or parcel.
3. The whole price paid.

4. When subject to redemption, it shall be so stated. The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ.

SEC. 367. Property sold subject to redemption, as provided in the last section, or any part thereof separately sold, may be redeemed by the following persons or their successors in interest:

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

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

SEC. 368. The judgment debtor or a redemptioner may redeem the property within six months from the date of the order confirming the sale, by paying the amount of the purchase money, with interest at the rate of two per centum per month thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon, and if the purchaser be also a creditor having a lien prior to that of the redemptioner, the amount of such lien with interest.

SEC. 369. If the property be so redeemed by a redemptioner, either the judgment debtor or any other redemptioner may within sixty days from the last redemption, again redeem it on paying the sum paid on the last redemption, with interest at the rate of two per centum per month thereon from the date of the last preceding redemption in addition, together with the amount of any taxes which the last redemptioner may have paid thereon, and unless his lien be prior to that of such redemptioner, the amount of such lien with interest. The property may be again and as often as a debtor or a redemptioner is disposed, redeemed from the last previous redemptioner within sixty days from the date of the last redemption, on paying the sum paid on the last previous redemption, with interest at the rate of two per centum per month thereon from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner prior to his own, with interest. Notice of redemption shall be given to the sheriff.

SEC. 370. If no redemption be made within six months from the confirmation of the sale, the purchaser shall be entitled to a conveyance from the sheriff, or if so redeemed, whenever sixty days shall have elapsed and no other redemption has been made, the time for redemption shall have expired and the last redemptioner shall be entitled to a conveyance from the sheriff. If the judgment debtor redeem at any time before the time for

redemption expires, the effects of the sale shall be terminated and he shall be restored to his estate.

SEC. 371. The mode of redeeming shall be as provided in this section:

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

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

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

4. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent. An affidavit by himself or agent showing the amount then actually due on the judgment, decree or mortgage.

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

SEC. 372. When two or more persons apply to the sheriff to redeem at the same time, he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemption, or if not, at any time thereafter when demanded. Where a sheriff shall wrongfully refuse to allow any person to redeem, his right thereto shall not be prejudiced thereby, and upon the submission of the evi-

dence and the tender of the money to the sheriff as herein provided, he may be required by order of the court or judge thereof, to allow such redemption.

SEC. 373. Until the expiration of the time allowed for redemption, the court or judge thereof may restrain the commission of waste on the property by order granted with or without notice, on the application of the purchaser or judgment creditor, but it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs to buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family while he occupies the property.

SEC. 374. The purchaser from the day of sale until a resale or a redemption, and the redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the same period.

SEC. 375. The party to whom such sheriff's deed is given shall upon the receipt thereof take the same to the clerk of the district court, who shall enter in his book of levies where the levy is recorded, the sale of real estate therein conveyed, and shall endorse the fact upon the deed with the date when presented to him and when made. And no county auditor shall record any such deed without such endorsement.

CHAPTER XXXIII.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

SEC. 376. After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the court or of a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may by an order require the judgment debtor to appear at a specified time and place before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into a bond with sufficient surety, that he will attend from time to time before the judge or referee, as shall be directed during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such bond, he may be committed to prison.

SEC. 377. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 378. After the issuing or return of an execution against property of the judgment debtor, or of any one of seven-

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

SEC. 379. Witnesses may be required to appear and testify before the judge or referee upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

SEC. 380. The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within sixty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

SEC. 381. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt; and the court or judge may by an order forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

SEC. 382. If any person, party or witness disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference for a contempt.

CHAPTER XXXIV.

OF WITNESSES AND EVIDENCE.

SEC. 383. Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action or proceeding.

SEC. 384. Any person offered as a witness shall not be excluded from giving evidence by reason of his interest in the event of the action, as a party thereto, or otherwise, but such interest may be shown to affect his credibility. Provided, however, That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased or insane person, or as a guardian of a minor under the age of fourteen years, then a party in interest or to the record shall not be admitted to testify in his own behalf.

SEC. 385. Any person offered as a witness shall not be excluded from giving evidence by reason of conviction for crime, but such conviction may be shown to affect his credibility: Provided, That any person who shall have been convicted of the crime of perjury, shall not be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon.

SEC. 386. The following persons shall not be competent to testify:

1. Those who are of unsound mind, or intoxicated at the time of their production for examination.
2. Children under ten years of age, who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly.
3. Indians, or persons having more than one-half Indian blood, in an action or proceeding to which a white person is a party.

SEC. 387. In order to encourage confidence and to preserve it inviolate, the following persons shall not be examined as witnesses:

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

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

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

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

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

CHAPTER XXXV.

MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES.

SEC. 388. No person shall be obliged to attend as a witness before any court of record, judge, justice of the peace, commissioner, referee or other officer, in any civil action out of the judi-

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

SEC. 389. The subpoena may require not only the personal attendance of the person to whom it is directed, at a particular time and place to testify as a witness, but may also require him to bring with him any books, documents or things under his control; but no public officer or person having the possession or control of public records or papers which by law are required to be kept in any particular office or place, shall be compelled to produce the same in any court.

SEC. 390. The subpoena shall be issued as follows:

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

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

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

SEC. 391. Such subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any

other person than an officer authorized to serve process, proof of service shall be made by affidavit.

SEC. 392. A person present in court or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

SEC. 393. If any person duly served with a subpoena 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. 394. Such failure to attend as required by the subpoena, shall also be considered a contempt, and upon due proof the witness may be punished by a fine not exceeding fifty dollars, and stand committed until said fine and costs are paid or until discharged by due course of law.

SEC. 395. 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 subpoenaed.

SEC. 396. 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. 397. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

CHAPTER XXXVI.

EXAMINATION OF PARTIES.

SEC. 398. A party to an action or proceeding may be examined as a witness, at the instance of the adverse party, or of

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

SEC. 399. 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. 400. 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. 401. A party to an action having filed interrogatories to be answered by the adverse party, as prescribed by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial.

SEC. 402. The testimony of a party, either upon an examination at the trial, or upon interrogatories filed, may be rebutted by adverse testimony.

SEC. 403. If a party refuse to attend and testify at the trial, or to be examined upon a commission, or to answer any interrogatories filed, his complaint, answer, or reply may be stricken out, and judgment taken against him, and he may also, in the discretion of the court, be proceeded against as in other cases for a contempt: Provided, That the preceding sections shall not be construed so as to compel any person to answer any question where such answer may tend to criminate himself.

CHAPTER XXXVII.

DEPOSITIONS OF WITNESSES RESIDING IN THE TERRITORY.

SEC. 404. The testimony of a witness in this Territory may be taken by deposition, to be read in evidence in an action, suit, or proceeding commenced and pending in any court in this Territory in the following cases:

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

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

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

SEC. 405. Either party may have the deposition of a witness taken in this Territory, before any judge, of the district court, justice of the peace, clerk of the supreme or district court, mayor of a city, or notary public, on serving on the adverse party or his attorney previous notice of the time and place of examination. Such notice shall be at least three days, and in addition one day, Sundays excepted, for every ten miles of the distance of the place of examination from the residence of the person to whom notice is given.

SEC. 406. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person in the presence and under the direction of such officer. When completed it shall be carefully read to or by the witness, corrected if desired, and subscribed by him and certified by the officer substantially as follows:

TERRITORY OF WASHINGTON, } ss.
County of _____.

I, A. B., justice of the peace in and for said county, (or judge,

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

Dated at —, the — day of —, 18—.

A. B. (Justice of the Peace.)

SEC. 407. 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. 408. Such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions, to the competency or credibility of the witness, or the manner of taking the deposition. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination. It shall be the duty of the person taking the deposition to propound to the witness every question proposed by either party, and to note all objections to the form of any interrogatory, and when any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question and before the answer the words "objected to," and when any witness declines to answer a question on the ground that it will tend to criminate himself, that fact shall also be noted after the question is written down. The deposition may be taken in the form of a narrative or by question and answer, or partly in either form, as either party present at the examina-

tion shall require. When taken by question and answer the officer shall first write down the question and then the answer, as nearly as may be in the language of the witness; but when the deposition is read to the witness previous to signing it, he shall be permitted to amend his answer to any question or any part of his deposition; such amendment however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added at the end of the deposition, under the title "amendment by the witness," and such amendment shall intelligibly refer to the part so amended.

SEC. 409. 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. 410. When the plaintiff in any action shall discontinue it, or when it shall be dismissed for any cause and another action shall afterwards be commenced for the same cause between the same parties, or their respective representatives, all depositions lawfully taken in the first action may be used in the other in the same manner and subject to the same conditions and objections as if originally taken for such other action: Provided, That the deposition shall have been duly filed in the court where the first action was pending, and shall have remained in the custody of the court, from the termination of the first action until the commencement of the other.

SEC. 411. When any action shall have been appealed from one court to another, all depositions lawfully taken to be used in the court below, may be used in the appellate court in the same manner and subject to such exceptions for informality or irregularity, and none other, as were taken in writing to such depositions in the court below.

SEC. 412. Any witness may be subpoenaed and compelled by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of

such witness, in like manner and under the same penalties as he may be subpoenaed and compelled to attend as a witness in any court.

CHAPTER XXXVIII.

DEPOSITIONS OF WITNESSES OUT OF THE TERRITORY.

SEC. 413. 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. 414. The deposition of a witness out of the Territory but residing within one hundred miles of the place of holding courts, 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. 415. 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 put to such witness. At the time and place named in the notice the parties or their attorneys may attend, and the party notified may present his cross interrogatories, if any he have, and failing so to do, shall be deemed to have waived the cross examination. If the court be not in session or the judge in said notice named be unable to attend, the parties may appear before the clerk of the court, who shall note any and all objections to such interrogatories and cross interrogatories, by writing the words "objected to" after such interrogatories. The clerk shall issue the commission, annexing thereto a copy of interrogatories, cross interroga-

atories, and the objections, and the commissioners taking said deposition shall note both questions and answers as "objected to," when the objection has been noted as aforesaid, and the parties at the trial shall have the full benefit of such objections taken at the time of the issue of said commission. It shall be issued to a person or persons not exceeding three in number, agreed upon by the parties or their attorneys; or if they do not agree, to any judge, justice of the peace, notary public or other competent person selected by the court or judge granting the order for the commission.

SEC. 416. Such proper interrogatories, as well on the part of the plaintiff as on the part of the defendant, as the respective parties may prepare to be settled, if they disagree as to form, by the court or judge thereof granting the order for the commission, shall be annexed to the commission; or where the parties agree, the examination may be without written interrogatories. Said agreement to be in writing and appended to the commission.

SEC. 417. 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. 418. 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 XXXIX.

PROCEEDINGS TO PERPETUATE TESTIMONY.

SEC. 419. 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. 420. 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. 421. If upon hearing of the parties or of the applicant alone, should no adverse party appear, the court or judge shall be satisfied that there is sufficient cause for taking the deposition, an order shall be made allowing the examination of the witness; and such court or judge may direct a commission to

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

SEC. 422. 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. 423. 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 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 XI.

RECORDS, DOCUMENTS, BOOKS, ETC.

SEC. 424. Any court in which an action is pending, or a judge thereof, may upon notice order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of any book, document or paper in his possession or under his control, containing evidence relating to the merits of the action or defense therein. If compliance with the order be refused, the court may exclude the book, document or paper from being given in evidence, or if wanted as evidence by

the party applying, may direct the jury to presume it to be such as he alleges it to be, and the court may also punish the party refusing as for contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers or documents where he is examined as a witness.

Sec. 425. 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. 426. 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. 427. 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 the office annexed, if there be such seal, if there be no such seal, then with the official certificate of such officer, shall be received in evidence to all intents and purposes as the originals themselves.

Sec. 428. 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. 429. 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. 430. A seal of court or public office, when required to any writ, process, or proceeding to authenticate a copy of any record or document, may be affixed by making an impression directly on the paper which shall be as valid as if made upon a wafer or on wax.

SEC. 431. Printed copies of the statute laws of any State, Territory, or foreign government, if purporting to have been published under the authority of the respective government, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this Territory, and on all other occasions as presumptive evidence of such laws.

CHAPTER XLI.

WRITS OF ERROR AND APPEALS TO THE SUPREME COURT.

SEC. 432. Every final judgment, order or decision of a district court, in a civil action, may be re-examined upon a writ of error in the supreme court for error in law: Provided, Every such writ shall be taken within three months next succeeding the term of the district court at which the final judgment, order or decision was made, and not afterwards: Provided, That if the party entitled to have such writ shall be absent from the Territory, and shall not have been personally served with process, nor appeared to the action; or if the party be an infant, married woman, or imprisoned or insane, then such writ may be made returnable at the next term of the supreme court succeeding the removal of such disability, and not afterwards.

SEC. 433. Notice of the taking of such writ shall be serv-

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

SEC. 434. The party desirous of taking his writ of error shall file with the clerk of the court in which the judgment was rendered, a precipe containing a particular description of the judgment, order or decision upon which he wishes to bring his writ of error, and a particular description of the errors assigned, which precipe shall also direct the clerk to issue, under seal of the court, notice to the adverse party of the filing of such preci-

pe, and said precipe shall state the term of the supreme court at which such writ of error will be prosecuted; and the writ of error shall be deemed to have issued at the time of the filing of such precipe: Provided, That in the cases mentioned in the preceding section, the notice given in open court shall be deemed equivalent to service of notice on the defendant in error.

SEC. 435. The notice shall be issued and served in the same manner as other process is served, and shall be returned to the clerk of the court from which the notice issued. It may be served on the defendant, or his attorney of record, in any county in the Territory. And if service of the notice cannot be had from any cause, the court at such term, upon being satisfied that the precipe has been filed and notice issued, may direct the manner in which such notice may be given; and after the order for giving notice has been fully complied with, may proceed as though notice had actually been given.

SEC. 436. 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. 437. The transcript of the record shall contain a copy of the pleadings, the journal entries, judgment, order or decision, bills of exceptions, execution and return, precipe, notice and return, and all matters pertaining to the case, but it shall not be necessary to send copies of notices to witnesses, motions or depositions, unless the same, by bill of exceptions, have been made part of the record.

SEC. 438. 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. 439. The court of error shall proceed to hear the cause upon the errors assigned in the precipe, and the defendant may take issue on the errors so assigned.

SEC. 440. 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. 441. 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. 442. 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.

SEC. 443. Any person who may be a party or privy to a judgment, order or decision, may prosecute a writ of error to reverse the same, and the reversal shall enure to the benefit of all the parties and privies therein, and no other party or privy shall afterwards prosecute a writ of error for the same cause.

SEC. 444. When it shall appear that any other person should be made a party to any proceeding upon a writ of error, the court shall require such person to be made a party, and direct in what manner notice shall be given.

SEC. 445. The reversal of a judgment, order or decision shall not affect the title of property sold upon an execution issued upon such judgment, order or decision; but the plaintiff in error may bring an action for the recovery thereof, and the court may award restitution or render such other judgment as justice shall require.

SEC. 446. When the supreme court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

SEC. 447. 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. 448. In all cases of writs of error or appeals in the supreme court, the court shall consider and adjudge upon all errors and mistakes which shall appear in the entire record by which plaintiff in error may have been prejudiced, if the same were excepted to at the time, whether interlocutory or final, and whether plaintiff in error had according to the strict rules of law waived the same by proceeding with the case under the order of the court, after such exception.

CHAPTER XLIII.

SET-OFF.

SEC. 449. 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. 450. 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. 451. 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. 452. 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. 453. 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. 454. To entitle a defendant to a set-off he must set the same forth in his answer.

SEC. 455. If the amount of the set-off duly established, be equal to the plaintiff's debt or demand, judgment shall be rendered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

SEC. 456. 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 XLIV.

COSTS IN CIVIL ACTIONS.

SEC. 457. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement expressed or implied of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums by way of indemnity for his expenses in the action, which allowances are termed costs.

SEC. 458. Costs shall be allowed the party in whose favor the judgment is rendered, except as is otherwise provided by law.

SEC. 459. The plaintiff shall not be entitled to costs in any action within the jurisdiction of a justice of the peace, which shall be commenced in the district court, when the recovery is for a less amount than one hundred dollars.

SEC. 460. In an action for an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recover less than ten dollars, he shall be entitled to no more costs or disbursements than the damage recovered.

SEC. 461. 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. 462. 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. 463. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such defendants as recover judgments in their favor, or either of them.

SEC. 464. When allowed to either party, costs to be called the attorney fee, shall be as follows :

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

SEC. 465. 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. 466. 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. 467. 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. 468. 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. 469. 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. 470. 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. 471. 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. 472. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting in his own right, but such costs shall be chargeable only upon or collected off the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense.

SEC. 473. 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. 474. 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. 475. 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. 476. In the following cases the costs of an appeal to the supreme court shall be in the discretion of the court:

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

SEC. 477. In all actions and proceedings other than those mentioned in this chapter, where no provision is made for the recovery of costs, they may be allowed or not, and if allowed may be apportioned between the parties, in the discretion of the court.

SEC. 478. 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. 479. 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 XLV.

OF COMMISSIONERS TO CONVEY REAL ESTATE.

SEC. 480. The several district courts may whenever it is necessary, appoint a commissioner to convey real estate:

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

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

SEC. 481. 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. 482. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

SEC. 483. 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. 484. 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. 485. It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the name of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance.

SEC. 486. 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. 487. In case of a judgment to compel a party to execute a conveyance of real estate, the court may enforce the judgment by attachment or sequestration, or appoint a commissioner to make the conveyance.

CHAPTER XLVI.

ACTIONS TO RECOVER AND AFFECTING REAL ESTATE.

SEC. 488. 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. 489. A defendant who is in actual possession may for answer plead that he is in possession only as tenant of another, naming him and his place of residence, and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord do not apply to be made defendant within the time the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant, on motion of the plaintiff he shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him defendant, or such further notice as the court or judge thereof may prescribe.

SEC. 490. The plaintiff in his complaint shall set forth the nature of his estate in the property, whether it be in fee, for life, or for a term of years, and for whose life, or the duration of such term, and that he is entitled to the possession thereof, and that

the defendant wrongfully withholds the same from him to his damage such sum as may be therein claimed. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.

SEC. 491. The defendant shall not be allowed to give in evidence any estate in himself or another in the property, or any license or right to the possession thereof unless the same be pleaded in his answer. If so pleaded the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him.

SEC. 492. The jury by their verdict shall find as follows:

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

2. If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for and the estate in such property or part thereof, or license, or right to the possession of either established on the trial by the defendant, if any, in effect as the same is required to be pleaded.

SEC. 493. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement, to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant

or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the value thereof at the time of trial shall be allowed as a set-off against such damages.

SEC. 494. If the right of the plaintiff to the possession of the property expire after the commencement of the action and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages.

SEC. 495. The court or judge thereof, on motion, and after notice to the adverse party, may for cause shown grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof, for the purposes of the action.

SEC. 496. The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement, but if any unnecessary injury be done to the premises, he shall be liable therefor.

SEC. 497. An action for the recovery of the possession of real property against a person in possession, cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant do not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser.

SEC. 498. A mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law.

SEC. 499. 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. 500. When in the case of a lease of real property and

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

SEC. 501. In an action to recover the possession of real property, the judgment therein shall be conclusive as to the estate in such property and the right to the possession thereof, so far as the same is thereby determined, upon the party against whom the same is given, and against all persons claiming from, through or under such party after the commencement of such action, except as in this section provided. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order vacating the judgment and granting him a new trial, upon the payment of the costs of the action.

SEC. 502. If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in the preceding section, such possession shall not be thereby affected in any way, and if judgment be given for defendant in the new trial, he shall be entitled to restitution by execution in the same manner as if he were plaintiff.

SEC. 503. In an action to recover the possession of real property by a tenant in dower, or her successor in interest, if such estate in dower has not been admeasured before the commencement of the action, the plaintiff shall not have execution to deliver the possession thereof until the same be admeasured as follows:

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

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

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

SEC. 504. In an action at law for the recovery of the possession of real property, if either party claim the property as a donee of the United States, and under the act of Congress approved September 27, 1850, commonly called the donation law, or the acts amendatory thereof, such party from the date of his settlement thereon, as provided in said acts, shall be deemed to have a legal estate in fee in such property, to continue upon condition that he perform the conditions required by such acts, which estate is unconditional and indefeasible after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property by virtue of settlement under such acts, such settlement and the performance of the subsequent conditions shall be conclusively presumed in favor of the party having or claiming under the elder certificate or patent, as the case may be, unless it appear upon the face of such certificate or patent that the same is absolutely void.

CHAPTER XLVII.

PARTITION OF REAL PROPERTY.

SEC. 505. When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, an action may be maintained by one or more of such persons, for a partition thereof according to the respective rights of the persons interested therein, and for sale of such property or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 506. The interest of all persons in the property, shall be set forth in the complaint specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

SEC. 507. The plaintiff may, at his option, make creditors having a lien upon the property or any portion thereof, other than by judgment or decree, defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only on the share assigned to such party: but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

SEC. 508. The notice shall be directed by name to all the tenants in common, who are known, and in the same manner to all lien creditors who are made parties to the suit, and generally to all persons unknown, having or claiming an interest or estate in the property.

SEC. 509. If a party, having a share or interest in, or lien upon the property, be unknown, or either of the known parties reside out of the Territory or cannot be found therein, and such fact be made to appear by affidavit, the notice may be served by publication, as in ordinary cases. When service is made by publication, the notice must contain a brief description of the property which is the subject of the suit.

SEC. 510. The defendant shall set forth in his answer the nature and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security.

SEC. 511. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined in such suit, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the decree for partition or sale is given.

SEC. 512. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or not ascertained.

SEC. 513. In making the partition, the referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid

them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

SEC. 514. The court may confirm or set aside the report in whole or in part, and if necessary appoint new referees. Upon the report being confirmed a decree shall be entered that such partition be effectual forever, which decree shall be binding and conclusive:

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

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

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

SEC. 515. Such decree and partition shall not affect any tenants, for years or for life, of the whole of the property which is the subject of partition, nor shall such decree and partition preclude any person except such as are specified in the last section, from claiming title to the property in question or from controverting the title of the parties between whom the partition shall have been made.

SEC. 516. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff and may be allowed as costs.

SEC. 517. If the referees report to the court that the property, of which partition shall have been decreed, or any separate portion thereof is so situated that a partition thereof cannot be

made without great prejudice to the owners, and the court is satisfied that such report is correct, it may thereupon by an order direct the referees to sell the property or separate portion thereof.

SEC. 518. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered to be sold.

SEC. 519. Before making an order of sale, if lien creditors other than those by judgment or decree, have not been made parties, the court, on motion of either party, shall order the plaintiff to file a supplemental complaint, making such creditors defendants.

SEC. 520. If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the clerk of the county where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree upon the property or any portion thereof, and unless he do so the court shall order a reference to ascertain them.

SEC. 521. If it appear by such certificate or reference, in case the certificate is not produced that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby respectively, and the order of priority in which they are entitled to be paid out of the property.

SEC. 522. The plaintiff must cause a notice to be served at least twenty days before the time for appearance on each person having such lien by judgments or decree, to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely on his judgment or decree.

SEC. 523. The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts due thereon or secured thereby, and their priority respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him.

SEC. 524. The report of the referee may be excepted to by either party to the suit, or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the Territory or his residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his agent or attorney, of record, or by publication thereof, for such time and in such manner as the order may prescribe.

SEC. 525. If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the suit, and upon the lien creditors who have been duly served with the notice to appear before the referee, as provided in section five hundred and twenty-two.

SEC. 526. The proceeds of the sale of the encumbered property shall be distributed by the decree of the court, as follows:

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

SEC. 527. Whenever any party to the suit who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

SEC. 528. The proceedings to ascertain the amount of the liens, and to determine their priority as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale, nor affect any other party, whose rights are not involved in such proceedings.

SEC. 529. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no such direction be given, all such proceeds and securities shall be paid into court, or deposited as directed by the court.

SEC. 530. When the proceeds of sale of any shares or parcel belonging to persons who are parties to the suit and who are known, are paid into court, the suit may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original suit.

SEC. 531. All sales of real property made by the referees shall be made by public auction, to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice.

SEC. 532. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants or parties out of the Territory.

SEC. 533. The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successor in office; and for the shares of any known owner of full age, in the name of such owner.

SEC. 534. When the estate of any tenant for life or years, in any undivided part of the property in question, shall have

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

SEC. 535. Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged and filed with the clerk.

SEC. 536. If such consent be not given, as provided in the last section, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be deposited in court for that purpose.

SEC. 537. The proportion of the proceeds of the sale to be invested as provided in the preceding section, shall be ascertained and determined in the several cases as follows:

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

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

And in all cases the proportion of the expenses of the proceedings shall be deducted from the proceeds of the sale.

SEC. 538. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of

their rights in the same manner, as far as may be, as if they were known and had appeared.

SEC. 539. In all cases of sales in partition, when it appears that a married woman has an inchoate right of dower in any of the property sold, or that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such inchoate, contingent or vested right or estate, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties.

SEC. 540. In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately or otherwise, if the court so directs.

SEC. 541. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase, nor shall the guardian of an infant party be interested in the purchase of any real property being the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section, shall be void.

SEC. 542. After completing the sale the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any taken. The report shall be filed with the clerk.

SEC. 543. The report of sale may be excepted to in writing by any party entitled to a share of the proceeds. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale.

SEC. 544. When a party entitled to a share of the property, or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

SEC. 545. When there are proceeds of sale belonging to an unknown owner, or to a person without the Territory who has no

legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into court or otherwise deposited by order of the court, the same shall be invested in securities on interest for the benefit of the persons entitled thereto.

SEC. 546. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

SEC. 547. When security is taken by the referees on a sale and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

SEC. 548. The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

SEC. 549. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear

that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

SEC. 550. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale to his general guardian, or the special guardian appointed for him in the suit, upon giving the security required by law, or directed by order of the court.

SEC. 551. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing a bond with sufficient sureties, approved by the judge of the court, conditioned that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

SEC. 552. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without suit and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may respectively be entitled, upon an order of the court.

SEC. 553. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the decree. In that case they shall be a lien on the several shares, and the decree may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

CHAPTER XLVIII.

OF WASTE AND TRESPASS.

SEC. 554. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs.

SEC. 555. If a guardian, tenant in severalty, or in common, for life or for years, of real property, commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant; in which action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice.

SEC. 556. Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city against the persons committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be.

SEC. 557. If upon the trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in

whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodland, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages.

SEC. 558. When any two or more persons are opposing claimants under the laws of the United States to any land in this Territory, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders.

CHAPTER XLIX.

NUISANCE.

SEC. 559. The obstruction of any highway or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance, and the subject of an action for damages and other and further relief.

SEC. 560. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance. If judgment be given for the plaintiff in such action, he may in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the sheriff to abate such nuisance. Such motion

must be made at the term at which judgment is given, and shall be allowed of course, unless it appear on the hearing that the nuisance has ceased or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may have the defendant enjoined.

SEC. 561. If the order be made, the clerk shall thereafter at any time within six months, when requested by the plaintiff, issue such warrant directed to the sheriff, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings endorsed thereon. The expense of abating the nuisance may be levied by the sheriff on the property of the defendant, and in this respect the warrant is to be deemed an execution against property.

SEC. 562. At any time before the order is made or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself, upon his giving bond to the plaintiff in a sufficient amount with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order. The sureties shall justify as bail upon arrest. If the defendant fails to abate such nuisance within the time specified, the warrant for the abatement of the nuisance may issue as if the same had not been stayed.

CHAPTER L.

FORECLOSURE OF MORTGAGE.

SEC. 563. 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. 564. 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. 565. In rendering judgment of foreclosure the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interests and costs at any time before sale, shall satisfy the judgment.

SEC. 566. When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the order of the sale that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be levied on any property of the mortgage debtor.

SEC. 567. A copy of the order of sale and judgment shall be issued and certified by the clerk, under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises, or so much thereof as may be necessary to satisfy the judgment, interests and costs, as upon execution; and if any part of the judgment, interest and costs, remain unsatisfied, the sheriff shall forthwith proceed to levy the residue of the property of the defendant. The sheriff shall endorse upon the order of sale, the time when he received it, and all subsequent proceedings under the said order shall conform, except as hereinafter provided, to the provisions regulating sales of property upon execution.

SEC. 568. 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. 569. 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 instalment 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. 570. 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. 571. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue do not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns.

SEC. 572. The provisions herein contained, so far as the same shall be applicable, shall govern in actions for the foreclosure of chattel mortgages or bills of sale creating liens on personal property. The mortgagee or holder of the lien may proceed upon his mortgage or lien, or if there be a separate obligation in writing to pay the same secured by said mortgage or lien, he may bring suit upon such separate promise. When he proceeds on the mortgage, if there be a specific agreement there-

in contained for the payment of a certain sum, or there is a separate obligation for the said sum, in addition to a decree of sale of mortgaged property, judgment shall be rendered for the amount due upon said mortgage or other instrument, the payment of which is secured thereby. The order of sale shall direct the sale of the mortgaged property, and if the proceeds of said sale be insufficient under such order of sale, the sheriff is authorized to levy upon and sell other property of mortgage debtor, not exempt from execution, for the sum remaining unsatisfied.

SEC. 573. In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same order of sale. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the district or county where the said property is located, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county. Nothing herein contained shall prevent the issue of an execution, as in ordinary cases, either for the whole mortgage debt or such deficiency, after applying the proceeds of the sale of mortgaged property. When, however, an execution shall issue upon a judgment recovered for a debt secured by mortgage, a schedule of the mortgaged property, real or personal, shall be endorsed upon such an execution, and the sale thereof under such order, shall foreclose the equity of redemption of the mortgage therein.

SEC. 574. When sales of other property not embraced in the mortgage or decree of sale are made under the order of sale, to satisfy any deficiency remaining due upon the judgment, two weeks publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the district or county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said district or county.

SEC. 575. Judgments over for any deficiency remaining

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

CHAPTER LI.

NE EXEAT.

SEC. 576. 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. 577. 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. 578. 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. 579. 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. 580. 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. 581. The defendant may have the same remedy by writ of habeas corpus as in other cases of arrest and bail.

SEC. 582. The proceedings may be had before justices of the peace in all cases within their jurisdiction.

SEC. 583. The affidavit and bond may be filed, and proceedings had in any district where the defendants may be found.

CHAPTER LII.

ACTIONS OF SURETIES AGAINST PRINCIPALS.

SEC. 584. 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. 585. 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. 586. 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. 587. 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. 588. 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. 589. 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. 590. 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. 591. The foregoing provisions of this chapter shall extend to heirs, executors and administrators of deceased persons, but the provisions of the five hundred and eighty-fifth section shall not operate against persons under legal disabilities.

CHAPTER LIII.

SUITS ON OFFICIAL BONDS, FINES AND FORFEITURES.

SEC. 592. The official bond of a public officer to the Territory, or to any county, city, town or other municipal or public corporation of like character therein, shall be deemed a security to the Territory, or to such county, city, town or other municipal or public corporation, as the case may be, and also to all persons severally for the official delinquencies against which it is intended to provide.

SEC. 593. When a public officer by official misconduct or neglect of duty, shall forfeit his official bond or render his sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled.

SEC. 594. Before an action can be commenced by a plaintiff other than the Territory, or the municipal or public corporation named in the bond, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the bond and an affidavit of the plaintiff, or some person on his behalf, showing the delinquency. But if the matter set forth in his affidavit be such that if true, the party applying would clearly not be entitled

to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant, on motion, shall be entitled to judgment of non-suit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, judgment shall be given accordingly.

SEC. 595. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same bond for another delinquency.

SEC. 596. In an action upon an official bond, if judgments have been recovered against the surety therein, other than by confession, equal in the aggregate to the penalty or any part thereof of such bond, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him.

SEC. 597. Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them.

SEC. 598. When an action shall be commenced for a penalty, which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense.

SEC. 599. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant wholly or partially from the consequences contemplated by law, in case when the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person.

SEC. 600. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid into the treasury of the proper county. Whenever by the provisions of law, any property real or personal shall be forfeited to

the Territory, or to any officer for its use, the action for the recovery of such property may be commenced in any county where the defendant may be found or where such property may be.

CHAPTER LIV.

ACTIONS BY AND AGAINST PUBLIC CORPORATIONS AND OFFICERS.

SEC. 601. An action at law may be maintained by any county, incorporated town, school district or other public corporation of like character in this Territory, in its corporate name, and upon a cause of action accruing to it, in its corporate character and not otherwise, in either of the following cases:

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

SEC. 602. An action may be maintained against a county or other of the public corporations mentioned or described in preceding section either upon a contract made by such county or other public corporation in its corporate character and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation.

SEC. 603. In such actions the pleadings of the public corporation shall be verified by any of the officers representing it in its corporate capacity, in the same manner as if such officer was a defendant in the action, or by the agent or attorney thereof as in ordinary actions.

SEC. 604. If judgment be given for the recovery of money or damages against such county or other public corporation, no

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

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

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

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

SEC. 605. Should the proper officer of said corporation fail or refuse to satisfy said judgment as in the preceding section provided, an attachment may be issued to compel his performance of said duty.

CHAPTER LV.

HABEAS CORPUS.

SEC. 606. Every person restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.

SEC. 607. Application for the writ shall be made by complaint, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

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

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

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

SEC. 608. 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. 609. 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. 610. If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay.

SEC. 611. 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. 612. If the person to whom such writ is directed cannot be found, or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by posting the same on some conspicuous place, either of his dwelling house or where the party is confined or under restraint.

SEC. 613. 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. 614. The return must be signed and verified by the person making it, who shall state:

1. The authority or cause of the restraint of the party in his custody.
2. If the authority shall be in writing, he shall return a copy and produce the original on the hearing.
3. If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party at the hearing unless prevented by sickness or infirmity, which must be shown in the return.

SEC. 615. 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. 616. 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. 617. No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or

discharge him when the term of commitment has not expired, in either of the cases following:

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

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

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

SEC. 618. 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. 619. 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. 620. 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. 621. 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. 622. 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. 623. 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. 624. 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. 625. 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. 626. Any writ or process authorized by this chapter may be issued and served, in case of emergency, on Sunday.

SEC. 627. 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. 628. Writs of habeas corpus shall be granted in favor of parents, guardians, masters and husbands, and to enforce the rights, and for the protection of infants and insane persons; and the proceedings shall in all cases conform to the provisions of this chapter.

CHAPTER LVI.

MANDATE AND PROHIBITION.

SEC. 629. Writs of mandate and prohibition may issue from the supreme and district courts of the Territory, but such writs shall issue from the supreme court only when necessary for the exercise of its functions and powers. In the district court the writ may be made returnable either in term time or vacation, and may be tried before the judge of said court, in like manner and with like effect as in term time.

SEC. 630. The district court or judge thereof of the county wherein the defendant, if a public officer or body, exercise his or its functions, or if a private person or corporation, wherein such person resides or may be found, or such private corporation might be sued in an action, shall have exclusive jurisdiction of the proceeding, except that the supreme court shall have jurisdiction in all cases where it may be necessary or proper to enable such court to maintain its appellate jurisdiction.

SEC. 631. Writs of mandate may be issued to any inferior court, corporation, board, officer or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. But though the writ may require such court, corporation, board, officer or person, to exercise its or his judgment, or proceed to the discharge of any of its or his functions, it shall not control judicial discretion. The writ shall not be issued in any case where there is any other plain and adequate remedy.

SEC. 632. 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. 633. The first writ shall be in the alternative or peremptory, as the court shall direct.

SEC. 634. 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. 635. 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. 636. 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. 637. Obedience to such writs may be enforced by attachment and fine and imprisonment, or both.

SEC. 638. The writ of prohibition shall command the court and party to whom it shall be directed, to refrain from any further proceedings in the matter therein specified, until the return of the writ and the further order of the court thereon, and upon the return, to show cause why they shall not be absolutely restrained from further proceedings in the matter.

SEC. 639. 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. 640. Costs shall be awarded in these proceedings as in civil actions.

SEC. 641. From the judgment of the district court or judge thereof refusing or directing such writs, an appeal or writ of error may be taken to the supreme court, in like manner and effect as in civil actions.

CHAPTER LVII.

INFORMATION.

SEC. 642. An information may be filed against any person or corporation in the following cases:

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

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

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

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

SEC. 643. The information may be filed by the prosecuting attorney in the district court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise or corporation which is the subject of the information.

SEC. 644. The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court.

SEC. 645. 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. 646. 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. 647. In every case wherein the right to an office is contested, judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself entitled to, if any, at the time of the judgment.

SEC. 648. If judgment be rendered in favor of the relator he shall proceed to exercise the functions of the office, after he has been qualified as required by law, and the court shall order the defendant to deliver over all books and papers in his custody or within his power, belonging to the office from which he shall have been ousted.

SEC. 649. 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. 650. 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. 651. 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. 652. 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. 653. If judgment be rendered against any corporation or against any persons claiming to be a corporation, the court may cause the costs to be collected by executions against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account and make a distribution thereof among the creditors. The prosecuting attorney shall immediately institute proceedings for that purpose.

SEC. 654. Whenever any property shall be forfeited to the Territory for its use, the legal title shall be deemed to be in the Territory from the time of the forfeiture, and an information may be filed by the prosecuting attorney in the district court for the recovery of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in civil action for the recovery of property.

SEC. 655. 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. 656. An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate or deed granted by the proper authorities of this Territory, when there is reason to believe that the same were obtained by fraud or through mistake or ignorance of a material fact, or when the patentee or those claiming under him have done or omitted an act in violation of the terms on which the letters, deeds or certificates were granted, or have by any other means forfeited the interest acquired under the same.

SEC. 657. In such cases the information may be filed by

the prosecuting attorney upon his relation, or by any private person upon his relation showing his interest in the subject matter; and the subsequent proceeding, judgment of the court and awarding of costs, shall conform to the above provisions, and such letters patent, deed or certificate shall be annulled or sustained, according to the right of the case.

CHAPTER LVIII.

ACTIONS BY AND AGAINST EXECUTORS.

SEC. 658. When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action at law therefor against the latter, if the former might have maintained an action had he lived, against the latter, for an injury caused by the same act or omission. Such action shall be commenced within two years after the death, and the damages therein shall not exceed five thousand dollars, and the amount recovered, if any, shall be administered as other personal property of the deceased person.

SEC. 659. All other causes of action by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. Where the cause of action survives as herein provided, the executors or administrators may maintain an action at law thereon against the party against whom the cause of action accrued, or after his death against his personal representatives.

SEC. 660. In an action against several executors or administrators, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the notice be served only on part of them in the

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

SEC. 661. When a judgment is given against an executor or administrator for want of answer, such judgment is not to be deemed evidence of assets in his hands, unless it appear that the complaint alleged assets and that the notice was served upon him.

SEC. 662. In an action against executors and administrators, in which the fact of their having administered the estate of their testator or intestate, or any part thereof, is put in issue and the inventory of the property of the deceased returned by them is given in evidence, the same may be contradicted or avoided by evidence:

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

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

SEC. 663. No person is liable to an action as executor of his own wrong for having taken, received or interfered with the property of a deceased person, but is responsible to the executors or administrators of such deceased person for the value of all property so taken or received, and for all injury caused by his interference with the estate of the deceased.

SEC. 664. An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof.

SEC. 665. An action may be commenced against an executor or administrator at any time after the expiration of one

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

SEC. 666. In an action against an executor or administrator as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such executor or administrator, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally.

CHAPTER LIX.

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CONTEMPTS AND THEIR PUNISHMENT.

SEC. 667. The following acts or omissions, in respect to a court of justice or proceedings therein, are deemed to be contempts of court:

1. Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings.
2. A breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding.
3. Misbehavior in office or other wilful neglect or violation of duty by an attorney, clerk, sheriff or other person appointed or selected to perform a judicial or ministerial service.
4. Deceit, abuse of the process or proceedings of the court by a party to an action, suit or special proceeding.
5. Disobedience of any lawful judgment, decree, order or process of the court.

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

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

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

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

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

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

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

SEC. 668. Every court of justice, and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six months; and when the contempt is not one of those mentioned in sub-divisions one and two of the last section, it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby, before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars.

SEC. 669. When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as

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

SEC. 670. In cases other than those mentioned in preceding section, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance.

SEC. 671. If the party charged be in the custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody that he may answer, and he shall thereupon be produced and held until an order be made for his disposal.

SEC. 672. In the proceeding for a contempt, the Territory is the plaintiff. In all cases of public interest, the proceeding may be prosecuted by the district attorney on behalf of the Territory, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a co-plaintiff with the Territory.

SEC. 673. Whenever a warrant of arrest is issued pursuant to this chapter, the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail, and if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer and detain him until an order be made in the premises, unless the person arrested execute and deliver to the sheriff, at any time before the return day of the warrant, a bond with two sufficient sureties, to the effect that he will appear on such return day and abide the order or judgment of the court or officer thereupon.

SEC. 674. The sheriff shall return the warrant of arrest

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

SEC. 675. Upon the evidence so taken, the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged; and if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter.

SEC. 676. If any loss or injury to a party in an action, suit or proceeding prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover of the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit or proceeding by the aggrieved party for such loss or injury.

SEC. 677. When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it, and in such case the act must be specified in the warrant of commitment.

SEC. 678. Persons proceeded against according to the provisions of this chapter, are also liable to indictment for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on the indictment, in passing sentence shall take into consideration the punishment before inflicted.

SEC. 679. When the warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the bond to be prosecuted, or both. If the bond be prosecuted and the aggrieved party join in the action, and the sum specified therein be recovered, so much thereof as will com-

pensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued, shall be deemed to be recovered for such party exclusively.

SEC. 680. Either party to a judgment in a proceeding for a contempt, may appeal therefrom in like manner and with like effect as from a judgment in an action, but such appeal shall not have the effect to stay the proceeding in any other action, suit or proceeding, or upon any judgment, decree or order therein, concerning which, or wherein such contempt was committed. Contempts of justice's courts are punishable in the manner specially provided in the "act relating to justices of the peace and to their practice and jurisdiction."

CHAPTER LXI.

SUITS ON FOREIGN JUDGMENTS.

SEC. 681. Judgment for debt rendered in any State or other Territory against any person or persons residents of this Territory at the time of the rendition of such judgment, shall not be of any higher character as evidence of indebtedness than the original claim or demand upon which such judgment is rendered, unless such judgment shall be rendered upon personal service of summons, notice or other due process against the defendant therein.

SEC. 682. The same defense to suits on judgments rendered without such personal service may be made by the judgment debtor which might have been set up in the original proceeding.

CHAPTER LXII.

MISCELLANEOUS PROVISIONS.

SEC. 683. 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. 684. 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. 685. 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. 686. 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. 687. When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty, to appoint some suitable person, a citizen of the county, to execute the same: Provided, That final process shall in no case be executed by any other person than the legally authorized officer; or in case he is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues, who shall make such appointment in writing; and before such appointment shall take effect, the person so appointed shall give security to the party interested for the faithful performance of his duties, which bond of

suretyship shall be in writing, be approved by the court or judge appointing him, and be placed on file with the papers in the case.

SEC. 688. 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. 689. 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. 690. 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. 691. 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. 692. 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. 693. The widow, or widow and children, or child or children, if no widow, of a man killed in a duel, shall have a right

of action against the person killing him, and against the seconds, and all aiders or abettors, and shall recover such a sum as to the jury shall seem reasonable.

SEC. 694. When a defendant in execution owns real estate subject to execution, jointly or in common with any other person, the judgment shall be a lien, and the execution be levied upon the interest of the defendant only. When he owns personal property jointly, or in co-partnership with any other person, and the interest cannot be separately attached, the sheriff shall take possession of the property, unless the other person having an interest therein shall give the sheriff a sufficient bond, with surety, to hold and manage the property according to law; and the sheriff shall then proceed to sell the interest of the defendant in such property, describing such interest in his advertisement as nearly as may be, and the purchaser shall acquire all the interest of such defendant therein; but nothing herein contained shall be so construed as to deprive the co-partner of any such defendants or interested in any such property subjecting the same to the debts of the co-partnership.

SEC. 695. Any party having a judgment upon any justice's docket, upon which an execution has been returned unsatisfied, and no property found, may take a transcript of such judgment and return it to the clerk of the district court embracing his county, and upon making an affidavit that the defendant has real estate in any county of said district subject to execution, the clerk shall enter the judgment in the execution docket, in the same manner as judgments of the district court, and thereafter it shall stand and execution be issued thereon as upon the judgment of the district court. A transcript thereof shall, as in other judgments, be recorded by the county auditor and remain a lien upon real estate in the county where so recorded.

CHAPTER LXIII.

OF CONSTRUCTION.

SEC. 696. For all necessary purposes connected with the district court each district shall be considered and held to be but one county; and whenever in this act the words district or county occur, the same may be rendered county or district, as may be necessary: Provided, That nothing herein contained shall be construed to confer jurisdiction upon county officers or extend their powers beyond the limits of their counties.

SEC. 697. 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. 698. 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. 699. 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. 700. The provisions of this act shall be liberally construed, and shall not be limited by any rule of strict construction.

SEC. 701. 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.

Passed the House of Representatives Nov. 26, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council Nov. 26, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

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

CHAPTER I.

PROPERTY AND POLLS SUBJECT TO ASSESSMENT AND TAXATION.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all taxes for the support of the government of this Territory shall be assessed on polls and on property valued in equal and rateable proportion; and all property real and personal within this Territory, not expressly exempted therefrom, shall be subject to taxation in the manner provided by law.

SEC. 2. The terms "real property" and "land," wherever used in this act, shall be held to mean and include not only the land itself, whether laid out into town lots or otherwise, with all things contained therein, but also all buildings, structures, improvements, trees and other fixtures of whatever kind thereon, and all rights and privileges belonging or in any wise appertaining thereto.

SEC. 3. The terms "personal estate" and "personal property" shall be construed to include all household furniture, goods, chattles, moneys and gold dust on hand or on deposit, either within or without this Territory; all boats and vessels, whether at home or abroad, and all capital invested therein; all debts due or to become due from solvent debtors, whether on account, contract, note, mortgage or otherwise; all public stocks, and stocks or shares in all incorporated companies, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

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

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

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

3. The personal property of all literary, benevolent, charitable and scientific institutions, incorporated within this Territory, and such real estate belonging to such institutions as shall be actually occupied for the purposes for which they were incorporated.

4. All houses of public worship, and the lots on which they are situated, and the pews or slips and furniture therein, and all burial grounds, tombs and rights of burial; but any part of any building, being a house of public worship, which shall be kept or used as a store or shop, or for any other purpose, except for public worship or for schools, shall be taxed upon the cash valuation thereof the same as personal property, to the owner or occupant, or to either; and the taxes shall be collected thereon in the same manner as taxes on personal property.

5. All public libraries and the real and personal property belonging to or connected with the same.

6. The property of all Indians who are not citizens, except land held by them by purchase.

SEC. 5. A poll-tax shall be assessed upon every male inhabitant of this Territory between the ages of twenty-one and fifty years.

CHAPTER II.

PROPERTY, WHERE AND TO WHOM ASSESSED.

SEC. 6. All lands shall be assessed in the county in which the same shall lie, and every person shall be assessed in the county where he resides, when the assessment is made for all real and

personal property then owned by him within such county; but land owned by one person and occupied by another, may be assessed in the name of the owner or occupant; and unoccupied land, if the owner is unknown, may be assessed as such without inserting the name of any owner.

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

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

SEC. 9. Every person, except as provided in the succeeding section, shall be assessed in the county in which he resides, when the assessment is made for all taxable personal property owned by him, including all personal estate in his possession or under his control as trustee, guardian, executor or administrator; and where there are two or more persons jointly in possession, or having control of any of such property in trust, the same may be assessed to either or all such persons, but it shall be assessed in the county where the same shall lie, if either of such persons reside in such county.

SEC. 10. All goods, wares and merchandise, kept for sale in this Territory; all stock employed in any of the mechanic arts; and all capital and machinery employed in any branch of manufactures, or other business within this Territory, owned by a corporation out of this Territory, or by any person whether residing in or out of the Territory, shall be taxable in the county where the same may be, either to the owners thereof, or to the person who shall have charge of, or be in possession of the same.

SEC. 11. Partners in mercantile or other business, may be

jointly taxed in their partnership name, or severally taxed for their individual shares, for all personal property employed in such business; and in case they are jointly taxed, such partner shall be liable for the whole tax.

SEC. 12. The person and property of every private corporation is liable to assessment and taxation, unless otherwise specially provided, and shall be assessed in the name of such corporation, in the county where the principal office or place of business of such corporation is located; but if such corporation is engaged in the business of navigation or railroading, then the steamboats or other water craft of such corporation shall be assessed in the county in this Territory where the home port or berth of such steamboat or other water craft may be, and the rolling stock of such railroad shall be assessed in the county in this Territory wherein the principal terminus or depot of such railroad may be: Provided, That if either termini or any depot of such road be in the county where such corporation has its principal office or place of business, then such rolling stock shall be assessed in such county. The personal property of a private corporation may be seized and sold for any tax levied upon the property of such corporation, as in the case of a natural person.

SEC. 13. The owner or holder of stock in any incorporated company which is taxed on its capital, shall not be taxed as an individual for such stock.

SEC. 14. When personal property is mortgaged or pledged, it shall for the purpose of taxation, be deemed the property of the person who has the possession.

CHAPTER III.

MANNER OF MAKING ASSESSMENT.

SEC. 15. Between the first Monday of February and the last Monday in April in each year, the assessor in each county shall ascertain by diligent inquiry, the names of all persons liable to taxation in his county, and also all the taxable personal property, and all taxable real estate therein, and make out an assessment roll of all taxable property, and appraise the same, according to the provisions of the statutes relating thereto.

SEC. 16. Every assessor shall require any person liable to be taxed in his county, to furnish him a list of his real estate, situate in his county, liable to taxation, and a list of all his personal property liable to taxation in this Territory, stating the same in detail, and shall require such person to make oath, that to the best of his knowledge and belief, such list contains a full and true account of all his property liable to be taxed in such county; and if any person shall refuse to furnish such list or to swear to the same, when required so to do by the assessor, such person shall forfeit and pay to the assessor, for the use of the county, the sum of fifty dollars, which sum may be recovered by action in any court having jurisdiction of matters of debt or contract, to the amount of fifty dollars and costs of suit.

SEC. 17. The assessor shall set down in an assessment roll, to be prepared by himself, in separate columns, and according to the best information he can obtain:

1. The names of all the taxable persons in his county.
2. A description of each tract or parcel of land to be taxed, specifying under separate heads the township, range and section in which the land lies; or if divided into lots and blocks, then the number of the lot and block.

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

4. The full cash value of each parcel of land taxed.

5. The full cash value of all the taxable personal property owned by, or to be taxed to such person, as provided by law.

6. The total valuation of all property taxed, real and personal.

SEC. 18. When lots are situated in any city, village or town, a plat of which shall have been recorded, the city, village or town in which the same are situated, shall be specified in the assessment roll.

SEC. 19. When any person is assessed as trustee, guardian, executor or administrator, a designation of his representative character shall be added to his name, and such assessment shall be entered in a separate line from his individual assessment, and he shall be assessed for the real estate held by him in such representative character, at the full value thereof, and for all personal property held by him in such representative character.

SEC. 20. If the land assessed be less, or other than a subdivision according to the United States survey, unless the same be divided into lots and blocks, so that it can be definitely described, it shall be described by giving the boundaries thereof, or in such other manner as to make the description certain.

SEC. 21. It shall be sufficient to describe lands in all proceedings relative to assessing, advertising or selling the same for taxes, by initial letters, abbreviations and figures to designate the township, range, section or part of a section, and also the number of the lots and blocks.

SEC. 22. Unoccupied lands liable to taxation, when the name of the owner is unknown, shall be described, and the value thereof set down in the assessment roll, in a part thereof separate from the other assessments, in the same manner that lands of residents are required to be described, and the value thereof designated.

LOTS

In the city (town or village) of. ———, described according to the map thereof in the office of the county auditor of said county.

Names of persons taxed.	No. of lots.	Blocks.	Valuation of each lot	Valuation of all the lots	Valuation of personal property.	Total valuation.	Amount of tax	Remarks.
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CHAPTER IV.

THE LEVY OF TAXES.

SEC. 24. The board of county commissioners of each county shall, at its term in May in each year, examine the assessment roll of its county, and shall have power to correct the same, make alterations in the description of lands or other property upon such roll, when it shall be necessary to render such description conformable to the requirements of this chapter; and may make any other alterations or corrections in such roll, as it shall deem necessary to make the same conform to the requirements of this chapter.

SEC. 25. The board of county commissioners of each county shall, at its term in May in each year, estimate and determine the amount of money to be raised in such county for county purposes, and apportion such amount, together with the amount of Territorial and school tax, required by law to be raised in its county, according to the valuation of taxable property in the

county, for a year, and such determination shall be entered at large in its records.

SEC. 26. For the purpose of raising a revenue for county purposes, the county commissioners of each county in the Territory shall, at its term in May in each year, levy a tax on all taxable property in its county, which tax shall be sufficient in amount to defray the expenses of the county: Provided, The county tax shall not exceed eight mills on every dollars worth of taxable property in the county for any one year.

SEC. 27. That the annual tax hereafter to be levied in this Territory, to defray the current expenses of the Territory, shall be three mills on the dollar of all taxable property, and a poll-tax of two dollars shall be assessed on, and paid by, each and every male inhabitant of the county over twenty-one, and under fifty years of age, the same to be applied to county purposes.

SEC. 28. Within twenty days after the assessment roll of any county has been examined, corrected and approved by the county commissioners, the county auditor shall transmit to the Territorial auditor a certified copy thereof, under the seal of his office.

SEC. 29. It shall be the duty of the Territorial auditor, on receiving such copies of the assessment rolls, to estimate the amount of tax to be collected in each county for Territorial purposes, and make a statement thereof, and carefully preserve the same in his office; and he shall also deliver a certified copy of such statement to the Territorial treasurer, who shall record the same in a book kept for that purpose, and the Territorial treasurer shall also charge the respective counties with the amount of tax so ascertained to be raised in each.

SEC. 30. The county auditor shall, within fifteen days after the adjournment of the May session of the county commissioners, make out two certificates of the several amounts apportioned to be assessed upon the taxable property of the county, for Territorial, county and school purposes and the amount of poll tax one of which he shall deliver or cause to be delivered to the county treasurer, and the other, with a transcript of the as-

assessment roll aforesaid, shall be delivered to the sheriff of the county, to which certificate and assessment roll thus delivered, shall be attached a warrant in the name of the United States, under the hand of the county auditor and with his seal of office thereto attached, commanding the said sheriff to collect the taxes charged in such transcript by demanding payment of the persons charged therein, and making sale of the goods and chattels mentioned in such transcript, or any other goods and chattels of the respective persons charged therein, if necessary; and that he pay over the moneys collected by him, by virtue of said warrant, to the county treasurer, and return said warrant together with the transcript of the roll aforesaid, and an account of his acts thereon, to the board of county commissioners.

CHAPTER V.

THE COLLECTION AND RETURN OF TAXES, AND PROCEEDINGS CONNECTED THEREWITH.

Sec. 31. That the sheriff of each county shall be tax collector thereof.

Sec. 32. That the county auditor of each county in this Territory shall, within fifteen days after the apportionment of taxes, make a certificate of the several amounts apportioned to be assessed upon the taxable property of the county, for Territorial, county, and school purposes, and deliver the same to the sheriff of the county, together with a transcript of the assessment roll, to which shall be attached a warrant, in the name of the United States, under his hand and seal of office, commanding the said sheriff to collect the taxes charged in said list, by demanding payment of the persons charged therein, and making sale of the goods and chattels of the respective persons named in said list, if necessary; and that he pay over all moneys col-

lected by him, by virtue of said warrant, to the county treasurer, and return said warrant, together with the list aforesaid, and an account of his acts thereon, to the county auditor, on or before the first Monday of January next ensuing the date thereof: Provided, The sheriff, before entering upon the duties of collector of taxes, shall execute an additional bond, in such sum as the board of county commissioners of the county may direct.

SEC. 33. It shall be the duty of the sheriff, upon receipt of the tax roll from the county auditor, immediately thereafter to give notice by posting up written or printed hand bills, three in each precinct within his county, to the effect that he or his deputy will attend at the usual places of voting in each election precinct in his county, for the purpose of collecting taxes; the meeting not to be less than one day in each precinct, and notice to be given fifteen days before such meeting, which notice shall distinctly state the day and hour of meeting and adjournment; and if any person residing in such precinct shall fail to attend at such time and place, and pay his or her taxes, such delinquent may pay the same at any time before the first day of January at the county seat, to the sheriff or his deputy; and if he fail to pay on or before said date as aforesaid, and the sheriff visits his residence, the sheriff may collect of such person, for his own use, ten cents per mile, going and returning.

SEC. 34. The sheriff shall pay over all moneys collected by him on any tax list in his hands, to the treasurer of the county, at least once a month, taking a duplicate receipt for the same, which he shall file with the county auditor of his county, immediately thereafter; and any sheriff failing to comply with the provisions of this section, shall be deemed guilty of misdemeanor, and upon conviction thereof, shall be fined in a sum not less than one hundred dollars, nor more than one thousand.

SEC. 35. The sheriff shall be allowed one and one half per centum on all taxes collected by him, up to the first day of January, next succeeding the date of said warrant, which percentage shall be paid out of the whole amount collected: Provided, however, That when a special tax is levied in any county, exceed-

ing five thousand dollars, the fees for collecting such special tax shall only be one per centum.

SEC. 36. County orders shall be receivable for county taxes, in the county where issued, and shall be allowed the sheriff on his settlement of county taxes, with the county commissioners; but no sheriff shall receive a larger amount of county orders than the amount of county taxes in his county, and the sheriff shall in all cases pay over to the county treasurer the full amount of Territorial, county and school taxes, in such money as may be required by law, just as received by him; Provided, That the county taxes in the county may be paid in the county orders of the county.

SEC. 37. No county officer shall, either directly or indirectly, purchase or receive in payment of taxes, or in exchange or otherwise, in any manner whatever, any county orders, or any demand against his county, for a claim allowed (by the proper officer to allow the same) during his term of office, for a less amount than that expressed on the face of such order or demand; and any such person so offending, shall, on conviction thereof be fined in a sum not less than one hundred, nor more than three hundred dollars.

SEC. 38. The sheriff shall, on payment to him of any tax, if required, give a receipt for the same, and shall note on his tax roll the payment thereof; and if any such sheriff shall wilfully return as unpaid any tax which has been paid to him, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine, which fine shall not exceed five hundred dollars, or by imprisonment not to exceed six months, or both, in the discretion of the court.

SEC. 39. In case any person shall refuse or neglect to pay the tax imposed on him, the sheriff shall levy the same by distress and sale of the goods and chattels of such person, wherever the same may be found within his county.

SEC. 40. The sheriff shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up in three

public places in the county where such sale shall be made; and the sale shall be at public auction in the day time, and the property to be sold shall be present; but at any time previous to the sale, the owner or claimant of such property may release the same by payment of taxes and charges for which the same is liable to be sold.

SEC. 41. On the sale of property as provided in the preceding section, the purchase money shall be immediately paid over to the sheriff, and in case of the purchaser neglecting to do so, the sheriff shall immediately offer the same again for sale.

SEC. 42. If property distrained for taxes cannot be sold for want of bidders, the sheriff shall return a statement of the facts, and the tax, if unsatisfied, shall be collected in the same manner as if no levy had been made.

SEC. 43. If the property distrained shall be sold for more than the taxes, costs and damages, the surplus shall be paid to the owner of such property.

SEC. 44. Whenever any sheriff discovers that any land has been assessed more than once for the same year, he shall only collect the tax justly due thereon, and shall make return of the balance as double assessment, and he shall be credited therefor by the county commissioners.

SEC. 45. If any of the taxes mentioned in the tax list annexed to his warrant, either on real or personal property, shall remain unpaid, and the sheriff shall be unable to collect the same, he shall make out a statement of the taxes so remaining unpaid, distinguishing by setting down separately such as are on real, and such as are on personal estate, with a full and correct description of such real estate from his tax roll, and the name of the person taxed, if therein specified, and submit the same by the first Monday in February after the date of the tax list, to the county commissioners; he shall also include in such statement a description of any land doubly assessed, and the amount of taxes thereon, and the county auditor shall carefully compare such statement with the tax roll, to ascertain that the same is correct.

Sec. 46. The return of the sheriff to the county commissioners of delinquent taxes shall be made in a tabular form, and may be varied as the facts may require, but when so made shall be as nearly as may be in the following form:

RETURN		Remarks.
<i>Of A--- B---, sheriff of the county of ---, and Territory of Washington, containing a description of lands, and valuation of real and personal property, and the amount of taxes due thereon, in said county, in the year ---, which remains due and unpaid.</i>		
Names.	Town lots in ---, No. let and block.	Description of lands.
A--- B---	Town block 1 lot 5	W. 1/4 of N. 6, 1/4
C--- D---	E. 1/2 of N. 6, 1/4
E--- F---
		5 00 Non-resident.
		\$20 00
		A--- B---, sheriff of --- county.
		Amount of taxes.
		Poll.
		Total valuation of all property.
		Valuation of personal property.
		Valuation of real estate.
		Number of acres.
		Range E. or W.
		Township.
		Section.

Sec. 47. The sheriff shall then make an affidavit to be annexed to such statement before any officer authorized to admin-

ister oaths, that the facts set forth in said statement are correct; that the sums therein returned as unpaid, are not paid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the persons charged with such unpaid taxes, whereon he could levy the same, which statement and affidavit shall be filed with the county auditor, and he shall thereupon be credited by the county commissioners with the amount of taxes so returned as unpaid and doubly assessed; and he shall be entitled to receive three dollars for making such return.

SEC. 48. Upon settlement as aforesaid, of the amount of taxes so collected and paid to the treasurer and of the amount of delinquents so returned to the county commissioners, such amounts shall be placed to the credit of the sheriff.

SEC. 49. Any sheriff who shall neglect or refuse to pay over all moneys by him collected for taxes, or shall refuse or neglect to make a return of the delinquent taxes of his county, as required in this act, shall be liable to be indicted therefor, and upon conviction may be punished by fine, not less than one hundred, nor more than one thousand dollars; or by imprisonment not less than six months, nor more than six years; or by both, at the discretion of the court.

SEC. 50. On the first of August, October and January the several county treasurers shall remit by safe conveyance to the Territorial treasurer, the amount of Territorial taxes in his hands at the said dates.

SEC. 51. It shall be the duty of the county auditor of each county, after the return of delinquent taxes, as made by the sheriff thereof, within fifteen days after the first Monday in February of each year, to make from said delinquent tax roll, a true and correct list of the taxes returned as unpaid, and a correct description of the lands or town lots, if the same can be made, and to whom such taxes are charged, and deliver the same to the sheriff of the county, with a warrant attached thereto, under his hand and his seal of office, in the name of the United States, commanding said sheriff to levy upon the goods and chattels of such delinquent tax payer, and if none be found, then upon the

goods and chattels of such delinquent tax payer, and if none be found, then upon the real property, as set forth in said tax list, or so much thereof as shall satisfy the amount of taxes so charged, with costs and expenses, and that said sheriff be required to pay over all moneys so collected by the first Monday in May thereafter.

SEC. 52. A warrant for the purpose of collecting delinquent taxes shall be deemed an execution against property, and shall have the force and effect thereof against any person, firm or corporation upon whom such taxes are levied or charged on the roll, and shall be executed and returned in like manner, except as in this chapter otherwise provided.

SEC. 53. If no personal property be found whereon to levy the warrant, or if that levied upon be not sufficient to satisfy the same, it must be levied upon any real property of the person, firm or corporation, against whom the tax is levied or charged, or sufficient thereof to satisfy such warrant, including fees of officer and all expenses of sale, and executing the warrant.

SEC. 54. In case of any delinquent tax levied upon real property, the owner being unknown or absent, or having conveyed the same to another by deed or otherwise, the warrant shall be executed by levying upon any property the person may own, for the amount of taxes, levied on all his property in the county.

SEC. 55. All taxes hereafter levied by any county in this Territory, and remaining unpaid or delinquent, may, by order of the county commissioners, be collected from the persons, firm or corporation, whether known or unknown, against whom the same were charged or levied, by warrant, in the manner and with the effect, provided in this chapter, of delinquent taxes.

SEC. 56. When real property is sold for delinquent taxes, the person executing the warrant must immediately make and deliver a certificate of sale to the purchaser, which shall particularly describe the property sold, and shall state that the same is subject to redemption, as provided by law: Provided, The purchaser shall be entitled to a deed to said property at the expiration of the time for redemption, if the same be not redeemed ac-

ording to law, on presenting the certificate of sale to the sheriff.

SEC. 57. Redemption is made by the payment of the purchase money, and twenty-five per centum additional, together with interest upon the purchase money from the date of sale to the time of payment, at legal rate, and the amount of any taxes which the purchaser may have paid upon the property. The real estate of minor heirs, who at the time of sale had no guardian or other person to take care of their interests, may be redeemed by them within one year after arriving at majority, and the purchaser, if he have received a deed, shall re-convey the premises, upon payment by the heir, as required of other redemptioners.

SEC. 58. A sale of real property, under the provisions of this chapter, conveys to the purchaser, subject to redemption, as herein provided, all the estate or interest therein, of the owner, whether known or unknown, together with all the rights and appurtenances thereto belonging.

SEC. 59. The person executing such warrant, shall make a certificate of sale of the property, for the property sold thereon, to the purchaser, stating therein that the same is made subject to redemption within three years from the date of such sale; the owner or his successor in interest, or any person having a lien or judgment, decree or mortgage on any part thereof separately sold, may redeem the same upon the conditions provided in section fifty-seven of this chapter.

SEC. 60. Real property sold for delinquent taxes, as provided in this chapter, may be redeemed by the owner or his successor in interest, or by any person having a lien by judgment, decree or mortgage on such property, or any part thereof separately sold, within three years from the date of the certificate therefor, and upon the terms and conditions and with the effects as provided in this chapter.

SEC. 61. Whenever any real property sold for delinquent taxes brings more than the amount of such taxes, with costs and charges of collection, the surplus must be paid to the county treasurer, and the person executing such warrant must take a

separate receipt for such surplus, and file the same with the county auditor on the return of the warrant; and the person entitled to the surplus paid over to the treasurer, shall be entitled to an order therefor on demand for the same of the county auditor.

SEC. 62. The certificate of sale to the purchaser must express the true consideration thereof, which is the amount paid by the purchaser; and the return of the officer executing the warrant must specify the amount for which each lot or parcel of land sold, and the name of the purchaser.

SEC. 63. All sales made for delinquent taxes, as provided in this chapter, upon real estate, must be made as is otherwise made in selling real estate upon an execution, at the court-house door, between the hours of ten o'clock, A. M. and four P. M., in the daytime, and notice of such sale shall be given in some public newspaper, published in the county where the property is situated, or in case no paper is published in the county, then in the paper published nearest the place of sale in the Territory, and in general circulation in the county, by advertisement for four consecutive weeks before such sale, describing accurately the lots or lands to be sold, and that they are to be sold for taxes due thereon.

SEC. 64. It shall be the duty of the sheriff to levy upon the goods and chattels of any person or persons removing from the county without first paying all taxes charged against them: and he shall make sale thereof, if necessary, in the manner prescribed in this chapter.

SEC. 65. The fees of officers, arising upon the provisions of this chapter, in relation to the collection of delinquent taxes, shall be the same as for similar services rendered upon execution, and shall be paid by the delinquent against whom the process is executed.

SEC. 66. All cattle, sheep, horses, hogs and other stock driven into this Territory for pasture or to a market from other States or Territories, or driven through this Territory to a market in any other State or Territory, shall be assessed as personal

property is assessed in this Territory, in any county where such transient stock may be found; and the tax so assessed shall be immediately collected from the owner or owners of such transient stock.

SEC. 67. The sheriff of any county where such transient stock may be found, may levy the assessment provided for in this act, according to the rate of assessment ordered by the board of county commissioners for the assessment of the property of resident property holders in his county, and may collect the same, if payment thereof is refused, by distraint, as prescribed for in section thirty-nine of this chapter: Provided, That the owner or owners of such transient stock shall not be liable to pay taxes upon the same in more than one county in this Territory.

SEC. 68. The treasurer of the respective counties shall deliver over to the respective sheriffs of their counties the assessment rolls now in their hands, taking proper receipts therefor. The amount of taxes collected by the treasurer, before delivering the books, shall be duly marked thereon and credited, so that the sheriff shall only be charged with the amount to be by him collected.

CHAPTER VI.

MISCELLANEOUS PROVISIONS CONCERNING THE COLLECTION OF TAXES, AND THE KIND OF MONEY RECEIVABLE THEREFOR.

SEC. 69. Any person who has a lien by mortgage, or otherwise, upon any land on which the taxes have not been paid, may pay such taxes and the interest and charges thereon: and the receipt of the person authorized to receive such tax shall constitute an additional lien on such land to the amount therein specified, and the interest thereon; and the amount so paid and the interest thereon, shall be collectable with, as part of, and in the same manner as the amount secured by the original lien.

SEC. 70. When any tax on any real estate shall have been paid by, or collected from any occupant or tenant, when there is some other person, who by agreement, or otherwise, ought to pay such tax or any part thereof, such occupant or tenant shall be entitled to recover, by action, the amount which such person should have paid, with interest thereon; or he may retain the same out of any rent due, or accruing from him to such person for real estate, on which such tax is so paid.

SEC. 71. Any suit or proceeding for the recovery of lands sold for taxes, except in cases when the taxes have been paid on the land redeemed, as provided by law, shall be commenced within three years from the time of recording the tax deed of sale, and not thereafter.

SEC. 72. If any sheriff shall fail to make settlement of the taxes included in his assessment roll, within the time required by this chapter, the county treasurer shall charge such sheriff five per centum damages, and twelve per centum interest per annum, from the day payment should have been made on the balance of unsettled taxes due from him; and if any sheriff shall withhold the payment of any public moneys collected or received by him after the same should be paid, and shall have been demanded, he shall be liable to pay ten per centum damages, and twelve per centum interest as above specified, on such moneys: which moneys, damages and interest, may be collected by suit upon the sheriff's bond, for the recovery of the same.

SEC. 73. If any person should be injured by the false return or fraudulent act of any sheriff, such person shall recover upon suit, brought on the bond or lieu of such sheriff and his sureties, double damages and costs of suit.

SEC. 74. No sale of land for taxes, and no deed made in pursuance thereof, shall be of any validity, if the taxes for which the same are sold, shall have been paid prior to such sale.

SEC. 75. Whenever any moneys shall have been collected or received by any officer for any distinct and specified object, no portion of them shall be paid or applied to any other object or purpose, without due authority, but shall be kept a separate

fund for such specified object; and any officer failing to comply with the provisions of this section, shall be liable to a fine, not exceeding five hundred dollars, or to imprisonment in the county jail, not exceeding six months.

SEC. 76. Any officer, who shall neglect or refuse to perform any of the duties imposed on him by this chapter, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

SEC. 77. Whenever any county treasurer shall fail to pay to the Territorial treasurer, any money in his hands for that purpose, at the time prescribed by law, he shall, in addition to other penalties, be liable to the following: If he shall so fail for the space of twenty days, he shall forfeit to the Territory ten per centum on the amount withheld; and if he shall fail to pay over such moneys for the space of forty days after such specified time, he shall forfeit his office as treasurer, and be deemed a public defaulter.

SEC. 78. As between the grantor and grantee of any land, when there is no express agreement as to which shall pay the taxes that may be assessed thereon, before the conveyance, if such land is conveyed at the time, or prior to the date of the warrant authorizing the collection of such taxes, then the grantee shall pay the same; but if conveyed after that date, the grantor shall pay them.

SEC. 79. The entries made in the county treasurer's books, the assessment rolls, and the warrants thereto attached, and the lists of lands sold for taxes, recorded by said treasurer, or by the county auditor, shall be prima facie evidence in all judicial proceedings.

SEC. 80. The Territorial auditor shall from time to time, as he may deem proper, cause to be printed blank assessment rolls, and other forms for proceedings required by this chapter, and shall transmit the same, together with such instructions as he shall think useful with reference to county statistics, to the several county auditors in the Territory, who shall distribute

the same to the assessors of their several counties, and said assessors shall obey such instructions from the Territorial auditor.

SEC. 81. All taxes levied in this Territory by the authority of the Territory, or a municipal corporation therein, upon any person or property in this Territory, shall be collected and paid in lawful money of the United States, unless otherwise provided: and the treasurer of each county shall transmit to the Territorial treasurer at the time prescribed by law, in each and every year, the amount of the taxes of all descriptions or kinds which may accrue in such county, in lawful money of the United States, and not otherwise, except in such cases as are now provided by law.

SEC. 82. Nothing in this act shall be so construed as to interfere with the provisions of any act passed at the present session of the Legislative Assembly, allowing the levy of a special tax in any county in this Territory, but the manner of collecting such special taxes, shall be as hereinbefore provided.

SEC. 83. The per centage due the sheriff and treasurer for collecting and receiving taxes collected under the provisions of this act, shall be deducted from the gross amounts collected in kind; and the county fund shall not make up any deficiency in the Territorial or school fund, by reason of taxes becoming delinquent and uncollectable.

SEC. 84. All taxes on real property levied under the provisions of this act, shall become and remain perpetual liens thereupon against all persons.

SEC. 85. All delinquent taxes now due and unpaid shall be collected in accordance with existing laws.

Passed the House of Representatives Nov. 27, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council Nov. 25, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

RELATIVE TO CRIMES AND PUNISHMENTS AND PROCEEDINGS IN CRIMINAL
CASES.

CHAPTER I.

OF THE RIGHTS OF PARTIES ACCUSED.

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

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

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

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

SEC. 5. If any person indicted for an 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: Provided, That all persons accused of crime in any court of this Territory, whether by indictment or otherwise, shall be admitted to bail by the court, where the same is pending, or by a judge in vacation, when it shall appear to the court or judge that the accused has offered to go to trial in good faith and without collusion with witnesses, and has been denied a trial by the court, or that the accused is so sick or infirm that further confinement in jail would greatly endanger his life or make his sickness or infirmity permanent, and the bail bond in such cases shall be reasonable and at the sound discretion of the court.

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

SEC. 10. Prosecutions for the offenses of murder and arson,

where death ensues, may be commenced at any period after the commission of the offense; for offenses, the punishment of which may be imprisonment in the penitentiary, within three years after their commission, and for all other offenses within one year after their commission: Provided, That any length of time during which the party charged was not usually and publicly resident within the Territory, shall not be reckoned within the one and three years respectively: And further provided, That where a person has been indicted within the period during which the indictment might be found, if the indictment be quashed the time of limitation shall be computed from the quashing of such indictment.

CHAPTER II.

OF OFFENSES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

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

SEC. 12. Every person who shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate any rape, arson, robbery or burglary, or by administering poison, or causing the same to be done, kill another, every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof shall suffer death. But this shall in no case prevent the exercise of the pardoning power of the Governor, or the authority to commute the punishment from that of death to imprisonment for life.

SEC. 13. 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. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another, and every person convicted thereof, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding three months.

SEC. 28. An assault with an intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the penitentiary for a term not less than one year, nor more than fourteen years.

SEC. 29. An assault with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show a willful, malignant and abandoned heart, shall subject the offender to imprisonment in the penitentiary not exceeding two years, or to a fine not exceeding five thousand dollars, or to both such fine and imprisonment.

SEC. 30. Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year.

SEC. 31. 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. 32. 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. 33. 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. 34. Every person who shall violently and unlawfully deprive another of the use of any bodily member, or who shall unlawfully and wilfully disable the tongue or eye, or bite the nose, ear or lip of another, shall be deemed guilty of simple mayhem, and on conviction thereof, shall be imprisoned in the county jail not more than one year nor less than one month, and be fined in any sum not exceeding two thousand dollars, or fined only.

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

SEC. 36. Every person who shall forcibly and feloniously take from the person of another, or from his immediate presence, any article of value by violence or putting in fear, shall be deemed guilty of robbery, and upon conviction thereof shall be punished with imprisonment in the penitentiary for any length of time not more than twenty years nor less than one year.

SEC. 37. 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. 38. Every offense mentioned in the preceding section may be tried either in the county in which the same may have been committed; or in any county in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be sold or transferred shall have been taken, confined, held, carried or brought: and upon the trial of any such offense; the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defense, unless it shall be made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or by threats.

SEC. 39. 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. 40. 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. 41. If any person, either verbally or by any written

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

CHAPTER III.

OF OFFENSES AGAINST PROPERTY.

SEC. 42. Every person who shall willfully and maliciously set fire to the dwelling house, barn, stable, out-house, ship, steamboat, or other vessel, or any water craft, mill, milk house, banking house, distillery, manufactory, mechanic's or artificer's shop, store house, building, or room occupied as a shop or an office for professional business, or printing-office of another, any public bridge, court-house, jail, market house, seminary or college edifice, or building thereto belonging, or other public buildings of the value of five dollars, shall be deemed guilty of arson, and upon conviction thereof shall be imprisoned in the penitentiary 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 willfully set fire to, the offender, on conviction thereof, shall be deemed guilty of murder in the first degree.

SEC. 43. Every person who shall willfully and maliciously set fire to any pile or parcel of boards, timber, piles, or other lumber, cord wood, ricks, stacks, or shocks of grain, hay or other vegetable products, or vegetable products severed from the soil

not in ricks, stacks or shocks, or any standing grass or grain, or other cultivated vegetable product of the soil, shall, upon conviction thereof, be imprisoned in the county jail not more than one year nor less than one month, and be fined in any sum not exceeding five hundred dollars.

SEC. 44. 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. 45. 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. 46. 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. 47. 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. 48. Every person who shall feloniously steal, take and carry, lead or drive away the personal goods or property of another, under the value of thirty dollars, shall be deemed guilty of

petit larceny, and upon conviction thereof shall be imprisoned in the county jail not more than two years nor less than one month.

SEC. 49. 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. 50. 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. 51. 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. 52. 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. 53. 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. 54. 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. 55. 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. 56. 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. 57. 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. 58. 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. 59. If any warehouseman, miller, storage, forwarding or commission merchant, or his or their servants, agents, or clerks, shall willfully and fraudulently make, or alter any receipt or other written evidence of the delivery into any warehouse, mill, store or other building belonging to him, them, or either of them, or his or their employers, of any grain, flour, pork, beef, or wool, or other goods, wares, or merchandise, which shall not have been so received or delivered into such mill, warehouse, store, or other building, previous to the making and altering such receipt or other written evidence thereof, upon conviction thereof, shall be imprisoned in the penitentiary not more than two years, nor less than six months, or imprisoned in the county jail for any length of time not exceeding one year, and fined in any sum not exceeding one thousand dollars: And provided further, If any agent, clerk, officer, servant, or person to whom any money or other property, shall be entrusted, with or without hire, shall fraudulently convert to his own use, or shall fail to account to the person so entrusting it to him, he shall be deemed guilty of larceny, and, on conviction thereof, shall be imprisoned in the penitentiary not more than ten years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 60. 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. 61. 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. 62. 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 defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment it shall be deemed sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any State, Territory, county,

city, town or village, or any body corporate, or any public officer in his official capacity, or any co-partnership or member thereof, or any particular person, and persons of skill shall be competent witnesses to prove a forgery.

SEC. 63. 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. 64. 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. 65. 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. 66. 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. 67. 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. 68. Every person who shall willfully and maliciously set on fire, or cause to be set on fire any timber lands, woods, prairie, grass, pasturage or other grounds, other than his own, or shall intentionally or by gross neglect permit the fire to pass his own premises or grounds, to the injury of any other person or persons, shall, on conviction thereof, for every such offense, be fined in any sum not exceeding five hundred dollars.

CHAPTER IV.

OF OFFENSES AGAINST PUBLIC PEACE.

SEC. 69. 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. 70. 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. 71. 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. 72. Every person who shall disturb any religious society, or any member thereof, when met or meeting together for public worship, or shall sell or give away any spirituous liquor at

any booth, wagon, shed or open place, or any boat, canoe or other water-craft, or in any building temporarily erected for the purpose of selling therein such liquors, within one mile of any collection of a portion of the citizens of this Territory, convened for the purpose of worship, or shall disturb any collection of people for any lawful purpose, such person shall, on conviction thereof, be imprisoned in the county jail not exceeding one month, and be fined in any sum not exceeding two hundred dollars, or fined only.

SEC. 73. 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.

SEC. 74. If any person authorized by any law of this Territory to take an oath or affirmation, or of whom an oath or affirmation shall be required by such law, shall willfully swear or affirm falsely in regard to any matter or thing concerning which such oath or affirmation is authorized or required, such person shall be deemed guilty of perjury, and if any person shall procure another to commit the crime of perjury, such person shall be deemed guilty of subornation or perjury.

SEC. 75. Every person who shall willfully, corruptly and falsely, before any officer authorized to administer oaths, under oath or affirmation, voluntarily make any false certificate, affidavit or statement of any nature, for any corrupt purpose, shall be deemed guilty of perjury.

SEC. 76. Every person convicted of the crime of perjury, committed on the trial of, or proceedings in a criminal action for a crime punishable with death or imprisonment for life, shall be punished by imprisonment in the penitentiary not less than five nor more than twenty years. Every person convicted of the crime of perjury, committed in any proceeding in a court of justice, other than such criminal action, shall be punished by imprisonment in the penitentiary, not less than three nor more than ten years, and every person convicted of the crime of perjury, committed otherwise than in a proceeding before a court of justice, or convicted of the crime of subornation of perjury, however committed, shall be punished by imprisonment in the penitentiary, not less than two nor more than five years.

SEC. 77. If any person shall endeavor to procure or incite another to commit the crime of perjury, though no perjury be committed, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one nor more than three years.

SEC. 78. 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. 79. 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. 80. 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. 81. 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. 82. If any jailor or other officer shall voluntarily suffer any prisoner in his custody, charged with or convicted of any criminal offense, to escape, he shall suffer, unless the prisoner so escaping be charged with or convicted of any capital offense, the like punishment and penalties as the prisoner so suffered to escape was sentenced to, or would be liable to suffer upon conviction for the crime or offense wherewith he stood charged; and if the prisoner was charged with or convicted of a capital offense;

he shall be imprisoned in the penitentiary not more than twenty years nor less than five years.

SEC. 83. 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. 84. 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. 85. 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. 86. 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. 87. 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. 88. 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 one month, or be fined in any sum not exceeding five thousand dollars.

SEC. 89. 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. 90. 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. 91. 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. 92. 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.

SEC. 93. 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. 94. 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. 95. 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. 96. 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. 97. 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. 98. 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. 99. 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. 100. 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. 101. 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. 102. 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. 103. 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. 104. 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. 105. 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. 106. If the taker up of stray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and 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 stray property.

SEC. 107. 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. 108. Every master, mate, or other officer, or other person belonging to, or in charge of any vessel, who shall dis-

charge, 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. 109. 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. 110. If any auditor, treasurer, sheriff, assessor, or county commissioner shall purchase, exchange, or receive in payment, during his term of office, any Territorial or county order, or demand, for less than the amount of such order or demand, he shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 111. 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. 112. 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. 113. 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. 114. 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. 115. 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. 116. 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. 117. 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. 118. 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, shall, on conviction thereof, be fined in any sum not less than ten dollars, which shall be recoverable in any court having competent jurisdiction thereof.

CHAPTER VII.

OF OFFENSES AGAINST MORALITY AND DECENCY.

SEC. 119. 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. 120. 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. 121. 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. 122. 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. 123. 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. 124. 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. 125. 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. 126. 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. 127. Every person who shall cruelly use, beat, torment, overload or overdrive any horse, ox, mule or other animal, whether belonging to himself or to another, shall, upon conviction, be fined in any sum not exceeding three hundred dollars.

CHAPTER VIII.

OF OFFENSES AGAINST PUBLIC HEALTH.

SEC. 128. 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. 129. 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. 130. 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. 131. 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 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. 132. 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. 133. Any tavern keeper, grocery keeper, brewer, distillers, or person or persons, Indian or Indians, who shall sell, barter, give or in any manner dispose of any wines, spirituous liquors, ale, beer, porter, cider or any other intoxicating beverage, to any Indian or Indians within this Territory, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof by any court having competent jurisdiction to try the same, shall forfeit and pay to the use of the county in which the offense may have been committed, a fine of not less than twenty-five dollars, and not more than one hundred dollars for each and every offense, and in all prosecutions under this section, Indians shall be competent as witnesses.

CHAPTER IX.

OF PRINCIPALS AND ACCESSORIES.

SEC. 134. 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. 135. 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. 136. Every person who shall become an accessory after the fact to any felony, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, or shall, or shall not be amenable to justice by any court having jurisdiction to try the principal felon, and either in the county where such person shall become an accessory or in the county where such principal felony shall have been committed.

CHAPTER X.

OF FINES.

SEC. 137. All fines imposed on any person by the provisions of this act where the same shall be collected, shall be paid to the county treasurer of the county where such conviction shall have been had, to go into the general county fund. The county treasurer shall give duplicate receipts therefor, one of which shall be filed with the county auditor; and all officers refusing or neglecting to pay over any fines within one month after they shall have been received, shall, upon conviction thereof, be fined in four fold the amount of such fines so received.

CHAPTER XI.

GENERAL PROVISIONS RELATIVE TO CRIMES AND PUNISHMENTS.

SEC. 138. 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. 139. 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. 140. 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. 141. If any mortal wound is given, or poison ad-

ministered in one county, and death, by means thereof, ensue in another, the jurisdiction is in either.

SEC. 142. 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. 143. 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. 144. 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. 145. 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. 146. 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. 147. So far as the jurisdiction of offenses cognizable

by the district court, and the trial of criminals is concerned, each judicial district shall constitute one county; and whenever in this act the word "county" or "district" occur, they shall be construed to mean either "district" or "county."

CHAPTER XII.

OF SEARCH WARRANTS AND PROCEEDINGS THEREON.

SEC. 148. 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. 149. Any such magistrate, when satisfied that there is reasonable cause, may also upon like complaint made on oath, issue search warrant in the following cases, to wit:

1. To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

2. To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

SEC. 150. 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. 151. When any officer in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized, shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant shall be destroyed under direction of the court or magistrate.

CHAPTER XIII.

DEMANDING FUGITIVES FROM JUSTICE.

SEC. 152. 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. 153. 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. 154. 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. 155. 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. 156. 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. 157. The complainant in such cases shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails to do so, the jailor may forthwith discharge the person from his custody.

CHAPTER XIV.

OF THE GRAND JURY.

SEC. 158. 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. 159. 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. 160. 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. 161. If a challenge to an individual juror be allowed, he shall be discharged and the panel filled.

SEC. 162. The following oath shall be administered to the grand jury:

“You, as grand jurors for the body of the (district or county, as the case may be,) do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make, of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the United States of America, your own counsel and that of your fellows, you shall keep secret; you shall present no person through envy, hatred or malice; neither will you leave any person unrepresented through fear, favor, affection or reward, or the hope thereof; but that you will present

things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this Territory, so help you God."

SEC. 163. 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. 164. 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. 165. 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. 166. The grand jury shall only inquire into the cases of parties in custody or under bail, charged with commission of offenses against the laws of the United States or of this Territory, and duly returned by a committing magistrate, justice of the peace or United States commissioner, or upon a complaint sworn to before an officer authorized to administer oaths and presented by the prosecuting attorney, or under the instructions of the court; and no complainant who may institute a prosecution shall be competent to be present at the deliberations of a grand jury, or vote for the finding of an indictment. Where a grand jury ignore a bill of indictment, they shall also find whether the prosecution is malicious and frivolous, and find whether the complainant or county shall pay the costs, which shall be returned with their proceedings into open court.

SEC. 167. The grand jury shall especially inquire as to the offenses of any person confined in prison on a criminal charge; into the condition and mismanagement of the public prisons in the county; into the willful misconduct in office of public officers, and shall in their discretion examine the public records of the county.

SEC. 168. 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. 169. No indictment shall be found unless twelve grand jurors vote for the finding thereof.

SEC. 170. 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. 171. 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. 172. Whenever the grand jury shall have been dismissed at any term of the court for which they shall have been impaneled, before the final adjournment, they may be summoned to attend again at the same term, if necessary; and if a full jury do not attend, the number may be completed from the bystanders.

CHAPTER XV.

FINDING AND PRESENTATION OF THE INDICTMENT.

SEC. 173. An indictment cannot be found without the concurrence of at least twelve grand jurors; and when so found, it must be endorsed "a true bill," and such endorsement signed by the foreman of the jury.

SEC. 174. When an indictment is found, the names of the witnesses examined before the grand jury must be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court, and if the indictment be for a misdemeanor only, and any witness has voluntarily appeared before the grand jury to complain of the defendant, his name must be marked as private prosecutor.

SEC. 175. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and filed with the clerk, and remain in his office as a public record; but if the defendant has not been held to answer the charge, neither the indictment or any order or process in relation thereto, must be inspected by any person other than the judge of the court or an officer thereof in the discharge of a duty concerning the same, until after the arrest of the defendant.

SEC. 176. No grand juror or officer of the court must disclose any fact concerning such indictment while it is not subject to public inspection; and a violation of this section, or the foregoing section, is punishable as a contempt.

SEC. 177. When a person has been held to answer a criminal charge, and the indictment in relation thereto is not found "a true bill," it must be endorsed "not a true bill," which endorsement must be signed by the foreman, and presented to the court and filed with the clerk, and remain a public record; but in the case of an indictment not found "a true bill," against a person not so held, the same, together with the minutes of the evidence in relation thereto, must be destroyed by the grand jury.

SEC. 178. When an indictment, indorsed "not a true bill," has been presented in court and filed, the effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by the grand jury, unless the court so order.

SEC. 179. A presentment is made to the court, by the foreman, in the presence of the grand jury, and with the concurrence of twelve of their number; but being a mere informal statement of facts, for the purpose of obtaining the advice of the court as to the law arising thereon, is not to be filed in court or preserved beyond the sitting of the grand jury.

CHAPTER XVI.

THE INDICTMENT.

SEC. 180. All the forms of pleading in criminal actions, heretofore existing; are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed herein.

SEC. 181. The first pleading on the part of the Territory is the indictment.

SEC. 182. The indictment must contain:

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

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

SEC. 183. The indictment may be substantially in the following form:

“THE TERRITORY OF WASHINGTON, } District court for the—
 } vs. } Judicial district of W. T..
 A— B— } holding terms at ———.

A. B. is accused by the grand jury of the ———, by this indictment, of the crime of———,” (here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter or the like, or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law,) “committed as follows:

“The said A. B., on the——day of——, 18—, in the county of——in the district aforesaid,” (here set forth the act, charged as a crime.) “Dated at——, in the district aforesaid,” the —— day of ——, A. D. 18—.” (Signed) “C. D., district attorney.” (Endorsed) “a true bill.”

(Signed)

“E. F., foreman of the grand jury.”

SEC. 184. The indictment must be direct and certain, as it regards:

1. The party charged.
2. The crime charged; and,
3. The particular circumstances of the crime charged when they are necessary to constitute a complete crime.

SEC. 185. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

SEC. 186. The indictment must charge but one crime, and in one form only, except that where the crime may be committed by use of different means, the indictment may allege the means in the alternative.

SEC. 187. The precise time at which the crime was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, and within the time which an action may be commenced therefor, except where the time is a material ingredient in the crime.

SEC. 188. When a crime involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material.

SEC. 189. When a crime involves the taking of or injury to an animal, the indictment is sufficiently certain in that respect if it describe the animal by the common name of its class.

SEC. 190. The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

SEC. 191. Words used in a statute to define a crime, need not be strictly pursued in the indictment, but other words, conveying the same meaning, may be used.

SEC. 192. The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive.
2. That it was found by a grand jury of the county or district in which the court was held.
3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown.
4. That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein.
5. That the crime was committed at some time prior to the finding of the indictment, and within the time limited by law for the commencement of an action therefor.
6. That the act or omission, charged as the crime, is clearly and distinctly set forth, in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.
7. That the act or omission, charged as the crime, is stated with such a degree of certainty as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

SEC. 193. No indictment is insufficient, nor can the trial, judgment or other proceedings thereon be affected by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

SEC. 194. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment.

SEC. 195. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction: but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial.

SEC. 196. In pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute, by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

SEC. 197. An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial.

SEC. 198. When an instrument which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

SEC. 199. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court, or before whom, the oath alleged to be false, was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

SEC. 200. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

CHAPTER XVII.

OF PROCEEDINGS BEFORE TRIAL.

SEC. 201. 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. 202. 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. 203. 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. 204. 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. 205. The officer must inform the defendant that he acts under authority of a warrant, and must also show the warrant if required.

SEC. 206. 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. 207. 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. 208. Recognizances in criminal proceedings may be taken in open court and entered on the order book.

SEC. 209. 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. 210. 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. 211. 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. 212. 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. 213. 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. 214. Every person indicted for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance or in custody to answer for such offense, he or his attorney shall be furnished with a copy of the indictment, and of all endorsements thereof without paying any fees therefor.

SEC. 215. 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. 216. The court may, in its discretion, on motion of the prosecuting attorney, order a *nolle prosequi* to be entered in any case, but no prosecuting attorney shall, without leave of the court, in any case cause such entry to be made.

CHAPTER XVIII.

OF THE DOCKET.

SEC. 217. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments pending, to be tried at the term according to the date of their filing, and specifying opposite to the title of each action, whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail, and shall, in like manner, enter therein all indictments found during the term, and on which issues of fact are joined, all cases sent to the court on change of venue, and all cases sent to the court by a magistrate on appeal or otherwise.

CHAPTER XIX.

OF THE ARRAIGNMENT OF THE DEFENDANT.

SEC. 218. 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. 219. 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. 220. If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and he shall be asked if he desire the aid of counsel, and if it appear that he is unable to employ counsel by reason of poverty, counsel shall be assigned to him by the court.

SEC. 221. 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. 222. 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. 223. If the indictment be for a misdemeanor, punishable by fine only, the defendant may appear upon arraignment by counsel.

CHAPTER XX.

OF WITNESSES AND EVIDENCE.

SEC. 224. 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. 225. 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. 226. 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 as hereinbefore provided, or in any prosecutions in which an Indian may be a defendant.

SEC. 227. 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. 228. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions.

CHAPTER XXI.

VENUE.

SEC. 229. The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial, which must be supported by other satisfactory proof, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county, or some part thereof, and demand to be tried by disinterested triers.

SEC. 230. 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. 231. No change of venue from the district shall be allowed on account of the prejudice of the inhabitants of any particular county, but where a party or his attorney shall make his affidavit that the inhabitants of any particular county are so prejudiced or excited, or so particularly interested in the cause or question, that he believes the party cannot have justice done by a jury of that county; or where, in cases now pending, there has already been a change of venue from any particular county ordered on account of prejudice, then no juror for that particular case shall be taken from that county, unless by consent of the party making the objection, but the case shall be tried by the jurors from the other counties, who may be in attendance as grand and petit jurors, and if, from challenges or any other cause, there shall not remain twelve competent jurors, then the case may be tried by a number less than twelve: Provided, That the defendant and prosecuting attorney consent to so try the case.

SEC. 232. When a change of venue is ordered, if the offense beailable, the court shall recognize the defendant, and, in all cases, the witnesses to appear at the term of the court to which the change of venue was granted.

CHAPTER XXII.

OF TRIALS.

SEC. 233. Issues of fact joined upon an indictment shall be tried by a jury of twelve persons, and the law regulating the drawing, retaining and selecting jurors, and trials by jury in civil cases, shall apply to criminal cases.

SEC. 234. 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. 235. The prosecuting attorney, in capital cases, may challenge peremptorily six jurors, in all other cases, three jurors.

SEC. 236. 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. 237. 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. 238. 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. 239. 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. 240. The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in capital cases.

SEC. 241. 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. 242. 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. 243. 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. 244. 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. 245. The court may order a view by any jury impaneled to try a criminal case.

SEC. 246. When two or more defendants are indicted jointly, any defendant requiring it shall be tried separately.

SEC. 247. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the Territory. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the

court, for the purpose of giving testimony for a co-defendant. The order of discharge is a bar to another prosecution for the same offense.

SEC. 248. 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. 249. 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. 250. 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. 251. 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. 252. 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. 253. 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. 254. 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. 255. 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. 256. 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. 257. 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. 258. When the defendant is found guilty, the court, and not the jury, shall fix the amount of fine and the punishment to be inflicted. The verdict of the jury may be substantially in the following form:

“We, the jury, in the case of the Territory of Washington, plaintiff, against —, defendant, find the defendant (guilty or not guilty, as the case may be.) (Signed,) A. B. Foreman.

SEC. 259. When the defendant is found guilty, the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise.

CHAPTER XXIII.

OF NEW TRIALS AND ARREST OF JUDGMENT.

SEC. 260. An application for a new trial must be made before judgment, and may be granted for the following causes:

1. When the jury has received any evidence, paper, document or book not allowed by the court, to the prejudice of the substantial rights of the defendant.

2. Misconduct of the jury.

3. For newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial.

4. Accident or surprise.

5. Admission of illegal testimony and misdirection of the jury by the court, in a material matter of law, excepted to at the time.

6. When the verdict is contrary to law and evidence; but not more than two new trials shall be granted for these causes alone.

SEC. 261. 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. 262. Judgment may be arrested on the motion of the defendant for the following causes:

1. No legal authority in the grand jury to inquire into the offense charged, by reason of its not being within the jurisdiction of the court.

2. That the facts as stated in the indictment do not constitute a crime or misdemeanor.

SEC. 263. The court may also, on its view of any of these defects, arrest the judgment without motion.

SEC. 264. 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. 265. Exceptions may be taken by the defendant, as in civil cases, on any matter of law by which his substantial rights are prejudiced.

CHAPTER XXIV.

OF JUDGMENTS AND EXECUTIONS.

SEC. 266. 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. 267. 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. 268. 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. 269. 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. 270. 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. 271. 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. 272. 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. 273. 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. 274. 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. 275. 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. 276. 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. 277. 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. 278. 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. 279. 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. 280. 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. 281. 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. 282. 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. 283. The punishment of death prescribed by law must be inflicted by hanging by the neck.

SEC. 284. 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. 285. 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. 286. The clerk of the district court shall make a final record of all the proceedings in a criminal prosecution, within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders or decision, and bill of exceptions.

CHAPTER XXV.

ACTIONS ON FORFEITED RECOGNIZANCES.

SEC. 287. In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments.

SEC. 288. The parties, or either of them, against whom such judgment may be entered in the district or supreme courts, may stay said execution till the next regular term of the court in which such judgment is entered, by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment after the adjournment of such succeeding term of court, unless the same shall be vacated before the end of such term.

SEC. 289. If bond be given and execution stayed, as provided in the preceding section, and the principal shall be produced at such term of court, the judge may vacate such judgment upon such terms as may be just and equitable, otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors.

CHAPTER XXVI.

OF WRITS OF ERROR AND APPEALS.

SEC. 290. 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. 291. 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. 292. 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. 293. 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. 294. 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. 295. 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. 296. 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. 297. 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. 298. 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. 299. 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. 300. When several defendants are tried jointly, any one or more of them may take an appeal, or sue out a writ of error.

SEC. 301. 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 re-

turned 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. 302. 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. 303. All opinions of the supreme court in criminal prosecutions, must be given in writing and recorded in the order book.

SEC. 304. 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. 305. 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. 306. The supreme court shall have power to make any rules not inconsistent with the provisions of this or other acts.

CHAPTER XXVII.

MISCELLANEOUS PROVISIONS.

SEC. 307. 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. 308. 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. 309. 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. 310. 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. 311. It shall be the duty of all county school superintendents and school directors to make complaint in all cases which shall come to their knowledge of a criminal violation of the laws relating to schools and education. It shall be the duty of road supervisors to make complaint in all cases which shall come to their knowledge of a criminal violation of the laws relating to roads and highways. It shall be the duty of all constables and sheriffs to make complaint of all violations of the criminal law which shall come to their knowledge within their respective jurisdictions.

SEC. 312. 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. 313. 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. 314. 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. 315. 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. 316. Bail shall, when required, justify as in civil cases.

SEC. 317. 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. 318. The plea of the benefit of clergy is abolished.

SEC. 319. The laws and usages of this Territory relative to pleading and practice heretofore in force in criminal cases, and not inconsistent herewith, as far as the same may operate in aid thereof, or to supply any omitted case, are hereby continued in force, but all laws heretofore enacted upon any matter provided for by this act, are hereby repealed: 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 the House of Representatives November 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 25, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

IN RELATION TO ROADS, FERRIES, BRIDGES, AND TRAVEL ON PUBLIC HIGHWAYS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all county roads shall be under the supervision of the board of county commissioners of the county

wherein the said road is located, and no county road shall be hereafter established, nor shall any such road be altered or vacated in any county in this Territory except by the authority of the board of county commissioners of the proper county: Provided, That this act shall not be construed to interfere with the jurisdiction over roads within the corporate limits of any city or town which by the charter of said city or town is vested in the corporate authorities of said cities or towns, and when such charter confers upon the corporate authorities the sole power to expend the road labor and taxes collected within such corporate limits.

SEC. 2. All applications for laying out, altering or locating county roads, shall be by petition to the board of county commissioners of the proper county, signed by at least twelve householders of the county residing in the vicinity where said road is to be laid out, altered or located, which petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road.

SEC. 3. When any petition shall be presented for the action of the board of county commissioners for laying out, alteration or vacation of any county road, it shall be accompanied by satisfactory proof that notice has been given by advertisement, posted at the place of meeting of said board, and also in three public places in the vicinity of said road or proposed road, thirty days previous to the presentation of said petition to said board, notifying all persons concerned that application will be made to said board at their next term, for laying out, altering or vacating such road, as the case may be.

SEC. 4. Upon the presentation of such petition and proof that notice has been given, as provided in the last section, the board of county commissioners may appoint three disinterested householders of the county, as viewers of said road, and a surveyor to survey the same, and shall issue an order directing said viewers and surveyor, on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view, survey and lay out or alter said road.

SEC. 5. It shall be the duty of the viewers and surveyor

appointed as aforesaid, after receiving at least five days previous notice, by one of the petitioners, to meet at the time and place specified in the order of the board of county commissioners aforesaid, or within five days thereafter, and after taking an oath or affirmation faithfully and impartially to discharge the duties of their appointments, respectively, they shall take to their assistance two suitable persons as chain bearers, and one marker, and proceed to view, survey and lay out or alter said road as prayed for in the petition, as near as in their opinion a good road can be made at a reasonable expense, taking into consideration the utility, convenience or inconvenience and expense which will result to individuals as well as to the public, if such road shall be established and opened or altered; and the surveyor shall survey such road under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the angles and distances; all trees on the line of such road shall be marked on each of the sides corresponding with the direction of the road, with three notches cut through the bark, and at least one inch into the wood, and all trees adjacent to the line shall be plainly blazed on the side facing the road. The beginning and termination of such road, and the termination of each mile thereon, shall be designated by a tree, if one is found at the point, if not, then by a stone containing at least 1728 solid inches, if such stones can be found in the vicinity, if not, then by a post of durable wood, at least four inches square and three and a half feet long, firmly planted not less than eighteen inches in the ground. When posts are used, two bearing trees shall be chosen, the course and distance of each of which from the post, the diameter of the tree and the kind of wood, shall be noted by the surveyor. If no stones can be obtained, and no trees suitable for bearing trees can be found, the surveyor shall cause a mound to be erected of compact earth around the post, eighteen inches high and four feet square. The beginning and terminating points of the road, whether trees, posts or stones, shall be marked by the letter "R." The termination of each mile shall be marked by a figure indicating the number of the mile from the beginning of the road,

followed by the letter "M." The marks required by this section, if occurring on stones, shall be cut legibly at least one-eighth of an inch deep; if occurring on trees or posts, they shall be plainly cut at least one-fourth of an inch deep in the solid wood, the bark having been first removed. All bearing trees shall be marked on the side facing the post to which they correspond, with a figure and letter the same as that on the post, cut into the solid wood in the same manner as other trees are required to be marked. The surveyor shall also make out and deliver to one of the viewers, without delay, a correct certified return of the survey of said road, and a plat of the same; and the viewers, or a majority of them, shall make and sign a report in writing, stating their opinion in favor of or against the establishment or alteration of such road, and set forth the reasons of the same, which report, together with the plat and survey of said road or alteration, shall be delivered to the county auditor by one of the viewers, on or before the first day of the term of said board then next ensuing; and it shall be the duty of the board of county commissioners, on receiving the report of the viewers aforesaid, to cause the same to be publicly read twice at the same meeting; and if no remonstrance with a greater number of remonstrators than there are names on the petition (the names on the remonstrance to be confined to the vicinity of the proposed road) or petitions for damages be filed, and the commissioners being satisfied that such road will be of public utility, the report of the viewers being favorable thereto, the commissioners shall cause said report, survey and plat to be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue an order directing said road to be opened.

SEC. 6. In all cases where any oath or affirmation is required to be taken by any person under the provisions of this act, the same may be administered by the surveyor, or by one of the viewers who have previously been sworn or affirmed themselves: Provided, That it shall not be necessary to survey any county road unless the board of county commissioners shall order the same.

SEC. 7. If any person through whose lands any county road may be viewed and marked out, shall feel that he or she would be injured by the opening of the same, such person may make complaint thereof in writing to the board of county commissioners at the time the report of the viewers appointed to view said road is received; and if such complaint be made, the county commissioners shall appoint three disinterested householders of the county, who shall meet at such time as may be designated by the county commissioners, or at such time as may be agreed upon by such householders, and after having been duly sworn or affirmed to discharge their duty faithfully and impartially, shall proceed and view said proposed road the whole distance through the premises of the complainant and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the county commissioners at the next regular term.

SEC. 8. If the board of county commissioners are satisfied that the amount of damages so assessed is just and equitable, and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, the commissioners shall order the same to be paid to the complainant out of the county treasury; but if in the opinion of the commissioners such proposed road is not of sufficient importance to the public to cause damages to be paid by the county, the commissioners may refuse to establish the same as a public highway, unless the expense or damages, or such part thereof as the commissioners may think proper, shall be paid by the petitioners.

SEC. 9. Any complainant who may conceive himself aggrieved by the assessment of damages as prescribed by the two preceding sections, may, within twenty days after such report is adopted by the county commissioners, appeal therefrom to the district court of the proper county; such appeal shall be taken to the district court in the same manner as appeals from justices of the peace, and if the appellant shall fail to recover a judgment

more favorable than the report appealed from, he shall pay all costs of the appeal.

SEC. 10. All 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 width.

SEC. 11. When the place of beginning or true corner of any public road shall become uncertain by reason of the removal of any marked tree or monument by which such road is designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested householders of the county to review, and if they deem it necessary, to straighten such road; and the reviewers shall cause the said road to be correctly surveyed and marked throughout as in case of a new road, and shall make a return of the survey and plat of such road to the county commissioners of the proper county; the commissioners shall cause the same, if approved, to be recorded as in other cases; and from thenceforth such road surveyed as aforesaid shall be considered as a public highway.

SEC. 12. 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 county commissioners of the proper county to permit him or them to turn such road through any other part of his or their land on as good ground, and without materially increasing the distance, to the injury of the public; and on receipt of such petition, accompanied by a sufficient bond to pay the costs and expense to be incurred thereby, the commissioners may appoint three disinterested householders as reviewers and a surveyor, who, or a majority of such reviewers, shall proceed to review 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 alterations, and if the reviewers, or a majority of them, shall report to

the commissioners that the prayer of the petitioner or petitioners is reasonable, 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 convenience 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.

SEC. 13. If any viewer or viewers shall refuse or neglect to perform the duties required by this chapter, without making satisfactory excuse for such refusal or neglect, he shall be fined by the board of county commissioners in any sum not exceeding ten dollars, to be recovered by an action before a justice of the peace of the proper county, which fine when collected shall be paid over without delay into the county treasury.

SEC. 14. Upon application being made under the provisions of this chapter, for a view or review of any public road proposed to be laid out, altered or vacated, the county commissioners shall, before issuing an order to the viewers, require a bond to be executed by one or more of the petitioners, for such view or review, with surety sufficient, to be approved by the commissioners and made payable to the county in such sums as the commissioners shall direct, not exceeding two hundred dollars, conditioned that if the prayer of the petitioners be not granted and allowed, the person executing such bonds will pay all costs and expenses that may be incurred by reason of such view or review.

SEC. 15. Any person whose lands shall be so situated that it has no connection with any public road, may make application in writing to the county commissioners of his county at a regular term, for a private road leading from his premises to some convenient public road, and thereupon the commissioners shall appoint three disinterested householders of the county as viewers, and cause an order to be issued 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 or affirmed, faithfully and impartially to discharge the duties of their appointment, and after at least three days notice given to all persons through whose lands such private road is to be located, such viewers shall proceed to locate and mark out a private road 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 such private road is located, and they shall also at the same time assess the damage sustained by the person or persons owning such lands.

SEC. 16. The viewers appointed in accordance with provisions of the preceding sections of this act, shall have power to determine, in all cases, whether or not gates shall be placed at proper points on said road, and assess damages in accordance with that determination.

SEC. 17. The viewers so appointed, or a majority of them, shall make a report to the county commissioners at the next regular term, 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 county 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, the commissioners 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.

SEC. 18. The board of county commissioners shall, as often as they may deem necessary, but not oftener than once a year, divide their respective counties, or any part thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records.

SEC. 19. The board of county commissioners shall annually at the February or May term thereof, appoint a supervisor of roads for each road district in the county, and shall at any time

fill any vacancy that may occur in such office. The county commissioners shall cause a certified copy of the order appointing a supervisor, to be delivered to the sheriff or his deputy, who shall serve the same as soon as may be, which shall be notice of his appointment and evidence of his authority to act as such. Each supervisor shall hold his office until the following February or May term of the board of county commissioners, and before entering upon the discharge of his duties, shall take an oath to faithfully discharge the duties of his office, and if required by the commissioners shall enter into bond to the county, with one or more sureties, to be approved by the commissioners, in any sum specified by the commissioners, not exceeding one thousand dollars, to the effect that he will faithfully account for and pay over to the treasurer all moneys that may be in his hands by virtue of his office. The county commissioners shall have power at any time to remove from office any supervisor who shall fail, neglect or refuse to perform the duties of the office.

SEC. 20. It shall be the duty of the county auditor to furnish the supervisor of each road district a list of petitioners for county roads residing in their respective districts, and it shall be the duty of the supervisors to cause said petitioners to perform two days labor each in opening said road: Provided, That any person may, in lieu of each day's work to be performed according to this section, pay into the hands of the supervisor the sum of three dollars per day, to be expended in labor on said road in said road district.

SEC. 21. It shall be the duty of every supervisor of roads, on or before the fifteenth day of March, to obtain the names and make out in alphabetical order, a list of all persons liable to perform labor on the public roads residing within his road district, and file the same with the county auditor, whose duty it shall be to affix to each name the amount of taxable property owned by each person residing or owning real property therein, for county rates the last preceding year.

SEC. 22. In making such estimate and assessment, the supervisor shall proceed as follows:

1. He shall apportion the labor to be performed in his road district, according to the valuation of taxable property owned by each person residing, or owning real property therein, in the ratio of one day's work for each and every one thousand dollars assessed for Territorial and county purposes, the last preceding year: Provided, That any person may, in lieu of each day's work to be performed according to this act, pay into the hands of the supervisor the sum of three dollars, to be paid to the county treasurer for the use of the general road fund for the county.

2. He shall assess two days work to be performed by every male between twenty-one and fifty years of age, except persons who are a public charge, or too infirm to perform labor.

SEC. 23. Whenever the supervisor shall, from any cause, have neglected or omitted to place on his list, and assess any person within the time required by law, he shall at any time afterwards place the name of any such person on the list, and assess the number of days work to be performed by him, which assessment shall in all respects be valid as if made in due time.

SEC. 24. The supervisor must notify every person within his road district, subject to road labor as aforesaid, to perform the work assessed on the public roads within his district, and if any person subject to road labor as aforesaid, shall, after three days notice, either personally or by writing, left at his usual place of abode, by the supervisor or by any other person by his direction, neglect or refuse to attend by himself or suitable substitute, at the time and place designated by the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall pass his time in idleness or inattention to the labor or duties assigned him, every such delinquent shall thereby become liable to the supervisor for the amount of his road tax in money, and such supervisor shall proceed at once to collect the same by levy and sale of the property, real and personal, of such delinquent, or sufficient thereof for that purpose, and to pay the penalty for such delinquency and the costs and expense of the levy and sale; and any person having men employed, either for himself or a company, shall pay the road tax due by

such men, on being notified in writing by the supervisor: Provided, That such person or company is indebted to such men the amount of such tax, the same, if not paid, to be collected by said supervisor as hereinabove provided.

SEC. 25. The supervisor must collect from the delinquent, in addition to the amount of the road tax, twenty per centum thereon, but if any such delinquent shall pay the amount of the road tax to the supervisor before a levy upon his property, such twenty per centum shall not be added thereto.

SEC. 26. Every person notified to labor on the public roads, under the provisions of this chapter, shall be required to appear at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and work industriously and diligently, doing at least eight hours faithful labor in each day at such work, and in such manner as shall be directed by the supervisor; and such supervisor may, if he deem it necessary, order any person (owning the same) to furnish a team of horses, mules or oxen, and wagon, cart, scraper or plow, to be employed or used on the roads under the direction of such supervisor; who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper or plow, in discharge of any labor due from such person.

SEC. 27. When a supervisor cannot find sufficient property of a delinquent out of which to make the amount of his road tax, or any part thereof, he must collect the same or any part thereof remaining uncollected, by an action in his own name against the delinquent, in any court having jurisdiction thereof; and if judgment be given in such action against the defendant, it shall be enforced in the same manner as a judgment for a fine in a criminal action. All moneys paid to, or collected by the supervisor for road taxes, shall be paid to the county treasurer for the use of the general road fund of the county.

SEC. 28. The supervisor of roads 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 if the labor in his district, assessed as provided in section twenty-two of this act, is not sufficient for that purpose, then he shall have authority to assess and call out such an amount of labor as will be sufficient to put the public roads in his district in good repair: Provided, That said assessment shall be made as near as possible upon the basis of assessment in section twenty-two; and he shall have authority to purchase for the use of the road district, any plows, scrapers or other implements which he may think proper, and to enter upon any lands adjoining or near the public road, and gather, dig and carry away any 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 any timber, plank or other materials necessary for making or repairing any public road in his district, and to enter upon any land adjoining or laying near any public road in his road district, and cut, open or construct such drains and ditches as he shall deem necessary for the making or preservation of such roads, doing as little injury as may be to such lands; and any person stopping or obstructing the drains or ditches so made, shall forfeit the sum of twenty dollars for each offense, to be recovered and appropriated as provided in the last section: Provided, That in all suits decided adversely to the supervisor, hereby authorized to be instituted by him, he shall be allowed a credit, in his yearly settlement, of costs he may have been compelled to pay on account of such adverse decision or decisions.

SEC. 29. If any person shall feel aggrieved by the act of any supervisor cutting or carrying away timber or stone as aforesaid, he may make complaint thereof in writing to the county commissioners, at any regular meeting within six months after the cause of such complaint shall exist, and such commissioners shall proceed to assess and determine the damages, if any, sustained by the complainant, and cause the same to be paid out of the county treasury.

SEC. 30. Every supervisor shall erect and keep up 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.

SEC. 31. If at any time during the year, any public road shall become obstructed by 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 obstruction to be removed or bridges repaired, for which purpose he shall immediately order out such number of inhabitants of his district as he may deem necessary to remove such obstruction, or to repair such bridge; and all persons so ordered out shall, after having received one day's notice, be subject to the same restrictions and liable to the same penalties, as if ordered out under section twenty-four of this chapter.

SEC. 32. In all cases where any person shall, under the direction of the supervisor of roads, perform more labor upon the public roads than may have been assessed upon him under the provisions of this act, the supervisor shall give such person a certificate, specifying the amount of extra labor so performed, which certificate may be transferred and received in discharge of the labor of any other person within the same district, to the amount of labor specified in such certificate, or 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. 33. Every supervisor shall keep an account of the days work performed on the roads in payment of road tax, and by whom performed, and also an account of all moneys collected or recovered by him for road tax; and such supervisor shall each year return his accounts to the board of county commissioners for examination and settlement, at the February or May term thereof, and must pay over any moneys in his possession to the county treasurer as often as once in three months for the use of the general road fund of the county.

SEC. 34. In an action by the supervisor to recover a delin-

quent tax, the presumption shall be, until the contrary is shown, that the defendant was duly warned to work the road, and failed or neglected so to do, and that he had no property whereon the supervisor could levy to make the amount of such tax, or the portion sued for. No property is exempt from levy and sale for a delinquent road tax.

SEC. 35. Any supervisor of roads who shall neglect or refuse to perform the several duties enjoined upon him by this chapter, or who shall, under any pretence whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for money paid or labor performed, unless the money shall have been paid or the labor performed prior to the giving or signing such receipt or certificate, shall forfeit for every such offense not less than five, nor more than fifty dollars for the use of his county, to be recovered before any justice of the peace having jurisdiction of the same, in the name of the county commissioners; and it is hereby made the duty of the commissioners to sue for the same: Provided, That if any supervisor conceive himself aggrieved by the decision of the justice of the peace, he may appeal to the district court as in other cases.

SEC. 36. Every supervisor of roads shall receive for each day necessarily employed in the performance of any of the duties required by this act, over and above the number of days work required by law to be performed by such supervisor, the sum of two dollars, to be paid out of the road fund in the county treasury, after the report of the supervisor shall have been received and approved by the commissioners. Every person employed as surveyor under this act, shall receive as compensation, the sum of three dollars per day; each viewer or reviewer the sum of two dollars per day; and each chain carrier and marker the sum of two dollars per day: Provided, That no surveyor, viewer, reviewer, chain carrier or marker shall receive any compensation, until he shall certify to the county commissioners that he has been necessarily employed the number of days for which he claims pay, and that he has complied with the requirements of this act.

SEC. 37. If any part of any road in this Territory shall not be opened for four years after, or from the time of its location, the same shall become vacated.

SEC. 38. All the Territorial roads in this Territory are hereby declared to be county roads.

SEC. 39. Any person subject to perform road labor, shall perform the same upon any road in the district which the supervisor may designate in his notice to perform work on the roads.

CHAPTER II.

THE ESTABLISHMENT AND REGULATION OF FERRIES.

SEC. 40. The board of county 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 its respective county, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioners, not exceeding five years.

SEC. 41. The board of county commissioners shall tax such sum as may appear reasonable, not less than one, 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 county auditor shall issue such license under the seal of his office.

SEC. 42. Unless otherwise provided by law, no such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where the ferry is proposed to be kept, unless such owner shall neglect to apply for such license; and whenever application shall be made for a license by any person other than such owner, the board of county com-

missioners 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 county commissioners at which application is made.

SEC. 43. 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, twenty days prior to any regular session of the board of county commissioners at which the application shall be made: Provided, That when application shall be made for the renewal of a license where the former license has expired, the same may be granted or renewed without previous notice or petition.

SEC. 44. 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 county auditor, 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. 45. 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 bank of the stream so that persons and property may be embarked and landed without danger or unnecessary delay.

SEC. 46. Every person obtaining a license, as aforesaid, shall give constant and diligent attention to such ferry, from day-

light in the morning until dark in the evening of each day, and shall moreover, at any hour in the night, if required, except in cases 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 daytime; 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 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. 47. Whenever the county commissioners of any county shall grant a license to keep a ferry across any lake or stream, such commissioners shall establish the rates of ferriage which may be lawfully 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 the publicity of the place at which the same shall have been established; 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 five dollars, over and above the amount which shall have been illegally received, to be recovered before any justice of the peace having jurisdiction.

SEC. 48. The county commissioners of the several counties are hereby authorized to fix, alter and establish, from time to time, the rates of ferriage to be levied and collected at all ferries now established, or hereafter to be established by law, within or bordering upon the county lines of any of the counties in this Territory.

SEC. 49. 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 of ferriage which are chargeable by law at such ferry, which list of rates 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. 50. 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. 51. Every person licensed to keep a ferry, according to the provisions of this chapter, 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. 52. 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

section forty-five of this chapter, 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 chapter; or if the same shall be abandoned, disused or unfrequented for the space of six months, at any one time, it shall be lawful for the board of county 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, subject to be reviewed by the district court: 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. 53. Any person who shall maintain any ferry, and receive ferriage, without first obtaining a license for the same, shall pay a fine of ten dollars for each offense, to be collected for the use of the 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 there is no ferry, or that the 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.

CHAPTER III.

THE ESTABLISHMENT AND REGULATION OF TOLL ROADS.

SEC. 54. Whenever a public road in any county in this Territory is or may hereafter be so located that there is little or no local labor along the line of said road, the board of county commissioners of the county where such road or any portion of the same is, or may hereafter be located, is authorized to lease such road or any portion of the same, to any person or corporation, to open, improve and keep the same in repair for a period not exceeding ten years, with the right in consideration thereof, to collect and receive tolls for travel thereon, in the manner provided in this chapter.

SEC. 55. Whenever it becomes expedient and lawful under the provisions of this chapter, to lease a public road, or any specified section thereof, the board of county commissioners shall make an order to that effect, specifying therein the termini thereof, and directing the county auditor to cause the same to be published in some weekly newspaper of general circulation therein, for a period not less than four weeks, and in like manner to give notice therewith that sealed bids will be received at such auditor's office for the leasing of such road, until a particular hour of a certain day thereafter, not more than ten days after the expiration of the publication of such order and notice.

SEC. 56. No bids shall be considered, unless accompanied by a bond executed by two or more sureties, in the sum of two thousand dollars, to be void upon the condition that the bidder, if the lease is awarded to him, will, within ten days thereafter, enter into the contract for keeping the road, and give the bond to secure the performance thereof as hereinafter provided.

SEC. 57. The contract for the lease shall be subscribed by the lessee, and approved by the board of county commissioners

and filed with the county auditor. At the time of filing the contract, the lessee shall give a bond to the county, in a sum to be fixed by the board of county commissioners, not less than two thousand, nor more than ten thousand dollars, with two or more sufficient sureties, to be void upon the condition that the lessee will faithfully perform the contract in relation to such road, and comply with the provisions of this chapter concerning the same.

SEC. 58. The sureties in the bond mentioned in the last section, shall have the qualification of bail upon arrest, and shall justify in like manner before the county commissioners or the clerk thereof.

SEC. 59. A road leased under this act, shall be cleared of standing timber and have a track for traveling of the same width, and be kept in the same order, and the streams or other waters on the line thereof shall be bridged, or ferries established thereon, and shall be made of such grade and of such materials as the contract shall specify.

SEC. 60. No toll shall be collected for travel on such roads, except at a gate, nor unless a sign board be posted at such gate in full view of the travel on the road, with the rates of toll plainly written or printed thereon. The lease shall specify the number of gates that may be placed on the road, to which it relates, and the location thereof, and thereafter the number of such gates shall not be increased; but the board of county commissioners, upon the application of the lessee, may, at any time, for good reasons, authorize the lessee to change the location of such gates, or any of them.

SEC. 61. The rates of toll that the lessee may collect and receive, shall be specified in the lease, and none other can be charged; and any person who shall pass through a gate upon such road without paying the toll legally charged thereat, or when traveling on such road shall go round such gate with intent to avoid the payment of such toll, shall be liable to the lessee for three times the amount of such toll; and any lessee of such road who shall by himself, his agents or servants, collect or re-

ceive of any person illegal toll for traveling on such road, shall be liable to such person for three times the amount of such toll.

SEC. 62. A road leased as provided in this chapter, is nevertheless to be deemed a highway; but no footman shall be required to pay toll for traveling on such road, nor shall any person while traveling from one portion of his farm to another, with or without any stock or vehicle, or person in his employ, or in going to, or returning from church, a funeral or an election.

SEC. 63. The board of county commissioners has authority, upon the application of the lessee, to cancel or modify the lease, upon such terms as may be equitable and just, and the proper district attorney may maintain an action against the lessee, in the name of the county, to have such lease declared forfeited, whenever the lessee shall fail or neglect to comply with the provisions thereof, and of this chapter.

SEC. 64. Tolls are only chargeable by the lessee upon the following items, or classes of person or property:

1. Sheep and hogs.
2. Horses, mules, asses or neat cattle, whether being used for draught, or led or driven loose.
3. A person other than a footman, and not traveling in a vehicle.
4. A two wheeled vehicle, loaded or unloaded.
5. A four wheeled vehicle, loaded or unloaded.

SEC. 65. The rate of tolls to be charged by the lessee, upon each item or class specified in the last section, is as follows:

1. The basis or unit of toll is the charge for a sheep or hog, to be known as a single toll.
2. For any animal described in subdivision two of such section, four such tolls may be charged.
3. For any person described in subdivision three of such section, ten such tolls may be charged.
4. For any vehicle described in subdivision four of such section, twenty such tolls may be charged.
5. For any vehicle described in subdivision five of such section, forty such tolls may be charged.

SEC. 66. The order mentioned in section fifty-five, shall specify the number of gates to be placed on the road, the grade of the road, the materials for the construction thereof, and the period for which the same is to be let. The bid shall specify the unit or rate of toll upon a sheep or hog, which the bidder is willing to accept for keeping the road, and such bid shall be deemed a bid for tolls, as to the other items or classes mentioned in section sixty-four, in the proportion of such unit or rate, as specified in section sixty-five.

SEC. 67. Upon opening the bids, the lease shall be awarded to the lowest bidder, having due reference to the fact of which of them is best qualified for the undertaking. The board of county commissioners have the power, and it is their duty to reject any or all bids, when there appears sufficient cause, and may subsequently re-offer and let the same.

CHAPTER IV.

TRAVEL ON PUBLIC HIGHWAYS.

SEC. 68. Whenever any person driving any vehicle, shall meet on any public highway in this Territory, whether owned or kept by a corporation or private person, the persons so meeting shall seasonably turn their vehicles to the right of the center of the road, so as to permit each vehicle to pass without interfering with, or interrupting the other.

SEC. 69. If any person shall willfully violate the provisions of this chapter, he shall forfeit and pay the sum of five dollars for every such violation, to the party injured, to be recovered by a civil action, and such further damage in the same action as such party may directly sustain by reason of such violation.

SEC. 70. That whenever any person driving a vehicle, who shall violate the provisions of this chapter, is at the time in the

employ of another, such other person is liable for the penalty herein provided, the same as if he were the driver of such vehicle at the time of such violation, but an election to sue either the driver or employer is a bar to an action against the other.

CHAPTER V.

BRIDGES ON PUBLIC ROADS.

SEC. 71. The board of county commissioners of the several counties in this Territory are hereby authorized to apply, in their discretion, any road moneys in the county treasury not otherwise appropriated, toward defraying the expense of the building or repairing bridges, on any of the county roads within their respective counties.

SEC. 72. The board of county commissioners may appoint some suitable person to superintend the letting and building, repairing and receiving the bridge when done. When a bridge is to be built, said superintendent shall put up three notices in the county, at least twenty days prior to the time of letting such bridge, one of which shall be posted in the neighborhood where the bridge is to be built or repaired, which notice shall state the general plan of said bridge and statement of the proposed repairs; also the time and place of letting the same, which shall be let to the lowest responsible bidder, at public outcry, and when said bridge is completed, the superintendent shall give the contractor a certificate for the same, if in his judgment the bridge has been built or repaired according to contract, and make due report thereof to the board of county commissioners, which certificate shall be a voucher to the board to pay the money: Provided, however, That whenever, in the discretion of the board of county commissioners, an emergency may require it, they may authorize repairs without such notice.

SEC. 73. Whenever it shall be deemed necessary by the

board of county commissioners of any county in this Territory, to erect or repair a bridge over any stream which is a boundary line between two counties, the board of county commissioners of said adjoining counties are hereby authorized to unite for the purpose of erecting or repairing such bridge; and when any person or persons interested shall apply in writing to the board of county commissioners of either of the counties interested, such board shall proceed to appoint three viewers, who shall, after being first sworn to well and faithfully perform their duties as such viewers, proceed to view the bridge proposed to be repaired, or the site designated for such new bridge, and make an estimate of the cost of such repairs or erection, and of their proceedings make due report to the commissioners, together with a plan and specifications of such new bridge, or a statement of the proposed repairs. If the board shall decide to appropriate the amount necessary for its erection or repairs, they shall submit such estimate of costs, together with the plan of such bridge, or statement of repairs to the county commissioners of the other county interested; and if said commissioners shall approve the same, and agree to defray one-half of the whole sum estimated or appropriated, together with the one-half of the necessary cost of view, then the board of county commissioners to which application was first made, shall proceed to appoint a superintendent, and build said bridge or make said repairs, as provided in section seventy-two of this chapter; the one-half the whole costs and expense of which shall be a legal claim against, and be paid by said adjoining county.

SEC. 74. All acts and parts of acts in conflict with any of the provisions of this act, be, and the same are hereby repealed, except special acts relating to roads in certain counties, passed at the present session of the Legislative Assembly.

Passed the House of Representatives Dec. 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council Dec. 2, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

DEFINING COUNTY LINES IN THE TERRITORY OF WASHINGTON.

WHEREAS, In consequence of the frequent amendments heretofore made regarding county lines, much doubt exists as to the proper boundaries of counties, making difficulty to courts and officers as to questions of jurisdiction, and in order to remove an uncertainty, it becomes necessary that such county lines should be accurately defined; therefore

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the following shall be the organized counties of Washington Territory, and the respective boundaries thereof, that is to say:

Whatcom county shall be bounded as follows: Commencing at the west end of Deception Passage; thence up said passage mid-channel in an easterly direction to the southern entrance of Swinamish slough or river; thence following the meanderings of the beach easterly to where the eighth standard parallel strikes the beach; thence due east along said parallel to the summit of the Cascade mountains; thence northerly along the summit of said mountains to the forty-ninth parallel of north latitude; thence west along said forty-ninth parallel to the point dividing the American and British possessions in the Gulf of Georgia; thence along said boundary line to the Strait of Juan de Fuca; thence southerly to the place of beginning.

Snohomish county shall be bounded as follows: Commencing at the south-west corner of Whatcom county; thence east to the summit of the Cascade mountains; thence southerly along said summit, to the north-east corner of King county, it being a point due east of the north-east corner of township number twenty-six north, range four east; thence due west along the north line of King county to Admiralty Inlet; thence northerly along the channel of said inlet to the entrance of Port Susan, including Gedney Island; thence up the main channel of Port

Susan to the mouth of the Steilaquamish river; thence north-westerly through the channel of the slough at the head of Camano Island; thence northerly to the place of beginning.

Jefferson county shall be bounded as follows: Commencing at the middle of the channel of Admiralty Inlet due north of Point Wilson; thence westerly along the Strait of Fuca to the north of Protection Island, to a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point directly east of the mouth of Eagle creek; thence west to the mouth of Eagle creek; thence one mile west from the mouth of said creek; thence south to the summit of the Olympic range of mountains, it being the south-east corner of Clalm county, on the north boundary line of township twenty-seven north, range two west; thence west to the Pacific Ocean; thence southerly along the coast to the mouth of Queets; thence east to the middle of the channel of Hood's Canal; thence northerly along said channel to the middle of the channel of Admiralty Inlet; thence northerly following the channel of said Inlet to a point due north of Point Wilson and place of beginning.

Clalm county shall be bounded as follows: Commencing at the north-west corner of Jefferson county, at a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point directly east of the mouth of Eagle creek; thence west to the mouth of Eagle creek; thence one mile west from the mouth of said creek; thence south to the north boundary line of township twenty-seven north, range two west; thence west to the sea coast; thence following up the said coast to Cape Flattery and to the Strait of Juan de Fuca; thence easterly along the coast of said Strait of Juan de Fuca to the place of beginning.

Island county shall contain Whidby and Camano Islands, and such other Islands and territory as shall be embraced within the area of the lines extended on all sides to close with the

boundary lines of surrounding counties and not included in said surrounding counties.

Mason county shall be bounded as follows: Commencing in the middle of the main channel of Puget Sound, opposite Case's Inlet; thence westerly along the main channel up to the head of Totten's Inlet; thence south to the south-west corner of section thirty-three, in township number nineteen north, range three west; thence west twenty miles to the east line of Chehalis county; thence north thirty-four miles to the south boundary of Jefferson county; thence due east to the main channel of Hood's Canal, opposite Chase's Rock; thence southerly along the middle of said channel; thence to a point due west of the section line that will run east and west through the centre of township number twenty-three north, of range three west; thence following the direction of said section line in an east direction twelve miles, to the north-west corner of section twenty-one, in township twenty-three north, range one west; thence south to the middle of the main channel of Case's Inlet; thence down the middle of the main channel of said Inlet to the place of beginning.

Kitsap county shall be bounded as follows: Commencing in the middle of Colvo's Passage, at a point due east of the meander post between sections nine and sixteen, on west side of Colvo's Passage, in township number twenty-two north, range two east; thence west on the north boundary line of section sixteen, seventeen and eighteen, to the head of Case's Inlet; thence north to a point that will intersect a line drawn due east and west through the centre of township number twenty-three north, of range three west; thence continue due west to the middle of the channel of Hood's Canal; thence along said channel to the middle of the main channel of Admiralty Inlet; thence following said channel up to the middle of Colvo's Passage; thence following the channel of said passage to the place of beginning.

King county shall be bounded as follows: Commencing where the fifth standard parallel line strikes the main land near the head of Commencement Bay; thence east along said parallel line to the middle of the main channel of White river; thence up

the middle of the main channel of White river to the forks of White river and Green Water; thence up the main channel of Green Water to the summit of the Cascade mountains; thence northerly along said summit to the south-east corner of township number twenty-seven north, range eleven east, it being a point due east of the north-east corner of township twenty-six, range four east; thence west to Admiralty Inlet; thence southerly along the main channels of Admiralty Inlet, Colvo's Passage and Commencement Bay, to the fifth standard parallel and place of beginning.

Pierce county shall be bounded as follows: Commencing at the mouth, mid-channel, of the Nisqually river; thence following the main channel of said river to its head; thence due east to the summit of the Cascade mountains; thence northerly along said summit to the head of Green Water; thence westerly down said river to its confluence with White river; thence down the main channel of White river to the intersection of the fifth standard parallel; thence west along said line to the head of Commencement Bay; thence northerly along the main channel of said bay to the south entrance of Colvo's Passage; thence down the channel of said passage to the north-east corner of section sixteen, in township number twenty-two north, range two east; thence west to the north-east corner of section sixteen, in township number twenty-two north, range one west; thence southerly along the channels of Case's Inlet and Puget Sound, to the middle of the mouth of the Nisqually river and place of beginning.

Thurston county shall be bounded as follows: Commencing at the south-east corner of section thirty-four, in township number nineteen north, range four west; thence east on township line to the south-east corner of section thirty-two, in township number nineteen north, range three west, thence north to the middle of the 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 Squaxen reservation; thence following said channel to the mouth of the Nis-

qually river; thence up mid-channel of said river to a point where it strikes the north boundary of Lewis county; thence due west to the north-west corner of section twenty-six, in township number fifteen north, range four west; thence north to the south-east corner of section thirty-four, in township number nineteen north, range four west, and place of beginning.

Lewis county shall be bounded as follows: Commencing at the north-east corner of Pacific county; thence south to the third standard parallel; thence east along said standard parallel to a point due south of the south-west corner of Thurston county; thence due south to the north boundary line of Cowlitz county; thence east to the west boundary of Skamania county; thence north nine miles to the north-east corner of section twenty-four, in township twelve north of range four east; thence east to the summit of the Cascade mountains; thence northerly along said summit to the head of Nisqually river; thence westerly down the channel of said river to the south-east corner of Thurston county; thence west to the place of beginning.

Clarke county shall be bounded as follows: Commencing on the Columbia river on the south bank of the Kalama river at its mouth; thence due east six miles to the Willamette meridian; thence north to the north-east corner of township number ten north, range one west; thence due east twenty-four miles to the western line of Skamania county; thence due south to the Columbia river; thence with the main channel of said river to the mouth of Kalama river and place of beginning.

Cowlitz county shall be bounded as follows: Commencing at the south-west corner of A. S. Abernethy's land claim on the Columbia river; thence up said river to the south bank of the Kalama river; thence east to the Willamette meridian; thence north to the north-east corner of township number ten north, range one west; thence west to the north-east corner of Wahkiakum county; thence south to the Columbia river and place of beginning.

Wahkiakum county shall be bounded as follows: Commencing at the south-east corner of Pacific county on the Columbia

river; thence up mid-channel of said river to the south-west corner of Cowlitz county; thence north to the north-west corner of Cowlitz county; thence east to the south-west corner of Lewis county; thence due north to the third standard parallel; thence west to the eastern boundary of Pacific county; thence south to the place of beginning.

Pacific county shall be bounded as follows: Commencing at the south-west corner of Wahkiakum county on the Columbia river; thence north to the north-west corner of section thirty in township number fifteen north, range six west; thence west to the sea coast; thence southerly, including Shoalwater Bay, to Cape Disappointment; thence up mid-channel of the Columbia river to the place of beginning.

Chehalis county shall be bounded as follows: Commencing at the north-east corner of Pacific county; thence west to the sea coast; thence northerly along said coast, including Gray's Harbor, to the mouth of Queets creek or river; thence east thirty-six miles, to the north-west corner of Mason county; thence south to the north-east corner of township number eighteen north, range seven west; thence east sixteen miles to the south-east corner of section thirty-four, in township number nineteen north, range four west; thence south to a point due east of the north-east corner of Pacific county; thence west to the place of beginning.

Skamania county shall be bounded as follows: Commencing on the Columbia river at a point where range line number four east strikes said river; thence north to the south-east corner of section thirteen, in township number twelve north, range four east; thence east to a point due north of the mouth of White Salmon; thence south to the middle of the channel of the Columbia river; thence along the channel of said river to the place of beginning.

Clickitat county shall be bounded as follows: Commencing at a point mid-channel of the Columbia river opposite to the mouth of the White Salmon, thence running north to a point due west of the mount Adams; thence easterly to the waters of the Pisco river; thence down its waters mid-channel to its junction with

the waters of the Topenish; thence down its course mid-channel to the Yakima; thence down the waters of the Yakima mid-channel to the waters of the Columbia river; thence down the Columbia river mid-channel to the place of beginning.

Yakima county shall be bounded as follows: Commencing at a point on the southern boundary of Lewis county due north of the mouth of the White Salmon; thence due south to a point due west of mount Adams, it being the north-west corner of Klickitat county; thence easterly to the head waters of the Pisco; thence down the Pisco to the Topenish; thence down the Topenish to the Yakima; thence down the Yakima to the Columbia river; thence up said Columbia river to the mouth of the Wenatchee river; thence up the Wenatchee to the summit of the mountains; thence southerly to the south-east corner of Lewis county; thence due west to the place of beginning.

Walla Walla county shall be bounded as follows: Commencing at a point where the boundary line between Washington Territory and Oregon intersects the Columbia river; thence east along said line to where it intersects Snake river; thence down the main channel of said river to the Columbia; thence down the Columbia to the place of beginning.

Stevens county shall be bounded as follows: Commencing at the point of intersection of the forty-ninth parallel of latitude, and the boundary line between Washington and Idaho Territories; thence west with said parallel to the summit of the Cascade mountains; thence southerly with said summit to the head waters of the Wenatchee river; thence down the channel of said river to the Columbia river; thence down mid-channel of said river to the mouth of Snake river; thence up mid-channel of said river to the boundary line between Washington and Idaho Territories; thence north on said line to the forty-ninth parallel of latitude and place of beginning.

SEC. 2. The act entitled "an act to create and organize the county of Quillehuyte," approved January 29, 1868, is hereby repealed, and the territory erected into said county is hereby declared to revert to the counties of Jefferson and Clalm, as bounded in this act.

SEC. 3. That all acts and parts of acts heretofore passed ascribing different boundaries to counties, be and the same are hereby repealed, and the county lines of said counties of this Territory shall be as herein prescribed.

Passed the House of Representatives November 24, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 24, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

AUTHORIZING THE SETTLEMENT OF ESTATES OF PERSONS DYING INTESTATE WITHOUT ADMINISTRATION.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be lawful for the legal representatives or survivors in interest of a person who may hereafter die intestate in this Territory, to settle the estate of the decedent without taking out letters of administration, by complying with the provisions of this act.

SEC. 2. The following named persons shall have priority of right to the benefits of this act in the order hereinafter named, when their relatives as hereinafter named, shall die intestate in Washington Territory:

1. When the wife shall die intestate, the husband.
2. When the husband shall die intestate, the wife.
3. In case a widower die intestate, his child or children of lawful age.

4. In case a widow shall die intestate, her child or children of lawful age.

5. When a single man or a single woman shall die intestate:

1. The father.

2. The mother.

3. The brothers and sisters equally, or as many of them as shall join in complying with the provisions of this act.

SEC. 3. The several persons named in the preceding section, in the order of privity therein named, may avail themselves of the benefits intended to be secured by this act, by application to the probate court of the county having jurisdiction of the estate of deceased, who shall appoint three disinterested householders to appraise the estate of deceased intestate, of every name and nature, and return the same into the probate court of said county in a properly prepared inventory, with the value of each article set opposite; and the probate judge shall find the sum total of the appraised value of said estate, and the person or persons applying for the benefit of this act, shall make and file with the probate judge a bond with three or more resident free-holders of the county as sureties in double the appraised value of said estate, conditioned that he, she or they will pay all the lawful debts of the deceased and perform all his or her lawful contracts relating to real or personal property, within one year from the date of said bond. And the sureties shall each be worth one-third of the whole sum named in the bond over and above all debts and liabilities and property exempt from execution, and unless this shall appear to the satisfaction of the probate judge, he shall not receive or file such bond, but shall order other additional security until so satisfied.

SEC. 4. The bond provided for in the last preceding section shall be made and filed as therein provided within forty days from the death of the intestate, or letters of administration shall issue as in other cases. The person or persons entitled to the benefits intended to be secured by this act, to make and file such bond, shall not be excluded from such privilege by reason of being a non-resident of this Territory. The party who avails

himself or themselves of the benefits of this act, shall pay all the costs of the proceeding.

SEC. 5. The person or persons so applying, after the approval of his bonds, shall publish for six consecutive weeks in some newspaper of general circulation in the county, or if there be none in the county, then in such newspaper nearest to said county having a circulation in said county, and by posting notices in three public places that he, she or they will pay all the lawful debts of the said deceased, and perform all his or her lawful contracts relating to real or personal property within one year from the date of said bond, and shall in said notice warn all persons to present their claims on the deceased at the dwelling house or place of business of the principal in said bond, or at such place of one of said bondsmen or sureties to said bond in the county where the bond is filed, for payment or adjustment.

SEC. 6. The creditors shall within said year present their claims to the principal in said bond, or to one of the sureties thereon, who shall accept or reject the same, in whole or in part, and endorse his action therein and return the same to the claimant within a reasonable time or he may pay the debt or as much thereof as he may deem just or perform the contract of the deceased relating to real or personal property, the same as the deceased might be compelled to do if living and as by this act required. But the creditors or claimants shall have no right of action on said bond till the expiration of said year. And in such cases the statutes of limitation shall, from the date of said bond, cease to run for the period of said year, but unless such claims or contract be presented properly vouched within said year, to one of the persons named in this section for his action thereon, the same shall be forever barred from collection.

SEC. 7. The claimants, within the time provided for the commencement of civil actions, if the claims presented as in this act required be not satisfied, may commence an action thereon in any court having jurisdiction against said bondsmen and his sureties, or if they be dead, then against their representatives, or if one or more of said bondsmen and sureties be dead, then

against the survivor or survivors, and the representative or representatives of such deceased, and judgment shall be given and execution issue and be enforced as in other civil cases: Provided, That said action shall not accrue till the expiration of the year provided for in section six of this act: And provided further, That no claim presented during said year, from the date of said bond, not at said date limited, shall be limited till the expiration of two years from the date of said bond.

SEC. 8. If a wife or husband die leaving a minor child or children living, who under the law of distribution and descents in this Territory, are heirs at law of the estate of deceased intestate, and the surviving wife or husband is not the parent of such minor child or children, in such cases the principal in said bond, after paying all the debts and performing all the contracts of such deceased intestate, shall hold the rest and residue of such estate in trust for such minor child or children, subject to the estate in dower or curtesy of said wife or husband, such principal or principals in such bond shall be subject as aforesaid trustee of the whole estate, with full power to sell and convey a sufficiency of said estate to satisfy all the claims against the estate presented as required by this act, and the current expenses of the same, and sales made for such purpose shall be valid without the order of any court. And when the minor child or children shall become twenty-one years old or get married, said trustee shall convey all real estate to said child or children belonging to them and deliver all personal property remaining, and shall not be entitled to any further compensation; but said child or children shall first pay to said trustee all moneys actually expended by him for the education of said child or children and the actual cost of conveyance or delivery before said children shall be entitled to said conveyance or delivery: Provided, That said trustee may by order of the district court sell and convey any or all of the real estate of said minor arising from such estates, also any and all of such personal property for the proper education of such minors: And provided further, That if the surviving husband or wife of such deceased shall not accept and comply with

the provisions of this act, then the child or children of such deceased shall, if of lawful age be entitled to the same: And provided further, That if the child or children of such deceased shall at the death thereof be twenty-one years old, or married, such child or children shall, as soon as the claims against said estate and current expenses thereof shall be satisfied, be entitled to his or her part of the residue thereof on payment to the said trustee the actual cost of conveyance or delivery.

Sec. 9. In all cases where the brothers and sisters of the deceased shall apply for the benefits of this act, those applying shall notify any non-resident brothers or sisters, either by six week's publication or satisfy the probate court that personal notice has been given; and resident brothers and sisters shall have actual personal notice. After such notice is given, those notified who fail to appear and join in said bond shall forfeit all claim to participate in the management and settlement of the estate, and be limited in their respective interests or shares in the residue thereof. Those executing the bond required by this act shall be trustees of the entire estate, and liable upon their bond for its proper management, as in this act prescribed.

Sec. 10. Nothing herein contained shall be so construed as to prevent the probate court of the proper county issuing letters of administration at the end of the forty days recited in section four, if at that time no bond has been filed in accordance with the provisions of this act.

Sec. 11. This act to take effect from and after its passage.

Passed the House of Representatives November 30, 1869.

GEORGE H. STEWARD.

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE.

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO PROVIDE FOR THE ELECTION OF COUNTY COMMISSIONERS AND DEFINING THEIR DUTIES.

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 county commissioners to consist of three qualified electors, to be elected by the qualified electors at the general election in 1871, and biennially thereafter, and two of said board of commissioners shall constitute a quorum to do business: Provided, That the commissioners now in office, or hereafter appointed to said office, shall continue in office until a new board of commissioners shall be elected as above provided.

SEC. 2. 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 or appoint a commissioner to fill any vacancy occasioned by death, resignation or otherwise, the person so elected or appointed 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 the same with the clerk of the board of county commissioners of his county, to be by him filed in his office.

SEC. 5. The board of county commissioners in the several counties in this Territory may hold regular sessions at the seat of justice of their respective counties, commencing on the first Mondays of February, May, August and November, at each of which they may transact any business which may be required by

law; but counties so desiring may omit the February and August terms.

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.

SEC. 7. The said board of county commissioners are hereby authorized to hold extra sessions when the business of the county may require the same, which extra sessions may be by adjourned terms from any regular term, the order therefor being entered on record in the minutes of such regular term of which it is a continuation, or by ten days notice from two of the commissioners to the third, or by the written consent of the three commissioners filed with the county auditor: Provided, That no extra session shall exceed three days, and that due notice be given of the time of holding the term and the business to be transacted.

SEC. 8. The county commissioners shall each receive five dollars per day for each and every day they may be necessarily employed in transacting the business of the county, and fifteen cents per mile for every mile traveled in going to and returning from the meetings of said board, or in the discharge of any official duty, to be computed by the nearest 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, the matter under consideration shall be postponed to the next subsequent meeting.

SEC. 10. The county 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 the said county commissioners, and attested by their clerk, shall be admitted as evidence of such proceedings in the trial of any cause in any court in this Territory; and until such seal shall be provided, the private seal of the chairman of such board of county commissioners shall be adopted as a seal.

SEC. 11. The several boards of county commissioners are authorized and required

1. To provide for the erection and repairing of court-houses, jails and other necessary public buildings for the use of the county.

2. To lay out, discontinue or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law, except within the limits of incorporated cities and towns, whereby the terms of the acts of incorporation, jurisdiction over the roads in the limits of said incorporations is vested in the corporate authorities thereof.

3. To license and fix the rates of ferriage; to grant grocery and other licenses authorized by law to be by them granted.

4. To fix the amount of county taxes to be assessed according to the provisions of law, and cause the same to be collected as prescribed by law.

5. To allow all accounts legally 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.

6. To have the care of the county property and the management of the county funds and business, and in the name of the county to prosecute and defend all actions for and against the county, and such other powers as are or may be conferred 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 power 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 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 county commissioners aforesaid, at their first session after the biennial election, 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 county 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, the probate court and county treasurer, and also to provide safe and convenient desks for the preservation and security of all the books and other documents in the several offices.

SEC. 16. At the May 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 county commissioners at their session in May in each year shall receive and inspect the assessment roll returned by the assessors, and if found correct, it shall be accepted by the board, 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 to divide their respective counties into election precincts, if not already divided, in such manner as shall be most convenient for the population, and to appoint a place for holding the election therein, and they shall create new precincts from

time to time as the population may require. 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 and inspector therefor.

SEC. 19. The board of county 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 and release in whole or in part any debt due to their county, when in their opinion the interest of their county will not be prejudiced thereby, except in cases where 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, unless otherwise specially ordered by special laws.

SEC. 22. When in the opinion of the county 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 general election, notice thereof being given at the same time and place as for other elections, when if a majority of the 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 buildings 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 commissioners in their respective counties may order all persons who shall be confined in the county jails of their respective counties, convicted of any crime or misdemeanor, to work on the roads of their respective counties, under the direction of the sheriff; but such convicts shall not be put to labor at a greater distance from the jail or place of con-

finement than five miles: Provided, That if any such convict shall refuse to perform such labor he shall be kept in close confinement on bread and water. The sheriff having the custody of such convicted persons may, to secure them from escape, attach a ball and chain to said convicts.

SEC. 25. No county commissioner shall directly or indirectly, 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. 26. The county 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. 27. 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. 28. In all cases of vacancy occurring in any of the county offices in this Territory, either by death, resignation or otherwise, it shall be the duty of the county commissioners of the county in which such vacancy occurs, at the first session thereafter, or as soon thereafter as practicable, to appoint a suitable elector of the proper county to fill such vacancy; such officer to remain in, or hold the office to which he may have been appointed, until the first general election after his appointment.

SEC. 29. Any person may appeal from the decision of the board of county commissioners to the next term of the district court of the proper district. Such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the county 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 county commissioners, or left with the clerk of

the board, and the party appealing shall give bond to the county with one or more securities, 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. The practice regulating appeals in, and writs of *certiorari* to justices' courts, shall so far as the same may be applicable govern in matters of appeal from the decision or order of the county commissioners' court. And nothing herein contained shall be so construed as to prevent a party having a claim against any county in this Territory, enforcing the collection thereof by civil action in any court of competent jurisdiction, after the same may have been presented and disallowed in whole or in part by the board of county commissioners of the proper county: Provided, That such action be brought within three months after such claim has been acted upon by said board.

SEC. 30. All acts and parts of acts heretofore passed defining the duties of county commissioners, in conflict with the provisions of this act be and the same are hereby repealed.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 1, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

IN RELATION TO COUNTY AUDITOR.

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 an officer authorized to administer oaths, 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 not exceeding ten thousand dollars, to be approved by the county commissioners of his county, conditioned that he will faithfully and impartially fulfill 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 chargea-

ble 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: Provided, That the owner of any claim allowed by the board of county commissioners may have the same issued in two or more warrants on the treasurer of the county, on payment of the auditor's fees therefor; and it shall be the duty of the chairman of the board of county commissioners, at the close of each term of the court, to issue and sign, under the seal of the court as such chairman, all orders on the county treasury due the auditor for his services or claims allowed at such term by said board.

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. He shall at least once in each year make out a full and complete exhibit of the finances of the county. Such exhibit shall be made out immediately after the spring term of the commissioners' court, and the county auditor shall cause the same to be published without delay in some newspaper, if any is printed within the county, if not, he shall post the same in a conspicuous place in his office.

SEC. 8. Such exhibit shall show:

1. The amount of tax assessed in the county the preceding year for Territorial, county, road and school purposes.
2. The amount of tax collected on such assessment.

3. The amount of money received from other sources.
4. The amount received into the treasury.
5. The amount still due and not collected.
6. The number of orders issued, their several amounts and for what they were issued.
7. The total amounts of orders redeemed.
8. The amount of outstanding orders.
9. The present condition of the treasury.
10. Remarks.

SEC. 9. The county commissioners shall allow the county auditor the same fees for making out such exhibit as he is allowed by law for similar services.

SEC. 10. 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. 11. 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 acknowledgments of deeds and other instruments of writing.

SEC. 12. No person doing the duties of auditor shall practice as an attorney before the board of county commissioners.

SEC. 13. It shall be the duty of the county auditor within two days after the adjournment of the board of county commissioners at any regular or special term of said court, to make out under his hand and seal of office a certified copy of the register of county warrants issued at such term of court, and forthwith deliver the same to the treasurer of the county, who shall record the same in a book to be kept by him for that purpose, and file and carefully preserve the original in his office for future reference.

SEC. 14. 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. 15. 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. 16. 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 tax roll 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. 17. It shall be the duty of the auditors of each of the several counties of this Territory, to publish the proceedings of the commissioners' court within fifteen days after the adjournment of each regular session thereof, in any newspaper published in the county, or having general circulation therein, but if there be no newspaper published in the county, the auditor may post up such proceedings in three different places in the county.

SEC. 18. The auditor of each county in this Territory shall record in a fair and legible hand-writing, 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. 19. 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. 20. Any county auditor who fails to record any instrument entitled to record within twenty days after the same is deposited with him for record, and the fees for recording the same shall have been tendered to him, shall be deemed guilty of a misdemeanor, and for every such offense may be fined in any sum not less than one hundred nor more than five hundred dollars.

SEC. 21. 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. 22. 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 seal, books, records and papers as aforesaid.

SEC. 23. Each auditor shall, upon the written demand of any person, make out a statement in writing, certified under his hand and the seal of his office, of all mortgages, 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. 24. Each county auditor shall keep a general index direct and inverted. The index direct shall be divided into seven columns, with heads to the respective columns as follows:

Time of reception	Grantor	Grantee	Nature of instrument	Volume and page where recorded	Remarks	Description of property
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He shall correctly enter in such index every instrument concerning or affecting real estate, the names of the grantors being in alphabetical order. The inverted index shall also be divided into seven columns, precisely similar, only that the names of the grantees shall be alphabetically arranged, and occupy the second column.

SEC. 25. Whenever any mortgage, bond, lien or instrument incumbering real estate, has been satisfied, released or discharged from record, whether by written release across the record or upon the margin thereof, or by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note in both the *indices* in the column headed remarks, opposite to the appropriate entry, that such instrument, lien or incumbrance, has been satisfied. And in all cases of the satisfaction or release of any recorded liens by mortgage, transcript of judgment, mechanic's lien, registered taxes, or other incumbrance whatsoever, the auditor shall enter with red ink across the record of the instrument creating or evidencing such lien or incumbrance, the word "satisfied," with the day of the date of such satisfaction or release.

SEC. 26. He shall also keep a well bound book in which shall be platted all maps of towns, villages, or additions to the same, within the county, together with the description, legend, acknowledgment or other writing thereon. He shall keep an index to such book of plats, which shall contain the name or names of the proprietor of such town, or village, or addition, and the name of the town, village or addition.

SEC. 27. Copies of all papers filed in the office of the county auditor as recorder of deeds and transcripts from the books of record kept in said office, certified by him under the seal of his office, shall be *prima facie* evidence in all courts in this Territory.

SEC. 28. In his capacity as *ex officio* recorder of deeds, the auditor shall not be bound to perform any of the duties required

to be performed in this act, for which a fee is prescribed by law, unless such fee has been paid or tendered.

SEC. 29. The auditor of each county shall keep in his office a well-bound book, which shall be a public record, open to inspection during office hours, in which shall be entered all transcripts of judgment from the supreme or district court, which by law are the evidence of lien upon real estate in his county. And when a judgment is satisfied, he shall write across the face in large letters the word "satisfied." It shall also be his duty to keep an index showing the name of judgment debtor, or the name of judgment creditor, the amount, date of judgment, and under the head of remarks, whether such judgment is satisfied, revived, assigned, or whatever disposition has been made of the same.

Passed the House of Representatives November 12, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 22, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 29, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO PROVIDE FOR THE DISTRIBUTION OF THE LAWS AND JOURNALS OF THE LEGISLATIVE ASSEMBLY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the printed laws and journals of the present and future sessions of the Legislative Assembly shall be distributed as follows: Two copies of each to the Library of Congress and the Supreme Court; one copy of each to the Governor of each State and Territory, for the use of the public

library of such State or Territory; one copy of each of the laws and journals to each member and the chief clerk of the Legislative Assembly; a sufficient number of the laws to each county auditor to supply one copy to each auditor and to the county commissioners, probate judge, sheriff, treasurer, assessor, superintendent of schools, coroner and each justice of the peace, as public property, for the use of their respective offices, to be delivered to their respective successors in office. Also one copy of the laws to the Governor of the Territory, to each of the justices of the supreme court of the Territory, to each of the Territorial prosecuting attorneys, Territorial auditor, treasurer, the Surveyor General, Secretary, Registers and Receivers of the land offices, the Attorney General of the United States, and the U. S. district attorney, and the clerk of the supreme court and several district courts of the Territory, to the Superintendent of Indian Affairs and the Assessor and Collector of Internal Revenue. There shall also be forwarded to each county auditor six copies of the laws, to be sold by him to citizens of the county, for the use of the county treasury, at a price to be fixed by the Territorial Secretary. There shall also be transmitted two copies of the journals of the two Houses to the county auditor, to be retained by him as public property.

SEC. 2. All remaining copies of the journals and laws shall be placed by the Territorial Secretary in the Territorial Library, subject to the order of the two Houses of the Legislative Assembly.

SEC. 3. It shall be the duty of the Secretary to carry into effect the provisions of the foregoing sections, and any necessary expenses incurred by him shall be allowed and paid out of the Territorial treasury, after being audited by the Territorial auditor like the accounts against the Territory.

SEC. 4. The printed volume of the laws, after being carefully compared with the original bills, and certified to by the Secretary, shall be deemed the original.

SEC. 5. The Secretary shall cause to be published as an appendix to the Council journal of the present session all the

decisions of the supreme court of Washinston Territory not heretofore published, if the same are furnished to him by the reporter of the supreme court: Provided, The proper auditing officers of the U. S. Treasury will allow the printing of said decisions, out of any funds appropriated by Congress to pay the public printing of the Territory.

SEC. 6. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 24, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 20, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

DEFINING THE RIGHTS OF HUSBAND AND WIFE.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all property, both real and personal, of the wife owned by her before marriage, and that acquired afterward by gift, bequest, devise, or descent, shall be her separate property; and all property, both real and personal, owned by the husband before marriage, and that acquired by him afterward, by gift, bequest, devise, or descent, shall be his separate property.

SEC. 2. All property acquired after the marriage by either husband and wife, except such as may be acquired by gift, bequest, devise, or descent, shall be common property.

SEC. 3. A full and complete inventory of the separate property of the wife, exclusive of money in specie, shall be made out and signed by the wife, acknowledged or proved in the manner required by law for the acknowledgment or proof of a conveyance of land, and recorded in the office of the auditor of the county in which the parties reside, and from time to time thereafter a further or supplemental inventory shall be made out, signed, acknowledged or proved, and recorded in like manner of all other separate property afterward acquired by the wife, excepting money whilst in specie and unconverted, and the rents and profits of her separate property included in the original or any subsequent inventory, if the same be money, so long as it shall remain in specie and unconverted.

SEC. 4. If there be included in any such inventory any real estate lying in other counties, such inventory shall also be recorded in such counties.

SEC. 5. The filing of any such inventory in the auditor's office shall be notice of the title of the wife, and all property belonging to her included in the inventory, as well as all money in specie not so included, shall be exempt from seizure on execution for the debts of her husband; and she shall be deemed to have waived the exemption from such seizure on execution of all property belonging to her not included in any such inventory, other than money in specie.

SEC. 6. The husband shall have the management and control of the separate property of the wife during the continuance of the marriage; but no alienation, sale or conveyance of the real property of the wife, or any part thereof, or any right, title, or interest therein, and no contract for the alienation, sale or conveyance of the same, or any part thereof, and no lien or incumbrance created thereon, shall be valid for any purpose unless the same be made by an instrument in writing, executed by the husband and wife, and acknowledged by her as provided for in the

acts concerning conveyances in case of the conveyance of her separate real estate. The separate personal property of the wife, excepting money in specie, shall not be sold, assigned, or transferred, unless both husband and wife join in the sale, assignment, or transfer thereof.

SEC. 7. When any sale shall be made by the wife of any of her separate property for the benefit of her husband, or when he shall have used the proceeds of such sale, with her consent in writing, it shall be deemed a gift, and neither she nor those claiming under her shall have any right to recover the same.

SEC. 8. If the wife has just cause to apprehend that her husband has mismanaged or wasted, or will mismanage or waste her separate property, she, or any other person in her behalf, may apply to the district court for the appointment of a trustee to take charge of and manage her separate estate; such trustee may, for good cause shown, be from time to time removed by the court and another appointed in his place. Before entering upon the discharge of his trust he shall execute a bond, with sufficient surety or sureties, to be approved by the court, for the proper performance of his duties. In case of the appointment of a trustee for the wife, he shall account for and pay over to the husband and wife, or either of them, the income and profits of the wife's estate, in such manner and proportion as the court may direct.

SEC. 9. The husband shall have the entire management and control of the common property, with the like absolute power of disposition as of his own separate estate. When it shall be provided by the terms of the instrument whereby any property may have been bequeathed, devised, or given to the wife, that the rents and profits thereof shall be applied to her sole and separate use, the entire management and control of the rents and profits of such property shall belong to the wife.

SEC. 10. The separate property of the husband shall not be liable for the debts of the wife contracted before the marriage, but the separate property of the wife shall be and continue liable for all such debts.

SEC. 11. In every marriage hereafter contracted in this Territory, the rights of husband and wife shall be governed by this act; unless there is a marriage contract containing stipulations contrary thereto.

SEC. 12. The rights of husband and wife married in this Territory prior to the passage of this act, or married out of this Territory, but who shall reside and acquire property herein, shall also be determined by the provisions of this act, with respect to such property as shall be hereafter acquired, unless so far as such provision may be in conflict with the stipulations of any marriage contract.

SEC. 13. All marriage contracts shall be in writing, and executed and acknowledged or proved in like manner as a conveyance of land is required to be executed and acknowledged or proved.

SEC. 14. When a marriage contract shall be acknowledged or proved, it shall be recorded in the office of the auditor of the county in which the parties reside, and also in the office of the auditor of every county in which any real estate may be situated which is conveyed or affected by such marriage contract.

SEC. 15. When any marriage contract is deposited in the auditor's office for record, it shall, as to all property affected thereby in the county where the same is deposited, impart full notice to all persons of the contents thereof.

SEC. 16. No marriage contract shall be valid, or affect any property, except between the parties thereto, until it shall be deposited for record with the auditor of the county where the parties reside; and if it relates to real estate in other counties, with the auditor of the county where the parties reside; and if it relates to real estate in other counties, with the auditor of the county wherein such property is situated.

SEC. 17. A minor capable of contracting matrimony may enter into a marriage contract, and the same shall be valid as if he were of full age, provided it be assented to in writing by the person or persons whose consent is necessary to his marriage.

SEC. 18. A marriage contract may be altered at any time before the celebration of marriage, but not afterward.

SEC. 19. The parties to any marriage contract shall enter into no agreement the object of which shall be to alter the legal order of descent, either with respect to themselves in what concerns the inheritance of their children or posterity, or with respect to their children between themselves, nor deteriorate from the rights given by law to the husband as the head of the family, or to the surviving husband or wife as the guardian of their children.

SEC. 20. No stipulation of any marriage contract shall be valid which shall derogate from the rights given by law to the husband over the persons of his wife and children, or which belong to the husband as the head of the family, or to the surviving husband or wife as the guardian of their children.

SEC. 21. A married woman may make and execute powers of attorney for the sale, conveyance, or incumbrance, of her real or personal estate, provided her husband joins in the execution of the instrument, and the same be acknowledged and certified in the manner provided by the law for the conveyance of her real estate.

SEC. 22. Any conveyance executed under and by virtue of such power of attorney shall be executed, acknowledged and certified in the same manner as if the persons making such powers of attorney were unmarried.

SEC. 23. A married woman shall have the right to revoke such power of attorney by any revocation thereof made and executed by her, and acknowledged and certified in the manner that conveyances by married women are required to be acknowledged and certified, and it shall not be necessary for the validity of such revocation that her husband shall join in the execution thereof.

SEC. 24. All powers of attorney heretofore made and executed by any married woman with her husband, and acknowledged and certified in the manner provided in section twenty-four of this act, and all conveyances heretofore and hereafter executed

under and by virtue of such powers of attorney, and acknowledged and certified in the manner provided in section twenty-two of this act, shall be valid and binding: Provided, That no rights already vested in third persons shall be affected by anything in this section contained.

Passed the House of Representatives December 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS.

Governor of Washington Territory.

AN ACT

CONCERNING FENCES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the following shall be considered lawful fences in this Territory:

1. Post and rail, or plank fences, five feet high, made of sound posts, five inches in diameter, set substantially in the ground, not more than ten feet apart, with four planks not less than one inch thick and six inches wide, securely fastened by nails or otherwise; said planks not more than nine inches apart.

2. Post and rail fences, with posts not more than ten feet apart, and rails not less than four inches wide, (five of them,) made in all other respects the same as the first described in this section.

3. Worm fences, made in the usual way, of sound, substantial rails or poles, five feet high, including riders, with stakes

firmly set in the ground, and spaces no greater than in post and plank or rail fences, except the two lower spaces, which shall not be more than four inches, and the top space between riders not to be more than sixteen inches.

4. Ditch and pole, or board or rail fence, shall be made of a ditch not less than four feet wide on top, and three feet deep, embankment thrown up on the inside of the ditch, with substantial posts set in the embankment not more than ten feet apart, and a plank, pole or rail securely fastened to said posts, at least seven feet high from the bottom of the ditch.

SEC. 2. All other fences which by reliable evidence shall be declared as strong and as well calculated to protect inclosures as either of those described in the preceding section of this act, shall be lawful fences.

SEC. 3. Any person making and maintaining in good repair around his or her inclosures, any fence such as is described in sections one and two of this act, may recover in a suit for trespass, before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damage sustained on account of such trespass, together with the costs of suits; and the animal or animals so trespassing may be taken and held as security for the payment of such damages and costs: Provided, That such persons shall have such fence examined and the damages assessed by three reliable, disinterested persons and practicable farmers, within five days next after the trespass has been committed: And provided further, That if, before trial, the owner of such trespassing animal or animals shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded.

SEC. 4. When any fence has been or shall hereafter be erected by any person on the boundary line of his land, and the

person owning the land adjoining thereto shall make, or cause to be made an inclosure so that such fence may also answer the purpose of inclosing his ground, he shall pay to the owner of such fence already erected one-half the value of so much thereof as serves for a partition fence between them.

SEC. 5. When two or more persons own land adjoining, which is enclosed by one fence, and it becomes necessary for the protection of the interests of one party said partition fence should be made between them, the other or others when notified thereof, shall erect, or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land.

SEC. 6. If after notice has been given by either party, and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected the one-half of such fence, the party giving notice may proceed to erect, or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party.

SEC. 7. The respective owners of adjoining inclosures shall keep up and maintain in good repair all partition fences between such inclosures, in equal shares, so long as they shall continue to occupy or improve the same.

SEC. 8. When any person shall unwittingly or by mistake erect any fence on the land of another, and when by a line legally determine that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: Provided, That when the fence to be removed forms any part of a fence inclosing a field of the other party having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run.

SEC. 9. When any party shall wish to lay open his inclosure, he shall notify any person owning adjoining inclosure; and if such person shall not pay to the party giving notice one-half

the value of any partition fence between such inclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence provided, as provided in section eight of this act.

SEC. 10. In assessing the value of any partition fence the parties shall proceed as provided for the assessment of damages in section four of this act.

SEC. 11. Upon the trial of any cause occurring under the provisions of this act, the defendant may impeach any such assessment, and in that case the court or the jury shall determine the damages.

SEC. 12. The owner of any animal that is unruly and in the habit of breaking through or throwing down fences, if after being notified that such an animal is unruly and in the habit of breaking through or throwing down fences, as aforesaid, he shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals that may be in company with such animal.

SEC. 13. This act shall not apply to any other counties except the counties of Walla Walla, Stevens, Yakima and Klickitat.

SEC. 14. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

PROVIDING FOR THE HOLDING OF JOINT CONVENTION TO ELECT TERRITORIAL OFFICERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a joint convention consisting of members of each house of the Legislative Assembly shall be held on the fourth Monday next after the organization of both houses, at each biennial session of said Assembly.

SEC. 2. The said joint convention shall be held at the hall of the House of Representatives, commencing at the hour of twelve o'clock meridian on the day herein appointed, and shall be presided over by the President of the Council, but in his absence the Speaker of the House shall preside; and the chief clerk of the Council shall keep the journal of said convention, and in his absence the chief clerk of the House shall perform that duty.

SEC. 3. All Territorial officers and militia officers required by law to be elected by the Legislative Assembly, shall be elected by said joint convention. Twenty members of the joint convention shall constitute a quorum, and a less number may adjourn from time to time and compel the attendance of absent members. The joint convention may adjourn from day to day until all the officers are elected according to law.

SEC. 4. It shall require a majority of the votes cast (a quorum being present) to elect, and the persons so elected shall be duly commissioned by the Governor upon presenting to the Governor the certificate of election signed by the presiding officer and clerk of said joint convention.

Passed the House of Representatives November 18, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 16, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 27, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

FOR THE BENEFIT OF AGRICULTURAL AND MECHANICAL FAIRS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the president and managers of agricultural and mechanical fairs in this Territory, shall have the authority to appoint one or more marshals for the purpose of preserving order on the fair grounds during the continuance of the fairs; and that such marshals so appointed shall have all the powers now conferred by law on sheriffs and constables.

SEC. 2. That before the marshals thus appointed shall proceed to act, they shall execute a bond, not to exceed three hundred dollars, and file the same in the county auditor's office, in the county in which said fair is to be held, the said bond to be approved by the said county auditor. They shall likewise take the oath sheriffs or constables are required by law to take, and be subject to the laws now in force relating to sheriffs and constables, and shall be entitled to the same fees sheriffs and constables now are for similar services.

SEC. 3. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 20, 1869.

WILLIAM McLANE,

Approved November 26, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO REGULATE THE TIMES OF HOLDING SUPREME COURT AND THE SEVERAL DISTRICT COURTS IN THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the time for holding the several district courts of the Territory shall be as follows, to-wit:

SEC. 2. At Port Townsend, to commence on the first Monday of March and September, to hold three weeks unless sooner adjourned.

SEC. 3. At Seattle, to commence on the first Monday of February and first Monday of August, to hold for three weeks unless sooner adjourned.

SEC. 4. At Steilacoom on the first Monday of April and third Monday of October, and hold two weeks unless sooner adjourned.

SEC. 5. At Olympia, to commence on the fourth Monday of March and the fourth Monday of September, to hold for three weeks unless sooner adjourned.

SEC. 6. At Vancouver, to commence on the third Monday of April and first Monday of November, to hold for four weeks unless sooner adjourned.

SEC. 7. At Walla Walla city, to commence on the third Monday of April and the second Monday of September, to hold for four weeks unless sooner adjourned.

SEC. 8. At Colville, in and for Stevens county, to commence on the second Monday of June in each year, to hold for two weeks unless sooner adjourned.

SEC. 9. The supreme court shall convene annually at the seat of government of the Territory, to commence on the first Monday of December, and to hold until all the business is disposed of.

SEC. 10. All acts and parts of acts in any manner conflicting with any of the provisions of this act, be and the same are hereby repealed.

SEC. 11. This act shall be in force and take effect sixty days after its passage.

Passed the House of Representatives December 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 26, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO PROVIDE FOR THE FORMATION OF CORPORATIONS.

CHAPTER I.

GENERAL INCORPORATIONS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That corporations for manufacturing, mining, milling, wharfing and docking, mechanical, mercantile, building and farming purposes, or for the purpose of engaging in any other species of trade or business, may be formed according to the provisions of this act; such corporations, and the members thereof, being subject to all the conditions and liabilities herein imposed, and to none other.

SEC. 2. Any two or more persons who may desire to form a company for any one or more of the purposes specified in the preceding section, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgment of deeds, and file

one of such articles in the office of the Secretary of the Territory, and another in the office of the county auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation. Said articles shall state the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for such length of time, (not less than two or more than six months,) as may be designated in such certificate, and the name of the city, town or locality and county in which the principal place of business of the company is to be located.

SEC. 3. A copy of any certificate of incorporation, filed in pursuance of this act, and certified by the auditor of the county in which it is filed, or his deputy, or by the Secretary of the Territory, shall be received in all the courts and places as *prima facie* evidence of the facts therein stated.

SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and power:

1. To sue and be sued in any court having competent jurisdiction.

2. To make and use a common seal and to alter the same at pleasure.

3. To purchase, hold, sell and convey such real and personal estate as the purposes of the corporation may require.

4. To appoint such officers, agents and servants as the business of the corporation shall require; to define their powers, prescribe their duties and fix their compensation.

5. To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no trustee shall be removed from office, unless

by a vote of two-thirds of the stock-holders, as hereinafter provided.

6. To make by-laws not inconsistent with the organic act of this Territory and the laws of the Congress of the United States and of this Territory.

7. The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in the articles of incorporation.

SEC. 5. The corporate powers of the corporation shall be exercised by a board of not less than two trustees, who shall be stockholders in the company, and a majority of them citizens of the United States and residents of this Territory, who shall before entering upon the duties of their office, respectively take and subscribe to an oath as prescribed by the laws of this Territory, and who shall after the expiration of the term of the trustees first elected, be actually elected by the stockholders at such time and place within the Territory, and upon such notice and in such manner as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he may own or represent by proxy shares of stock, and the person or persons receiving the greatest number of votes shall be trustee or trustees: Provided, That nothing herein contained shall prevent any corporation by their by-laws limiting such *bona fide* shareholder to a single vote, disregarding the number of shares of stock he may own. It shall be competent at any time for two-thirds of the stockholders of any corporation organized under this act to expel any trustee from office and to elect another to succeed him. In all cases where a meeting of the stockholders is called for the purpose of expelling a trustee and electing his successor, such notice shall be given of the meeting as the by-laws of the company may require. Whenever any vacancy shall happen among the trustees by death, resignation or otherwise, except by removal and the election of his successor as herein provided, it shall be filled by appointment of the board of trustees.

SEC. 6. If it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved; but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding upon the company until their successors are elected.

SEC. 7. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

SEC. 8. The first meeting of the trustees shall be called by a notice signed by one or more persons named as trustees in the certificate, setting forth the time and place of the meeting, which notice shall be either delivered personally to each trustee or published at least twenty days in some newspaper in the county in which is the principal place of business of the corporation; or if no newspaper is published in the county, then in some newspaper nearest thereto in the Territory.

SEC. 9. The stock of the company shall be deemed personal estate, and shall be transferrable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid except between the parties thereto, until the same shall have been entered upon the books of the company, so as to show the names of the parties by and to whom transferred, the numbers and designation of the shares and the date of the transfer.

SEC. 10. The stockholders of any corporation formed under this act may in the by-laws of the company prescribe the times, manner and amounts in which payments of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the trustees shall have the power to demand and call in from the stockholders the sums by them subscribed, at such time and in such manner, payments or installments, as they may deem proper. In all cases notice of

each assessment shall be given to the stockholders personally or by publication in some newspaper published in the county in which the principal place of business of the company is located; and if none be published in such county, then in the newspaper nearest to said principal place of business in the Territory. If after such notice has been given any stockholders shall make default in the payment of assessments upon the shares held by him, so many of said shares may be sold as will be necessary for the payment of the assessment upon all the shares held by him, her or them. The sale of said shares shall be made as prescribed in the by-laws of the company but shall in no case be made at the office of the company. No sale shall be made except at public auction, to the highest bidder, after a notice of four weeks published as above directed in this section, and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale, for the smallest number of shares or portion of a share, as the case may be, shall be deemed the highest bidder.

SEC. 11. Whenever any stock is held by a person as executor administrator, guardian or trustee, he shall represent such stock at all the meetings of the company, and may vote accordingly as a stockholder.

SEC. 12. Any stockholder may pledge his stock by a delivery of the certificates or other evidence of his interest, but may nevertheless represent the same at all meetings and vote as a stockholder.

SEC. 13. It shall not be lawful for the trustees to make any dividend except from the net profits arising from the business of the corporation, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock of the company, unless in the manner prescribed in this act; and in case of any violation of the provisions of this section, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or

were not present when the same did happen, shall, in their individual or private capacities, be jointly and severally liable to the corporation and the creditors thereof in the event of its dissolution, to the full amount so divided, or reduced, or paid out: Provided, That this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

SEC. 14. The total amount of the debts of the corporation shall not at any time exceed the amount of the capital stock actually paid in, and in case of an excess, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of the board of trustees at the time, and except those not present when the same did happen, shall, in their individual and private capacities be liable, jointly and severally, to the said corporation, and in the event of its dissolution, to any of the creditors thereof, for the full amount of such excess.

SEC. 15. No corporation organized under this act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidences of debt for circulation as money.

SEC. 16. Each stockholder shall be individually and personally liable for his proportion of the debts and liabilities of the company, contracted or incurred during the time that he was a stockholder, for the recovery of which joint or several actions may be instituted and prosecuted.

SEC. 17. No person holding stock as executor, administrator, guardian or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder, and the estate and funds in the hands of the executor, administrator, or guardian or trustee shall be liable in like manner and to the same extent as the testator, or intestate, or the

ward or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her own name.

SEC. 18. It shall be the duty of the trustees of every company incorporated under this act, to keep a book containing the names of all persons, alphabetically arranged, who are or shall be stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares, which book, during the usual business hours of the day, on every day excepting Sunday and the legal holidays, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stockholder or creditor of the company shall have the right to make extracts from such book, or to demand and receive from the clerk or other officer having the charge of such book, a certified copy of any entry therein, or to demand and receive from any clerk or officer a certified copy of any paper placed on file in the office of the company, and such book and certified copy shall be presumptive evidence of the fact therein stated in any action or proceeding against the company or any one or more of the stockholders.

SEC. 19. If at any time the clerk or other officer having charge of such book shall make any false entry or neglect to make any proper entry therein, or having the charge of any papers of the company shall refuse or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of not less than one hundred dollars nor more than one thousand dollars, and all damages resulting therefrom, to be recovered in action of debt in any court having competent jurisdiction; and for neglecting to keep such book for inspection as aforesaid, the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect, to be sued for and recovered in the name of the people, in the district or probate court

of the county in which the principal place of business of the corporation is located.

SEC. 20. Any company incorporated under this act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital.

SEC. 21. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by a notice signed by at least a majority of the trustees, and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located; or if no newspaper is published in the county, then the newspaper nearest thereto in the Territory, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of stock shall be necessary to increase or diminish the amount of capital stock.

SEC. 22. If at a meeting so called a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out and signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the trustees, and filed as required by the second section of this act, and when so filed the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

SEC. 23. Upon the dissolution of any corporation formed

under the provisions of this act, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation by the name of the trustees of such corporation, collect and pay the outstanding debts, settle all its affairs and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

SEC. 24. Any corporation formed under this act, may dissolve and disincorporate itself by presenting to the district judge of the judicial district in which the office of the company is located, a petition to that effect, accompanied by a certificate of its proper officers and setting forth that at a meeting of the stockholders called for the purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the Territory. At the time and place appointed, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken the necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

SEC. 25. All corporations now existing or hereafter formed under the laws of other States and Territories for the conducting and transactions of marine, life or fire insurance business, with an authorized agent residing in and having an office in this Territory, shall have ample power to do and transact such insurance business within this Territory, not inconsistent with the organic act of this Territory, with ample power by their corporate name and style to enjoy all such rights not inconsistent with the organic act as aforesaid, and to maintain and defend the same in any

court or place within this Territory as fully as though said companies were domestic corporations, incorporated by and in accordance with the laws of this Territory.

SEC. 26. Any corporation desiring at any time to remove its principal place of business into some other county in the Territory, shall file in the office of the county auditor a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest to the city, town or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of no corporation hereafter formed under this act shall be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation: Provided, That within three months from the passage of this act, such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest the city, town or locality, and where the principal place of business of such corporation has been in fact located, designating the city, town or locality, and county where its principal place of business shall be located. On compliance with the provisions of this section in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established, or removed at or to any designated city, town or locality, and county in the Territory.

SEC. 27. All persons who have organized themselves as a corporation under the provisions of this act for purposes other than those enumerated in section first, are hereby declared incorporate bodies, with all the powers the same as they would enjoy had they been incorporated for the purposes set forth in said section first.

SEC. 28. In incorporations already formed, or which may hereafter be formed under this act, where the amount of the capital stock of such corporation consists of the aggregate valua-

tion of the whole number of feet, shares, or interest in any mining claim in this Territory, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its by-laws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust, or other instrument, vest, or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: Provided, That the greater portion of said amount of capital stock shall have been so subscribed: And provided further, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-law or express contract.

SEC. 29. The provisions of this act shall extend to and apply to all associations already formed under any law of this Territory, or hereafter to be formed under the provisions of this act, for the purpose of supplying any cities or towns in this Territory, or the inhabitants thereof, with pure and fresh water.

SEC. 30. Such water companies incorporated for the purposes specified in the preceding section shall have the right to purchase or take possession of and use and hold such lands and waters for the purposes of the company, lying without the limits of the city or town intended to be supplied with water upon making compensation therefor. The mode of proceeding to obtain possession of such lands for the use of the company, right

of way for laying pipes and aqueducts for the use of the company when the parties cannot agree, shall so far as the same be applicable, be as prescribed in chapters three and four of this act.

SEC. 31. Water companies hereafter incorporating under the provisions of this act, must first obtain from the corporate authorities of a city or town intended to be supplied with water, the right or privilege so to do; but nothing herein contained shall affect parties now acting under legislative grants or franchises.

CHAPTER II.

THE INCORPORATION OF COLLEGES, SEMINARIES, CHURCHES, LYCEUMS, LIBRARIES, AND OTHER SOCIETIES FOR BENEVOLENT, TEMPERANCE, CHARITABLE AND SCIENTIFIC PURPOSES.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any two or more persons desirous of forming a corporation for a college, seminary, church, library, or any benevolent, temperance, charitable or scientific society, shall adopt articles certifying:

1. The names of the persons concerned, and their having associated to form a body politic.
2. Their corporate name and location and chief place of business.
3. If a joint stock company, the amount of capital stock and the amount constituting a share; if not a joint stock company, then the terms of admission to membership.
4. A full and specific statement of their object and purpose.
5. What officers the society and company will have; by what officers business will be conducted, and when they are to be elected, or if appointed, when and by whom such appointment is to be made; and also the number of trustees to manage the affairs of said society, and the names of the trustees for the first year of its existence; which articles shall be subscribed and

sworn to by them, or by their president or secretary and a majority of such associates, before some officer authorized to administer oaths, and filed and recorded in the office of the auditor of the county where such corporation or its chief place of business shall exist, and a copy thereof, certified to by the auditor, shall be filed in the office of the Secretary of the Territory.

SEC. 2. When such articles shall have been filed as aforesaid, the persons who shall have signed and verified the same, and their successors, shall be a body politic and corporate with perpetual succession; they shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered, in all courts of this Territory; they may have a common seal, alter and change the same at pleasure; acquire and sell property, personal and real, for the purposes of carrying out the specified objects of the corporation, and no other; make by-laws, rules and regulations as they may deem proper and best for the welfare and the good order of the corporation: Provided, That such by laws, rules and regulations be not contrary to the constitution and laws of the United States and the existing laws of this Territory.

SEC. 3. That any college or seminary hereafter incorporated by the provisions of this act, shall have power and is hereby invested with authority to confer the degrees usually conferred by such institutions.

SEC. 4. Any corporation desiring its dissolution may, by a three-fourths vote of all its members at some regular meeting, execute a surrender of all its corporate powers, and upon the filing of duplicate surrenders with the said auditor and Territorial Secretary, the said corporation shall be dissolved to all intents and purposes.

CHAPTER III.

CORPORATIONS WHEN AUTHORIZED TO APPROPRIATE LAND FOR CORPORATE PURPOSES.

SEC. 1. A corporation organized for the construction of any railroad, macadamized road, plank road, clay road, canal or bridge, shall have a right to enter upon any land between the termini thereof, for the purpose of examining, locating and surveying the line of such road or canal, or the site of such bridge, doing no unnecessary damage thereby.

SEC. 2. Such corporation may appropriate so much of said land as may be necessary for the line of such road or canal, or the site of such bridge, not exceeding sixty feet in width, besides a sufficient quantity thereof for toll-houses, work shops, materials for construction, timber excepted, a right of way over adjacent lands to enable such corporation to construct and repair its road, canal, or bridge, and to make proper drains; and in the case of a railroad, to appropriate sufficient quantity of such lands, in addition to that before specified in this section, for the necessary side tracks, depots and water stations, and the right to conduct water thereto by aqueduct; but no such appropriation of private property shall be made until compensation therefor be made to the owner thereof, irrespective of any increased value thereof by reason of the proposed improvement by such corporation, in the manner hereinafter provided.

SEC. 3. Any corporation may change the grade or location of its road or canal, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes, and for the accomplishment of such change, shall have the same right to enter upon, examine, survey

and appropriate the necessary lands and materials, as in the original location and construction of such road or canal.

SEC. 4. When it shall be necessary or convenient in the location of any road herein mentioned, to appropriate any part of any public road, street or alley, or public grounds, the county court of the county wherein such road, street, alley or public grounds may be, unless the same be within the corporate limits of a municipal corporation, is authorized to agree with the corporation constructing the road, upon the extent, terms and conditions upon which the same may be appropriated or used, and occupied by such corporation, and if such parties shall be unable to agree thereon, such corporation may appropriate so much thereof as may be necessary and convenient, in the location and construction of said road.

SEC. 5. Whenever a private corporation is authorized to appropriate any public highway or grounds, as mentioned in the last section, if the same be within the limits of any town, whether incorporated or not, such corporation shall locate their road upon such particular road, street or alley, or public grounds, within such town, as the local authorities mentioned in the last section, and having charge thereof, shall designate: but if such local authorities shall fail or refuse to make such designation within a reasonable time, when requested, such corporation may make such appropriation without reference thereto.

SEC. 6. Whenever such public highway or grounds is taken by a private corporation by agreement with the local authorities mentioned in section four, such corporation may place such gates thereon, and charge and receive such tolls thereat as such local authorities may consent to by such agreement, and none other; but when the same is appropriated without such agreement, as provided in section five, such corporation shall not place any gate or other obstruction upon the public highway or grounds appropriated, nor charge or receive any toll from any person passing over or along the same.

SEC. 7. Any road, other than a railroad, constructed by a corporation formed under this act, shall be cleared of standing

timber for thirty feet in width of said road, and shall have a track in the centre not less than sixteen feet wide, finished and kept in good travelling condition, except when the cutting on said road is six feet or more deep on either side, in which case such track need not be more than ten feet wide, with turnouts of sixteen feet in width for every quarter of a mile of such narrow track.

SEC. 8. All streams or other waters upon the line of such roads, shall be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams or other water, or if such stream or other water form the boundary between two counties, then the county court of either of said counties may authorize the corporation to place a ferry-boat upon such stream or other water, to be kept and run for such toll as the county court may prescribe, and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court may authorize such corporation to connect their road with a ferry, now or hereafter established over such stream or other water under the general statute in relation to ferries.

SEC. 9. Whenever a road of any kind herein mentioned, other than a railroad, is completed, or any particular section of it, fit-for public travel, the corporation shall give notice thereof, by publication in some newspaper of general circulation, along the line of such road or section, or by posting notices along the line of such road or section, or by posting notices along such line in some conspicuous places, not less than five miles apart, and thereafter such road or section thereof is a common highway, so that every person with his stock and vehicles of every description may travel thereon upon the payment of the tolls prescribed by the corporation, subject to the power of the corporation, by giving notice thereof in like manner, to suspend such right of travel upon all or any portion of such road, for a reasonable time, to enable it to make any necessary repairs or improvements thereon.

SEC. 10. A corporation shall only collect and receive toll on its road at a gate established thereon, and such shall be plainly

and specifically printed or written upon a signboard, posted at such gate, in plain view of the travel on the road; but such corporation shall not establish any gate within the limits of any town, whether incorporated or not, or within one-half mile of the limits of such town, except as specially provided in section six; but no person travelling on foot, or going in any manner or with any property, from one part of his farm to another part, or going to or from church, funerals or elections, is liable to pay for traveling upon such roads.

SEC. 11. Any person traveling upon any road herein mentioned, who shall pass through a gate thereon without paying the toll legally chargeable thereat, or who shall go round such gate with the intent to avoid the payment of such toll, shall be liable to the corporation for three times the amount thereof, and any corporation which by its agents or servants, or in any manner shall illegally collect any toll from any person travelling on such road, shall be liable to such person for three times the amount thereof.

SEC. 12. Any bridge constructed by a corporation formed under this act, when completed and fit for public travel, and notice thereof is posted in some conspicuous place on such bridge, or by publication in a newspaper, as in the case of a road, is a common highway, within the meaning and subject to the conditions specified in section nine, as to roads, and subject to the further power of the corporation to prescribe, by advertisement in some conspicuous place on such bridge, the rate of speed any one may travel on such bridge.

SEC. 13. A corporation may collect and receive such tolls for crossing its bridge, as may be plainly written or printed upon a sign board, posted in some conspicuous place on such bridge, but no person not liable to pay toll on a road, as provided in section ten, is liable to pay toll for crossing such bridge; and any person who shall pass over such bridge without paying the toll legally chargeable thereat, or any corporation which shall illegally collect any toll from any person crossing such bridge, shall be respectively liable to each other for three times the amount of such toll, as provided in section eleven, in case of roads.

SEC. 14. Every corporation formed under this act for the construction of a railroad, as to such road shall be deemed common carriers, and shall have power to collect and receive such tolls or freights for transportation of persons or property thereon as it may prescribe.

SEC. 15. It shall be the duty of every incorporation organized for the construction of any macadamized road, plank road, clay road or bridge, to keep an accurate statement or account of the moneys expended by said corporation, in the construction of any such road or bridge, and keeping the same in repair, including any sums paid for lands, appropriated as necessary for said corporation, which statement or account shall be verified at the time of the annual meeting held for the election of directors, by the president of the said corporation, or one of the directors thereof, to the effect that he believes the said account to be just and correct, and a copy of such verified account shall, within ten days after such annual election be deposited with the auditor of the county with whom the articles of incorporation are filed. Said corporation shall also keep an accurate account of the tolls received for travelling upon said road or bridge, or of other profits accruing to said corporation, which accounts shall be verified in like manner, and a copy thereof deposited with said county auditor within ten days after such annual election.

SEC. 16. At any time after the expiration of ten years from the time of taking tolls on any macadamized road, plank road, clay road or bridge, it shall be lawful for the county court of any county through which any such road, or part thereof, shall pass, or in which such bridge may be situated, to pay to such corporation the amount of money expended by it in the construction of such road or bridge, and keeping the same in repair, and all other necessary expenses, including any sums paid for lands appropriated by such corporation, together with interest on said account, and sums of money at the rate of twenty per centum per annum, after deducting from said amount the tolls and other profits annually received by said corporation, and after the payment of the amounts expended in constructing and keeping in

repair said road or bridge, and other necessary expenses incurred in and about the same, and interest thereon less the amount received by such corporation, the said road or bridge shall become free for public travel.

SEC. 17. The foregoing section shall not be construed so as to prohibit said county court, at any time before the expiration of said period of ten years, from purchasing said road or bridge, for any sum that may be agreed upon by said county court and corporation.

CHAPTER IV.

MODE OF PROCEEDING TO APPROPRIATE LAND BY PRIVATE CORPORATIONS.

SEC. 1. Whenever any corporation, authorized as in the provisions of this act to appropriate lands or right of way, is unable to agree with the owner thereof as to the compensation to be paid therefor, or if such owner be absent from this Territory, such corporation may maintain an action in the district court of the proper county, against such owner, for the purpose of having such lands appropriated to its use, and for determining the compensation to be paid to such owner therefor.

SEC. 2. Such action shall be commenced and proceeded in to final determination in the same manner as an action at law, except as in this chapter otherwise specially provided.

SEC. 3. The action shall be commenced against the person in the actual possession of the land at the time; or if the property be not in the actual possession of any one, then against the person acting as the owner thereof; or if there be no one in the actual possession, or acting as owner thereof, then against an owner unknown.

SEC. 4. The complaint shall describe the land sought to be appropriated, with convenient certainty. If the defendant, or

either of several defendants, is a non-resident of this Territory, or unknown, service of the summons may be made by publication as in ordinary cases.

SEC. 5. A defendant in actual possession may, for answer, plead that he is in possession only as the tenant of another, naming him and his place of residence, if known, and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and thereafter the action shall proceed in all cases as if originally commenced against him.

SEC. 6. The defendant in his answer may set forth any legal defense to the appropriation of such lands, or any portion thereof; or omitting such defense, may aver the true value of the land in question, or the damage resulting from the appropriation thereof, or both.

SEC. 7. Upon the motion of either party, before the formation of the jury, the court, upon the request of either party, shall order a view of the lands in question, and upon the return of the jury the evidence of the parties may be heard and the verdict of the jury given.

SEC. 8. Upon the payment into the court of the damages assessed by the jury, the court shall give judgment appropriating the lands in question to the corporation, and thereafter such lands are the property of such corporation.

SEC. 9. Either party to the action may appeal from a judgment therein, in like manner and with like effect as in ordinary cases; but such appeal shall not stay the proceedings, so as to prevent such corporation from taking such lands into possession and using them for the purposes of the corporation.

SEC. 10. The costs and disbursements of the defendant shall be taxed by the clerk and recovered off the corporation; but if it appear that such corporation tendered the defendant before commencing the action, an amount equal to or greater than that assessed by the jury, in such case the corporation shall recover its costs and disbursements off the defendant.

SEC. 11. If a judgment in such action be reversed and a new trial had, and at such second trial the jury assess the dama-

ges of the defendant at a greater sum than before, the court shall, in addition to the judgment appropriating the land, as provided in section eight, give judgment in favor of the defendant for such excess.

SEC. 12. If the defendant accept the damages paid to the clerk, he waives his right of appeal, and if he do not, such sum shall remain in the control of the court, to abide the event of the appeal, and if the defendant or unknown owner of the land do not appear and claim the same, it shall be invested for the benefit of whom it may concern, as in case of unclaimed moneys in the sale and partition of lands.

SEC. 13. Whenever the law authorizes private real property to be appropriated to public uses, the same may be entered upon, examined, surveyed and selected in the mode prescribed by the statute giving such authority, and thereafter the Territory, county or other municipal or public corporation therein, seeking and authorized to make such appropriation, may proceed in the mode in this title prescribed, to have such property appropriated and the compensation therefor determined and paid, and not otherwise; except that the compensation in the case of such Territory, county, municipal or public corporation, is paid by the deposit in court of an order duly drawn upon the treasurer thereof, for the amount of such compensation.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 17, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO REPEAL ALL POLICE TAX LAWS DISCRIMINATING AGAINST CHINESE, MONGOLIANS AND KANAKAS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the acts of the following titles, to-wit:

An act to levy taxes on Kanakas, approved January 28, 1868; an act to protect free white labor against competition with Chinese Coolie labor, and to discourage the immigration of the Chinese into this Territory, passed January 23, 1864, and the several acts amendatory thereto, passed at the several sessions of 1864-5, 1865-6, 1866-7, and any laws or parts of laws which levy a police tax discriminating against persons of the Mongolian race, or natives of the Sandwich, Society or other islands of the Pacific, residing in this Territory, be and the same are hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 12, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 15, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 25, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

RELATIVE TO THE INSPECTING AND PACKING OF SALMON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all persons packing salmon in barrels, casks or kits, except canned or smoked, to be sold in this Territory or to be exported therefrom, shall brand the initials of their Christian and the whole of their surname in plain, legible letters on the head of each barrel, cask or package, and whether the same are spring or fall salmon, the name of the place, and the year in which they were packed.

SEC. 2. All persons who shall sell or export such packages of salmon before the same are branded, as described in section one of this act, shall, upon conviction thereof, be fined at the rate of ten dollars for each barrel, and five dollars for each half barrel or kit so sold or exported. Such fine or penalty may be recovered on the complaint of any person or persons before any justice of the peace or any court of competent jurisdiction, as in other cases provided; and one-half of the money arising from such fines shall be paid over to the complainant, the other half to be paid over to the county treasurer for the use of common schools in the county where the offense is committed.

SEC. 3. Every person who shall use the brand or name of another person without first obtaining their consent, shall, upon conviction thereof, be imprisoned in the penitentiary for a term not exceeding two years.

SEC. 4. The act creating the office of salmon inspector, and all former acts in conflict with this act, the same be and are hereby repealed; and this act to be in force on and after the first day of January, 1870.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 20, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 26, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT.

ESTABLISHING A UNIFORM STANDARD OF WEIGHTS AND MEASURES AND TO
CREATE THE OFFICE OF SEALER THEREOF.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the county auditors of the various counties be and they are hereby made the sealers of weights and measures for their respective counties.

SEC. 2. It shall be the duty of the county sealers of the various counties of this Territory, to procure at the expense of their said counties, a complete standard of weights and measures in conformity with that established by the Congress of the United States, which shall consist of a yard, a pound weight, liquid gallon and a half bushel, and the usual subdivisions of such weights and measures; the said standards to be certified to by the weigher and measurer of the United States custom house.

SEC. 3. Said weights and measures shall be kept in the office of the county sealer and shall be sealed with the seal of the board of county commissioners and a certificate of their accuracy under the affidavit of said sealer shall be entered upon the minutes of the board of county commissioners and a copy thereof transmitted to the Secretary of the Territory and filed by him in his office.

SEC. 4. It shall be the duty of all persons using any weight, measure or beam by which any commodity or article of trade or traffic is weighed or measured to have the same certified by the county sealer at least once, and as often thereafter as may be necessary to make the same conform to the standard of weights and measures, and every person hereafter using any weight, measure or beam in weighing or measuring not conformable to the standard of the county in which such weight, measure or beam are used, he or she shall be liable to indictment therefor and upon conviction thereof shall be fined in a sum not less than fifty dollars or more than one thousand dollars.

SEC. 5. The county sealer shall be entitled to charge and receive for his services at the following rates, to be paid by the

person having the sealing done: For sealing and marking every beam, one dollar; for sealing and marking measures of extension, at the rate of fifty per yard, not to exceed two dollars for any one measure; for sealing and marking every weight, twenty-five cents; for sealing and marking liquid and dry measures, if the same be of the capacity of a gallon or more, fifty cents; of less than one gallon, twenty-five cents; they shall also be entitled to a reasonable compensation for making such weights and measures conform to the standards established by this act.

SEC. 6. This act to take effect and be in force from and after its approval by the Governor.

Passed the House of Representatives November 26, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

SUBMITTING TO THE VOTERS OF WASHINGTON TERRITORY AT THE NEXT GENERAL ELECTION A PROPOSITION FOR CALLING A CONVENTION TO FRAME A STATE CONSTITUTION AND TO APPLY FOR ADMISSION OF THE STATE OF WASHINGTON INTO THE UNION.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the next general election that may be held in this Territory, there shall be submitted to the voters thereof a proposition for calling a convention to frame a State constitution, and for the admission of the proposed State in the Union.

SEC. 2. The manner of voting on said proposition shall be "for convention" and "against convention," and all tickets on which shall be written or printed "for convention" shall be counted in favor of same, and all on which shall be written or printed "against convention" shall be counted against the same.

SEC. 3. The votes so cast shall be counted, canvassed and returned to the Secretary of the Territory in the manner now required in the returns of votes in the election of delegate of the Territory.

SEC. 4. If it shall appear that at such general election a majority of the votes cast are in favor of a convention, it shall be the duty of the next legislature that may assemble after such general election, to provide for the calling of a convention and to do all other acts proper and necessary to give effect to the popular will.

SEC. 5. The Governor of the Territory shall give notice in his proclamation for the next general election that the legal voters of the Territory are required to vote for or against a State convention.

SEC. 6. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 13, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 29, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT FOR THE PROTECTION OF SHEEP AND OTHER DOMESTIC ANIMALS," APPROVED JANUARY 29, 1868.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That an act entitled "an act for the protection of sheep and other domestic animals," approved January 29th, 1868, be and the same is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives October 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 21, 1869.

WILLIAM McLANE,

President of the Council.

Approved October 27, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO AUTHORIZE THE PURCHASE OF THE GOVERNMENT BUILDINGS AT FORT STELLACOOM FOR AN INSANE ASYLUM.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Governor of the Territory, the Territorial secretary and Territorial auditor are hereby appointed a board of commissioners to purchase the government buildings at fort Steilacoom, if the same should be offered for sale by the government of the United States, for the purpose of an insane asylum.

SEC. 2. The said commissioners shall attend the sale of the said buildings, and on behalf of the Territory bid for the same such reasonable sum as in their judgment may be just; and if the said buildings should be purchased by said commissioners, they are hereby authorized to certify the same to the Territorial auditor, particularly specifying the amount to be paid for the same.

SEC. 3. That upon the receipt of the certificate of the said board of commissioners by the Territorial auditor, he is authorized and directed to issue his warrant upon the Territorial treasurer, payable out of the first money or moneys that may come to his hands, for the sum specified in said certificate, and payable to said commissioners.

SEC. 4. That the said commissioners shall apply the money received by them on said warrant to payment of the said bid on said buildings, and shall take a valid transfer of said buildings, and shall take charge of said buildings and turn them over to the commissioners for the care and custody of insane and idiotic persons, to be prepared and used by them as an insane asylum at the expiration of the present contract for keeping of the insane.

SEC. 5. This act to take effect and be in force from and after its passage.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE ASSESSING AND COLLECTING TERRITORIAL AND COUNTY REVENUE," APPROVED JAN. 1867.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That an act entitled "an act to provide for the assessing and collecting Territorial and county revenue," approved January 31st, 1867, be and the same is hereby amended as follows, to-wit: Wherever the word "November" occurs in said act, strike out the same and insert in place thereof the word "January."

SEC. 2. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives October 23, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 25, 1869.

WILLIAM McLANE,

President of the Council.

Approved October 27, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO LOCATE THE SITE FOR THE PENITENTIARY AND TO APPROPRIATE MONEY TO DEFRAY EXPENSES THEREOF.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That John McReavy, Fred. A. Clarke and L. F. Thompson, be and they are hereby constituted and appointed a board of commissioners, who shall exercise the powers and perform the duties hereinafter specified.

SEC. 2. It shall be the duty of said board of commissioners to select lands for and to locate a site for the erection of the penitentiary.

SEC. 3. The lands so selected and the site so located shall be at or near Steilacoom, in the county of Pierce.

SEC. 4. The board of commissioners are hereby empowered and required, after making the selection and location as provided in sections two and three of this act, to apply for and obtain a good and sufficient deed or deeds to the same, from the owner or owners of the lands so selected, and the title thereof shall be vested in the United States absolutely: Provided, That when the lands are conveyed as provided in this section, the same shall be and is hereby declared the site upon which to erect a penitentiary, in accordance with the act of Congress approved January 22d, 1867.

SEC. 5. It shall be the duty of said board of commissioners to have the lands surveyed and a plat and diagram thereof made by a competent surveyor.

SEC. 6. It shall be the duty of said board of commissioners to have the deed or deeds aforesaid, recorded in the office of the recorder of Pierce county, and shall as soon thereafter as practicable transmit the same with the surveys, plats and diagrams thereof, and an abstract of title duly certified to under seal by the county auditor of said Pierce county, together with an authenticated copy of this act, to the Honorable Secretary of the Interior of the United States for his approval.

SEC. 7. In order to carry out the provisions of this act, the sum of two hundred and fifty dollars, or so much thereof as may be necessary, is hereby appropriated out of any funds in the Territorial treasury not otherwise appropriated, and the Territorial auditor is hereby authorized and required to draw his warrant upon the Territorial treasurer in favor of John McReavy, Fred. A. Clarke and L. F. Thompson for said sum, to defray the expenses necessary to be incurred in carrying out the provisions of this act.

SEC. 8. "An act to permanently locate and build the pen-

penitentiary of the Territory of Washington, approved January 28, 1867," and "an act in relation to future control of Territorial convicts, and to employ them upon penitentiary grounds and buildings, approved January 31, 1867," and all acts and parts of acts in conflict with the provisions of this act, be and they are hereby repealed.

SEC. 9. This act to take effect and be in force from and after its passage.

Passed the House of Representatives October 29, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 12, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 29, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO PREVENT THE INTRODUCTION AND SPREAD OF A DISEASE KNOWN AS THE GLANDERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That no person shall be allowed to keep a horse or horses, mule or mules, jackass or jackasses that have the disease known as the glanders, within this Territory.

SEC. 2. If any person having in his possession any of the animals named in section one of this act, which are diseased with the glanders, he shall, upon the determination of the jury as hereinafter provided, on an order issued by a justice of the peace of the county in which such animal is found, forthwith kill such animal, and if he neglects or refuses to do so within three days

from the day he receives such notice, or the day such notice is served upon him in person, or by leaving the same at his residence or place of business, he shall be liable, upon conviction before any justice of the peace of the proper county, to a fine not exceeding one hundred dollars, or imprisonment not exceeding three months, or both, at the discretion of the court before whom he is tried, together with the costs of the court; and he shall be liable for all damages arising from his having kept such animal: Provided, That in case of acquittal, the party making complaint shall pay the costs of prosecution: And provided further, All cases arising under this act may be tried by the district court of the county where the offense is charged to have occurred.

SEC. 3. Any person bringing an animal into this Territory which has the disease known as the glanders, knowing him to be so diseased, shall be liable to arrest, and upon conviction shall be fined in a sum not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, at the discretion of any court having jurisdiction.

SEC. 4. It shall be the duty of any justice of the peace upon complaint that any animal or animals having the glanders are running at large, to issue an order to a constable to take up said animal or animals forthwith and keep the same in some safe place; and said justice shall then summon a jury of not less than three nor more than six, whose duty it shall be to try the case, and if said jury decide it to be glanders by a majority vote of the same, it shall be the duty of said constable to kill said animal or animals.

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

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,
Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,
President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,
Governor of Washington Territory.

AN ACT

TO PREVENT HOGS TRESPASSING IN CERTAIN COUNTIES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* The owner or lessee of any premises may take up any hogs found trespassing upon his said premises, and may safely keep the same at the expense of the owner of said hogs.

SEC. 2. All persons taking up hogs trespassing upon their lands inclosed, shall immediately thereafter post notices in three public places, containing a description of the ear or other mark of such hogs, whereby their owners may identify them as property.

SEC. 3. If the owners of such hogs come forward within five days after the time such notices were posted, and prove them to be their property, the person taking them up shall deliver them to such owners, upon their paying all costs, charges and damages sustained by reason of their trespassing.

SEC. 4. If, however, the owners do not come forward within the five days, then the person taking up such hogs shall immediately notify a constable of the precinct wherein the trespass has been committed, or if there be no constable in said precinct, then the sheriff of the county or constable of a neighboring precinct, and said constable shall proceed to sell at public auction, (after giving five days notice of such sale by posting notices in three public places in said precinct,) all said hogs so taken up: Provided, however, That the owners may prove their property, and receive it by paying all costs, charges and damages at any time before said sale takes place.

SEC. 5. If the parties cannot agree as to the amount of the charges and damages, then each party may choose one disinterested person, and they may choose a third person, who shall determine the amount of the damages and cost of keeping of said hogs. Should the owner not come forward, then the constable shall appoint one or more disinterested persons to determine the amount.

SEC. 6. The fees of the officers for making sales under the

provisions of this act, shall be the same as are allowed by law for sales under execution.

SEC. 7. If there should be any surplus money arising from such sales after paying all costs, charges and damages, the constable shall pay the same to the owner or owners of said hogs sold, provided they prove they are entitled to it within ten days after the sale; if not, then he shall pay it to the county treasurer, taking his receipt for the same.

SEC. 8. All money paid to the county treasurer under the provisions of this act, shall become a part of the school fund.

SEC. 9. Any constable or sheriff refusing to pay to the county treasurer or to the owners the surplus money derived from such sale, shall be liable for the same on his official bond, and shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars.

SEC. 10. The provisions of this bill shall only apply to the counties of Walla Walla, Island, Jefferson, Pacific, Whatcom, Mason and Clalm.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

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 hereinafter named, shall be as follows, to-wit:

FOR CLERKS OF THE SUPREME AND DISTRICT COURTS:

For filing declaration, petition, plea, demurrer, affidavit, exhibit or any other paper, in each cause, each.....	\$ 10.
For issuing <i>capias</i> , attachment, execution, <i>certiorari</i> , <i>supersedeas</i> , <i>habeas corpus</i> , information, mandate, writ of error or replevin, and for any other original writ, each..	1 00.
For entering each writ.....	25
For issuing writs of <i>vinditioni exponas</i> or order of sale, every hundred words.....	20
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..	25
For docketing appeals from justice's of the peace court...	25
For docketing each cause, to be charged but once.....	25
For writs for each special venire for jury, charged in each cause tried.....	50
For receiving panel and swearing jury.....	25
For swearing witnesses, each.....	15
For entering claim for each witness for their attendance..	15
For entering judgment, recognizance, special rule, continuance, discontinuance, retraxit, rule of reference, allowance of writ of <i>habeas corpus</i> , confession of judgment, or default or consent, rule or plea, notice of appeal to supreme or district court, each.....	50
For entering surrender of principal by bail, exonerator cancelling bail bond, discharge of recognizance, issue joined, motion, non-suit, report of referees; judgment upon any issue of law or fact, or on report of referees, appeals	

from inferior courts, appeals to higher courts, and acknowledgments.....	\$	50
For taking affidavits, each.....		25
For taking affidavits with sealed attachments, each.....	1	00
For writing affidavits, per folio of one hundred words....		25
For taking depositions, per folio.....		20
For issuing subpoenas, one or more names.....		50
For calling and swearing talesmen, each.....		15
For giving order to each juror for his attendance.....		50
For approving bonds, including justification.....	1	00
For copying papers, per folio.....		20
For certificate and seal.....	1	00
For entering a declaration of intention to become a citizen of the United States.....	1	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.....	3	00

FOR SHERIFF:

For service of every notice and complaint, and return there- of on each defendant, besides mileage.....	1	00
For levying each writ of execution on real or personal prop- erty, besides mileage.....	1	00
For levying each writ of attachment on real or personal property, besides mileage.....	1	00
For service of <i>capias ad satis faciendum</i> upon the body of each defendant named in the writ.....	1	00
For every bail bond.....	1	00
For serving writ of possession without the aid of the county, besides mileage.....	2	00
For serving writ of possession with the aid of the county, besides mileage.....	3	00
For executing writ of inquiry, and returning the same with inquisition.....	2	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 subpoena to witness, besides mileage, for each person therein named.....	\$ 40
For summoning each grand and petit juror, besides mileage.....	25
Per centage on all moneys actually made and paid to sheriff on execution or order of sale, under one thousand dollars, two per centum.	
Per centage on all sums over one thousand dollars, one per centum.	
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.....	6 00
For serving <i>scire facias</i> for each defendant, besides mileage.....	1 00
For calling jury.....	25
For calling each witness.....	10
For bringing up a person on a writ of <i>habeas corpus</i> , besides mileage.....	1 00
For each days attendance on any court of record.....	3 00
For posting each notice, besides mileage.....	50
For executing a sentence of death.....	50 00
For each mile necessarily travelled in going to and returning from the county seat to the place of service.....	10

FOR JUDGES OF THE PROBATE COURT:

Sec. 2. For granting letters of administration.....	1 00
For probate of will or testament.....	1 00
For granting letters of testamentary.....	1 00
For granting letters of testamentary, when the same are contested.....	3 00
Taking bonds in any case.....	1 00
Hearing complaints against spendthrifts and lunatics....	5 00
Appointing guardian.....	75
Decree of settlement of an estate.....	1 00
Decree of settlement of an estate when contested.....	2 00
Order of distribution.....	1 00
Examining inventory of appraisement or return of sale and filing same in office, each.....	75

Every writ of process under seal.....	\$ 50
Each order of court on record.....	50
Examining accounts, each one hundred words, counting two (2) figures for a word.....	25
Warrant to appraise or divide an estate.....	75
Issuing commission.....	1 00
Allowing an appeal.....	25
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 partition of real estate.....	1 00
Allowing reports on the accounts of executors or adminis- trators.....	50
Extending letters of administration.....	50
Decree respecting the probate of will or codicil.....	1 00
Filing each paper.....	10
Administering an oath.....	15
Recording all papers required by law to be recorded, for each one hundred words.....	20
Order of apportionment of an insolvent estate among the creditors.....	2 00
Acknowledgment with seal.....	75
Entering appointment of executors, administrators or guar- dians, or other appointments necessary.....	50
Issuing letters of guardianship.....	75
For hearing each contested case, to be taxed as costs against the party in default.....	5 00
Issuing citations to executors, administrators and guardians	50
Copies of papers and records, each one hundred words....	20
Provided, That no probate judge in this Territory shall hereaf- ter receive any compensation per diem for his services from the county: And provided further, That in the county of Walla- Walla the probate judge of said county shall be paid out of the county treasury of said county, an annual salary of seven hun-	

dred dollars in lieu of all fees above allowed, and that the fees above provided shall be collected by the probate judge, and by him be paid in kind over to the county treasurer of said county for the general fund, and take duplicate receipts therefor, one of which shall be filed with the county auditor of said county.

FOR JUSTICES OF THE PEACE:

For issuing notice.....	\$ 75
For issuing warrant in criminal cases.....	1 00
For taking recognizance of bail, including justification...	1 00
For committing to jail.....	50
For every subpoena.....	25
For each name in subpoena after first.....	10
For entering judgment on trial.....	50
For entering judgment of confession on default.....	50
For each folio of certified copy of proceedings, or appeals <i>certiorari</i> or otherwise.....	20
For every adjournment at request of either party.....	50
For swearing witnesses, jurors or arbitrators, each.....	15
For issuing writ of attachment.....	1 00
For <i>scire facias</i>	1 00
For entering discontinuance or satisfaction.....	50
For taking acknowledgment of deeds or other instruments	1 00
For venire of jury.....	1 00
For writ of restitution.....	1 00
For taking affidavits, each.....	25
For attending with clerk of county commissioners at the opening of polls, per diem.....	3 00
For issuing writ of replevin.....	75
For filing each paper in a cause.....	15
For approving a bond including justification.....	50
For administering an oath.....	15
For taxing costs in any cause.....	50
For taking depositions, for each folio.....	20
For making certified copies of any proceedings in his court or before him, for each folio.....	20
For solemnization of marriage and making return thereof.	5 00

FOR COUNTY AUDITORS:

SEC. 3. 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 figures as a word, excluding calculations.....	25
For making out exhibits of receipts and expenditures of county for past year, for each one hundred words, counting every two figures as a word, excluding calculations..	25
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.....	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.....	20
For each order drawn on county treasurer.....	20
For copy of an order drawn upon the order of the board..	50
For drawing each receipt.....	10
For each notice delivered to the sheriff for general or special election.....	50
For opening and examining election returns and making abstract of votes and copies thereof, per diem.....	3 00
For each certificate of election, to be paid by county.....	50
For each order for view of road.....	1 00
For taking bonds of county officers, and all other persons required by the board or by law to give bonds, each....	1 00
For administering an oath.....	15
For each bond executed by the commissioners to purchaser 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 business, to be paid by the party to whom granted.....	\$ 1 00
For entering license on record.....	25
For entering the approval by county commissioners of li- censes 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 dis- trict court for similar services.	
For reading and entering petition for view of road, to be paid by petitioner.....	1 00
For reading and entering remonstrance against view of road or petition for damages, each to be paid by remonstrants	1 00
For reading and entering report of road viewers.....	50
For entering appointment of road viewers.....	50
For notifying justice of the peace or county commissioners to attend at the opening and examination of election re- turns, each.....	50
For certifying copy of commissioner's 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 of writing for record..	10
For making final settlement of any account with the county, per folio.....	20
For each certificate as recorder of liens on record against the property of any person.....	50
The fee of a county auditor for issuing a license of mar- riage, and recording a certificate of the performance of the marriage ceremony shall be \$2 50, which fee shall be paid at the time the license is issued by the party ap- plying for the same.	

FOR CONSTABLES:

For serving complaint and notice on each defendant, besides mileage.....	\$1 00
For service and return of a <i>capias</i> 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 every days attendance upon any court of record.....	3 00
For summoning jury before justice of the peace.....	1 50
For each mile necessarily traveled in going to or returning from the court to the place of service.....	20

FOR COUNTY COMMISSIONERS:

SEC. 4. For service per diem, besides mileage.....	5 00
Mileage going to the county seat, for each mile traveled..	15

JURORS:

Each grand and petit juror shall be allowed for each day's attendance on a court of record, if not a talesman.....	3 00
(including pay received from the United States, for every mile to and from the seat of justice.)	
Talesman serving as a petit juror, each trial, when he may be detained more than one day, per diem.....	3 00.
(including any pay received from the United States.)	
For every days attendance upon justice of the peace courts, besides mileage.....	2 00
For serving on inquest.....	2 00
Mileage each way, per mile.....	10

WITNESSES:

SEC. 5. For each days attendance upon the district, county commisioner's, probate and justice's court...	2 00
Mileage each way.....	10

NOTARY PUBLIC:

SEC. 6. 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.....	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 deposits, 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:

SEC. 7. 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

INTERPRETERS AND TRANSLATORS:

Interpreters and translators shall receive such fees as the court by whom they are employed shall certify to be just.

SECRETARY OF THE TERRITORY:

For issuing commission to commissioners of deeds.....	2 50
For each certificate, with seal attached.....	1 00
For copy of any matter of record or on file in his office, per folio.....	25

SEC. 8. County surveyors shall receive the compensation allowed by the provisions of an act entitled "an act to create and establish the office of county surveyor."

SEC. 9. It shall be the duty of the clerks of the supreme and district courts, sheriffs, auditors, judges of the probate courts, justices of the peace, to keep severally a book to be called the "fee book," in their respective offices, in which they shall enter all the fees charged by them; and said books shall be open to the inspection of any one desiring to inspect the same, in which shall

be stated the fees charged for, in detail, with the title of the matter, proceeding or action in which they are charged.

SEC. 10. It shall be the duty of the district judge to give this act specially in charge to the grand jury.

SEC. 11. Any officer who shall violate any of the provisions of section two of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars.

SEC. 12. If any officer shall take more or greater fees than are herein allowed, he shall be liable to indictment, and on conviction shall be removed from office and fined in any sum not exceeding one thousand dollars.

SEC. 13. Every officer whose fees are as ascertained and fixed by this act, shall publish and set up in his office a table of the fees allowed him according to this act, within one month after its passage, in some conspicuous place, for the inspection of all who have business in his office, upon pain of forfeiture for each day of his omission so to do, a sum not exceeding twenty dollars, which may be recovered by any person by action before any justice of the peace of the same county, with costs.

SEC. 14. When, by law, any publication is required to be made by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall be compelled to make publication thereof.

SEC. 15. The term "folio" when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole draft or paper there should not be a complete folio, and when there shall be an excess over the last folio exceeding a quarter, it shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same.

SEC. 16. When any sheriff, constable or coroner serves more than one process in the same cause not requiring more than one journey from his office, he shall receive mileage only for the most distant service.

SEC. 17. No attorney in any case shall be allowed any fees as a witness in such case.

SEC. 18. No fees shall be charged by any officer for administering and certifying the oath of office.

SEC. 19. Mileage of officers who are required to reside at the county seat, shall be computed from the court-house of the county, and every portion of a mile shall be computed as one mile.

SEC. 20. Each and every officer who shall be called on or required to perform services for which no fees or 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. 21. All fees are invariably due in advance where demanded by the officer required to perform any official act, and no officers shall be required to perform any official act unless his fees are paid when he demands the same: Provided, This section shall not apply when the officers perform any official act for his county or the Territory.

SEC. 22. Witnesses in civil cases shall be entitled to receive, upon demand, their fees for one day's attendance, together with mileage going to the place where they are required to attend. if such demand is made to the officer or person serving the subpoena at the time of service.

SEC. 23. 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. 24. 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. 25. 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, 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.

Passed the House of Representatives November 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 25, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

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 they shall be severally commissioned and qualified, 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. And all official acts heretofore performed in this Territory by notaries public, duly commissioned and quali-

fied under color of their office, are hereby declared authentic and valid, though such acts may have been performed subsequently to the time or term named in the commission appointing said notaries.

SEC. 6. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 16, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 15, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 19, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO PREVENT THE SPREAD OF CONTAGIOUS OR INFECTIOUS DISEASES AMONG DOMESTIC ANIMALS.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That no person or company of persons shall bring or cause to be brought into this Territory, sheep, hogs, cattle or other domestic animals of any description, knowing them to be affected by any contagious or infectious disease, under penalty of a fine of not less than fifty nor more than five hundred dollars for each offense, said fine to be collected by an action brought for that purpose in the name of the Territory, before any court having competent jurisdiction in the county where such animal or animals were introduced, and to be paid into the county treasury of said county.

SEC. 2. Any person or company of persons, now or hereafter having ownership of or in any such animal or animals men-

tioned in the preceding section, affected by contagious or infectious diseases, shall keep such animals within an inclosure or in a district secure from contact with other animals. Any person willfully or knowing violating the provisions of this section shall be liable to the same penalty as provided for in the first section of this act.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 20, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 26, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

IN RELATION TO OATHS AND AFFIRMATIONS.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That every court, judge, clerk of a court, justice of the peace or notary public, is authorized to take testimony in any action, suit or proceeding, and such other persons in particular cases as authorized by law. Every such court or officer is authorized to administer oaths and affirmations generally, and every such other person in such particular case as authorized.

SEC. 2. An oath may be administered as follows: The person who swears holds up his hand, while the person administering the oath thus addresses him: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between ——— and ——— shall be the truth, the whole

truth, and nothing but the truth, so help you God." If the oath be administered to any other than a witness giving testimony, the form may be changed to: "You do solemnly swear you will true answers make to such questions as you may be asked," &c. &c.

SEC. 3. Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing connected with or in addition to the usual form of administration, which, in witnesses opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode.

SEC. 4. When a person is sworn who believes in any other than the christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

SEC. 5. Any person who has conscientious scruples against taking an oath, may make his solemn affirmation, by assenting, when addressed, in the following manner: "You do solemnly affirm that," &c., as in section two.

SEC. 6. Whenever an oath is required, an affirmation, as prescribed in the last section, is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury, equally with a false oath.

Passed the House of Representatives November 30, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 30, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO AUTHORIZE THE FORMATION OF LIMITED PARTNERSHIPS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That limited partnership for the transaction of mercantile, mechanical or manufacturing business may be formed within this Territory, by two or more persons, upon the terms, and subject to the conditions contained in this act.

SEC. 2. A limited partnership may consist of two or more persons, who are known and called general partners, and are jointly and severally liable as general partners now are by law, and of two or more persons who shall contribute to the common stock a specific sum in actual money as capital, and are known and called special partners, and are not personally liable for any debts of the partnership, except as in this act specially provided.

SEC. 3. The persons forming such partnership shall make and severally subscribe a certificate, in duplicate, and file one of such certificates with the county auditor of the county in which the principal place of business of the partnership is to be. Before being filed, the execution of such certificate shall be acknowledged by each partner subscribing it before some officer authorized to take acknowledgments of deeds; and such certificate shall contain the name assumed by the partnership and under which its business is to be conducted, the names and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate.

SEC. 4. Such partnership cannot commence before the filing of the certificate of partnership, and if a false statement is made in such certificate, all the persons subscribing thereto are liable as general partners for all the debts of the partnership. The partners shall, for four consecutive weeks immediately

after the filing of the certificate of partnership, publish a copy of the same in some weekly newspaper published in the county where the principal place of business of the partnership is, or if no such paper be published therein, then in some newspaper in general circulation therein, and until such publication is made and completed, the partnership is to be deemed general.

SEC. 5. A limited partnership may be continued or renewed by making, acknowledging, filing, and publishing a certificate thereof, in the manner provided in this act for the formation of such partnership originally, and every such partnership not renewed or continued as herein provided, from and after the expiration thereof according to the original certificate, shall be a general partnership.

SEC. 6. The business of the partnership may be conducted under a name in which the names of the general partners only shall be inserted, without the addition of the word company or any other general term. If the name of any special partner is used in such firm with his consent or privately, he shall be deemed and treated as a general partner, or if he personally makes any contract respecting the concerns of the partnership with any person except the general partners, he shall be deemed and treated as a general partner in relation to such contract, unless he makes it appear that in making such contract he acted and was recognized as a special partner only.

SEC. 7. During the continuance of any partnership formed under this act, no part of the capital stock thereof shall be withdrawn, nor any division of interests or profits be made, so as to reduce such capital stock below the sum stated in the certificate of partnership before mentioned; and if at any time during the continuance or at the termination of such partnership, the property or assets thereof are not sufficient to satisfy the partnership debts then the special partners shall be severally liable for all sums or amounts by them in any way received or withdrawn from such capital stock, with interest thereon from the time they were so received or withdrawn respectively.

SEC. 8. All actions, suits or proceedings respecting the

business of such partnership, shall be prosecuted by and against the general partners only, except in those cases where special partners or partnerships are to be deemed general partners or partnerships, in which case all the partners deemed general partners may join therein; and excepting also those cases where special partners are severally liable on account of sums or amounts received or withdrawn from the capital stock, as provided in section seven.

SEC. 6. No dissolution of a limited partnership shall take place except by operation of law, before the time specified in the certificate of partnership, unless a notice of such dissolution, subscribed by the general and special partners is filed with the original certificate of partnership or the certificate, if any renewing or continuing such partnership, nor unless a copy of such notice be published for the time and in the manner prescribed for the publication of the certificate of partnership.

SEC. 10. In all cases not otherwise provided for in this act, all the members of limited partnerships shall be subject to all the liabilities, and entitled to all the rights of general partners.

Passed the House of Representatives November 29, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO REPEAL SECTION SECOND OF AN ACT ENTITLED "AN ACT TO FIX THE TIME OF HOLDING CERTAIN TERMS OF CERTAIN DISTRICT COURTS OF THE TERRITORY OF WASHINGTON," APPROVED OCT. 16, 1869.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section two of an act entitled "an act to fix the time of holding certain terms of certain district courts of the Territory of Washington," approved October 16, 1869, be and the same is hereby repealed.

SEC. 2. This act to be in force from and after its passage.
Passed the House of Representatives October 29, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 30, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 16, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

DEFINING LIBEL AND PROVIDING FOR THE PUNISHMENT THEREOF.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a libel is a malicious defamation of a person made public by any printing, writing, sign, picture, representation or effigy, tending to provoke him to wrath or expose him to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or any malicious defamation made public as aforesaid, designed to blacken and vilify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives or friends.

SEC. 2. Every person who makes, composes, dictates, or procures the same to be done, or who wilfully publishes or circulates such libel, or in any way knowingly and wilfully aids or assists in making, publishing or circulating the same, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars.

SEC. 3. In all prosecutions or indictments for libel the truth thereof may be given in evidence to the jury, and if it appear to them that the matter charged as libelous was true and was published with good motives and for justifiable ends, the defendant shall be acquitted.

SEC. 4. No printing, writing or other thing is a libel unless there has been a publication thereof.

SEC. 5. The delivering, selling, reading or otherwise communicating a libel, or causing the same to be delivered, sold, read or otherwise communicated, to one or more persons or to the party libeled, is a publication thereof.

SEC. 6. This act to take effect and be in force from and after its approval by the Governor.

Passed the House of Representatives November 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 25, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT TO ESTABLISH A STANDARD FOR THE MEASUREMENT OF CLAPBOARDS OR SHAKES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the act fixing the measurement of clapboards or shakes, approved January 28th 1867, be and the same is hereby repealed.

Passed the House of Representatives November 13, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 15, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 25, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT.

ASSIGNING THE JUDGES TO THE SEVERAL DISTRICTS IN THE TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Hon. B. F. Dennison, Chief Justice of Washington Territory, be and he is hereby assigned to the third judicial district, and must reside therein.

SEC. 2. That the Hon. O. Jacobs, Associate Justice, be and he is hereby assigned to the second judicial district, and must reside therein.

SEC. 3. That the Hon. Jas. K. Kennedy, Associate Justice, be and he is hereby assigned to the first judicial district, and must reside therein.

SEC. 4. That the counties of Stevens, Yakima and Walla

Walla shall compose the first judicial district, and holding terms at Walla Walla, shall be in and for the counties of Walla Walla and Yakima; and that the district court holding terms at Colville, be in and for the county of Stevens.

SEC. 5. That all acts and parts of acts in conflict with this act, be and the same are hereby repealed.

SEC. 6. That this act shall take effect and be in force from and after its passage.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

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 in said Territory shall be two hundred feet of the lode, including all dips, spurs and angles within said two hundred feet, and for fifty feet on each side of the ledge.

SEC. 2. Any person who may discover a ledge of mineral bearing quartz within this Territory shall be entitled to hold two claims, one as a discovery claim and one by right of pre-emption.

SEC. 3. No person shall be entitled to hold a quartz mining claim in said Territory, unless upon locating such claim he shall distinctly mark the bounds by planting firmly stakes not

less than three inches square at each end of such claim, and by placing thereon a notice in writing designating the name of each claimant, the number of the claim, and if the discovery claim, the same shall be so specified, together with the name of the ledge and the number of feet in the aggregate, together with date of location, and shall cause the same to be recorded in the county auditor's office in the county in which such claim or ledge may be situated, within twenty days after locating such claim.

SEC. 4. It shall be the duty of the county auditor of the county in which such claim is located, to record all notices of the location of claims under the provisions of this act, in a book to be by him kept in his office, to be called the "book of quartz claims," and shall be entitled to charge and receive for each and every claim such notice shall contain, the sum of one dollar.

SEC. 5. Every person who may locate a quartz mining claim in said Territory, shall within one year after locating such claim, do, or cause to be done, one hundred dollar's worth of work upon each and every claim held or located by such person. An affidavit sworn to before any person competent to administer oaths, by the person or persons performing such labor or work, and filed with the county auditor, shall be *prima facie* evidence of the compliance with the requirements of this section.

SEC. 6. Individuals associated together as companies may, by working upon any portion of the claims held or owned by them as a company, to the amount of one hundred dollars for each and every claim so held, be deemed to have worked on each claim, and shall not therefore be deemed to have forfeited any part thereof, or may pay into the county treasury the amount of one hundred dollars, as provided for in section fifth of this act.

SEC. 7. No sales or transfer of claims shall be deemed valid unless the same shall be recorded in the county auditor's office, in the county where such claim or claims may be situated, within twenty days after such sale or transfer.

SEC. 8. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 9. This act shall take effect and be in force from and after its approval by the Governor.

Passed the House of Representatives November 16, 1869.

GEORGE H. STEWARD,
Speaker of the House of Representatives.

Passed the Council November 22, 1869.

WILLIAM McLANE,
President of the Council.

Approved November 26, 1869.

ALVAN FLANDERS,
Governor of Washington Territory.

AN ACT

FOR THE RELIEF OF PIERCE COUNTY.

WHEREAS, Pierce county has been called upon under the laws of the Territory to give the county jail for the temporary safe keeping of Territorial convicts, and said jail was all that was required for county purposes, but was not suitable nor sufficient for the safe keeping of Territorial convicts without considerable repair, which said repair has been ordered and partly made by the county commissioners of said county; therefore

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of one thousand dollars in legal tender notes, or so much thereof as is necessary for the repairs already made and to be made upon and in said jail, be and the same is hereby appropriated to said county.

SEC. 2. Said sum of one thousand dollars in legal tender notes, or so much thereof as may be needed to repair said jail, shall be paid out of, and only from the proceeds of labor of Territorial convicts that may be imprisoned in said jail.

SEC. 3. Said sum of one thousand dollars in legal tender

notes, or so much thereof as may be needed to repair said jail, shall be paid by the sheriff or jailer having charge of said Territorial convicts, to the treasurer of said county from the proceeds of labor of said convicts, or the said convicts labor shall be applied to the repairs of said jail to make the same secure the labor or the sum of one thousand dollars in legal tender notes, to be expended and for the purpose above specified, and none other.

SEC. 4. The repairs of said jail to be made under and by the county commissioners of Pierce county, with the advice of the sheriff or jailer or keeper of Territorial convicts.

SEC. 5. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 24, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 25, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO FIX THE TIME OF HOLDING CERTAIN TERMS OF CERTAIN DISTRICT COURTS
OF THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a regular term of the district court of the second judicial district of Washington Territory holding terms at Vancouver, shall be held at Vancouver, commencing on the third Monday of December, 1869, and to continue until the business of said term is disposed of; the said

term to be held in lieu of the regular November term, 1869, heretofore provided for by law; and all causes docketed for trial and all persons committed or bound over to appear at the regular November term, 1869, of the district court of the second judicial district of Washington Territory holding terms at Vancouver, shall be tried in the manner provided by law at the term of the court provided for by this section, and it shall be the duty of the clerk of said court to inform the sheriffs of the several counties composing said district, under the seal of the court, of the provisions of this act, and also cause the same to be published in some newspaper published in the district, for the information of the people of the said district.

SEC. 2. That in addition to the regular term of the district court of the first judicial district, there shall be held a special term of said court to be held at Walla Walla, commencing on the first Monday of January, 1870, and to continue for three weeks, unless sooner adjourned: Provided, That at said special term of said court there shall be tried only such civil cases as may have been continued from the October term, 1869, and no others.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 16, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 22, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 26, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO REGULATE THE MEASUREMENT AND SURVEY OF LUMBER IN THE LOG, AND
FIX THE COMPENSATION THEREFOR.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the Governor to appoint some suitable person having the qualifications of an elector, who shall be denominated the surveyor general of logs for Washington Territory, who shall hold his office for the term of two years, unless sooner revoked.

SEC. 2. It shall be the duty of the person so appointed to ascertain by actual measurement and survey the quantity of lumber contained in each and every saw-log, or boom or raft of logs or timber to be sawed or manufactured into lumber; also piles and spars.

SEC. 3. Before entering upon the duties of his office he shall execute a bond to the United States in the sum of five thousand dollars, with one or more good and sufficient sureties, to be approved by the Governor, conditioned for the faithful and impartial discharge of his duties. He shall also take and subscribe an oath before some person authorized by law to administer oaths, faithfully and impartially to perform the duties of his office, which oath shall be written on the back of his bond and attested by the person administering the same, and deposited with the Secretary of the Territory.

SEC. 4. He shall have authority to appoint deputies in such places as he may deem expedient, or where he cannot personally attend; such deputy surveyors shall before entering upon the duties of their office, take and subscribe the oath prescribed in section three of this act, and may be required to execute a bond to the surveyor general, with sureties to be approved by him, which oath and bond shall be filed in his office, and shall be subject to removal at the pleasure of the surveyor general, who shall also be responsible for the acts of his deputies.

SEC. 5. For the purpose of ascertaining the quantity of lumber in any log, or boom, or raft of logs, that he or his depu-

ties may be called upon to measure or survey, he shall provide for himself and the use of his deputies the rule and scale of measurement known and designated as the Bangor scale, and no other rule, or scale, or form of measurement shall be had or used to measure or ascertain the quantity of lumber contained in saw-logs, or in booms, or rafts of logs, or timber to be manufactured into lumber in this Territory.

SEC. 6. It shall be the duty of the surveyor general and his deputies, when called upon for that purpose, to proceed without unnecessary delay to scale, measure and ascertain the quantity of lumber contained in any boom or raft of logs or timber to be manufactured into lumber, excluding such logs or timber, as in their judgment are defective or unsound; and when he has completed the measurement thereof, according to the provisions of this act, he shall make and deliver to the contracting parties a certified statement under his hand and seal, of the quantity of lumber so measured and contained in such boom, raft or body of logs or timber, and shall enter a corresponding statement with the names of the contracting parties, in a book to be kept by him for that purpose, which shall be considered a record, and shall be open for inspection.

SEC. 7. It shall be the duty of all the deputy surveyors appointed under the provisions of this act to keep a correct account of all the lumber by them measured and surveyed, and shall make a report thereof to the surveyor general, on the 31st of March, 30th of June, 30th of September, and 31st of December in each year, or fractional parts of a year that he or they may be in office, which shall be considered the quarterly returns, and the surveyor general shall enter the same on his record and file said returns in his office.

SEC. 8. As a compensation for his services, the surveyor general and his deputies are authorized to charge and collect the following fees, payable in coin, to-wit: Ten cents per thousand feet for the first 100,000 feet in each boom or raft of logs so surveyed, and eight cents per thousand for the remaining quantity, be it more or less, to be paid equally by the parties selling and buying.

SEC. 9. The deputy surveyors appointed under the provisions of this act, shall each pay to the surveyor general ten per centum of all the money received by them for their services as such, as a compensation for extra services in keeping books, records, etc.

SEC. 10. Any person, corporation or company buying, selling or dealing in saw-logs or timber which is to be sawed or converted into lumber, who shall use any other scale or rule of measurement for the purpose of ascertaining the quantity of lumber contained in said logs or timber, than the one prescribed in the fifth section of this act, shall be deemed guilty of a misdemeanor, and may be proceeded against by the surveyor general or any other person aggrieved, by prosecution or indictment, and on conviction thereof before any court having competent jurisdiction, may be fined in any sum not exceeding five hundred dollars nor less than fifty dollars, and imprisonment, at the discretion of the court, together with costs of suit; and such fines when collected shall be paid into the county treasury of the proper county by the officer so collecting, and shall be placed to the credit of the common school fund.

SEC. 11. In case of vacancy by removal, death, resignation or other disability of the surveyor general, the Governor shall, when notified thereof, appoint his successor, who shall before entering upon the duties of his office, comply with all the provisions of the third section of this act.

SEC. 12. If the surveyor general or any of his deputies shall willfully make or cause to be made a false statement, or give a certificate containing a statement of more or less lumber in any boom or raft of logs that he or they may measure or survey, other than such boom or raft actually contained, he shall be deemed guilty of malfeasance in office, and on conviction thereof before any court having competent jurisdiction, may be fined in any sum not exceeding five hundred dollars nor less than one hundred dollars, and imprisonment, at the discretion of the court, to be collected with cost of suit, and disposed of according to the provisions of the ninth section of this act, and said surveyor general or deputy shall forfeit and be deprived of his office.

SEC. 13. It shall be the duty of the surveyor general to report to the Governor on the first day of January and July in each year, the quantity of lumber surveyed by him and his deputies for the six months next preceding such report, stating therein the places and quantity so surveyed, and the Governor shall communicate the same to the next general session of the Legislative Assembly of this Territory.

SEC. 14. All acts conflicting with the provisions of this act be and the same are hereby repealed.

SEC. 15. This act to take effect and be in force from and after the first day of January, 1870.

Passed the House of Representatives November 30, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

IN RELATION TO THE QUARANTINE OF VESSELS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That G. V. Calhoun, L. B. Hastings and C. E. P. Wood are appointed a board of health in this collection district, No. 103 district of Puget Sound, whose duty it shall be to make such regulations respecting the quarantine of ships or vessels, prescribing in what cases it shall be performed by vessels arriving at any ports in this district, as may be deemed just and reasonable, and the same modify or change as in their*

opinion the public safety may require; and the board of health so appointed shall appoint a health officer who shall before entering upon the duties of his office give bonds with good and sufficient sureties to the Territory of Washington, in the sum of five hundred dollars, conditioned for the faithful performance of his duties as such health officer, and shall be sworn before some officer qualified to administer oaths to perform the duties of his office to the best of his ability, and which bond and oath shall be filed in the office of the Territorial secretary.

SEC. 2. The health officer shall reside at the port of entry and shall require all vessels having on board any person or persons infected with small pox, plague, pestilential or malignant fever, or other malignant, infectious or contagious disease, or who shall have been so infected during the voyage, or having on board any goods reasonably supposed to have any infection of such disease, to perform quarantine at some safe, suitable and convenient place selected and designated for that purpose by the board of health, and order the master or other person having charge or control of such vessel to proceed with and anchor at such designated place, there to remain and be purified and cleansed, as he may direct, and a suitable place on shore may be prescribed and properly limited for the landing, care, treatment and purification of any persons or passengers of such vessel.

SEC. 3. The board of health may, and it shall be their duty to seize any goods landed from any such infected vessel without the permission of the health officer, and remove and keep the same till they shall have caused them, the said goods, to be thoroughly cleansed and purified, and which cleansing and purification shall be performed by or under the direction of the health officer with all possible dispatch, at which time such goods shall be turned over to the care and custody of the person properly claiming the same, upon the payment, by the person so claiming, the expense of such removal and purification; and upon the failure of the health officer to turn over to such person any such goods agreeable to the provisions of this section, he shall be liable for all the damages that may arise from such failure,

and which may be recovered by suit in any court of competent jurisdiction, together with costs of suit.

SEC. 4. Any owner, master, supercargo, officer, seaman, consignee, or any other person who shall refuse or neglect to obey the orders and regulations of the board of health, in regard to such quarantine, or the purification and cleansing of such vessel, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding three months, or both.

SEC. 5. Any person sick on board any such vessel may be sent on shore by said health officer, at some place appointed and limited for that purpose, and shall there be maintained, provided for and cleansed, by or under the direction of the health officer, at the expense of such sick or infected person, if able: otherwise at the expense of the vessel in which the person or persons may have been brought into any of the ports or waters of this district.

SEC. 6. If any person shall come on shore from any vessel infected or justly suspected of being so, subject to or performing quarantine, or shall leave the place appointed for the sick, or for purification, being placed there, or employed or placed there by the health officer, without permission of such officer, he or she shall be fined not exceeding one thousand dollars, or imprisoned not exceeding three months, or both.

SEC. 7. If any person shall, without permission of the health officer, go on board any vessel ordered for or performing quarantine, or go within the limits appointed by the health officer for the reception of infected persons and property on shore, he or she shall be considered as infected, and shall be held to undergo purification in the same manner and under the same regulations and penalties as those who are performing quarantine, and shall remain there at his or her expense until discharged by the health officer, and any person coming into any such place, having been previously designated as a place for infected persons or property, or go on board any vessel ordered to or performing quarantine, and having at the time the lawful flag, as hereinafter described, hoisted at the mast head, without permission of the health officer, he may be forcibly detained by the person or per-

sons there employed by the health officer, till he shall have undergone purification in the same manner and under the same regulations as those performing quarantine.

SEC. 8. A red flag, at least six feet long and four feet wide, shall be hoisted from sunrise to sunset at the main truck of any and all vessels ordered for or performing quarantine; failing in which, the vessel shall be liable to a fine of five hundred dollars: Provided, The master or other person having the care and custody of any such vessel, shall first be notified of such regulations and have sufficient time and opportunity to procure said flag. A flag as hereinbefore described shall also be conspicuously displayed at the place designated by the board of health for the reception of infected persons and property on shore, in default of which the officer or officers having the control of such infected place, shall forfeit his appointment and shall also be liable to a fine of fifty dollars, to be recovered before any justice of the peace by any person suing for the same.

SEC. 9. If any owner, master, supercargo, officer, seaman or consignee of any vessel, or any other person knowing such vessel to be subject to quarantine, shall bring, or suffer the same to be brought to or near any wharf, store, dwelling-house or other building not used for the purposes of the health-officer in his official capacity as such, or shall make any false declaration as to the port or place from which such vessel came, or in regard to the condition and health of any person on board any such vessel, or shall cause, aid or permit the landing of any person or property of any nature or kind whatever from such vessel, without the permission of the health officer, he shall be punished by fine not exceeding five thousand dollars, or imprisonment not exceeding three months, or both.

SEC. 10. If any such vessel shall not be removed to the place of quarantine agreeably to the directions of the health officer, or shall be brought near any wharf, store, dwelling-house or other building without his permission, the health officer shall cause such vessel to be forthwith removed to such place, there to remain at the risk of the owners till the expiration of the time

limited by the health officer, and the expense of removal shall be paid by the master, owner or consignee, who shall severally be liable therefor, and may be recovered by the board of health, together with costs of suit, in any court having jurisdiction.

SEC. 11. The master of every vessel arriving at any port in the collection district of Puget Sound having on board any person or persons infected with plague, small pox or any malignant, infectious or pestilential disease, or who have been so infected during the voyage, or having on board any goods which may reasonably be supposed to have any infection of such disease, shall forthwith give notice thereof to the health officer; and if any such master or other person having charge of such vessel shall neglect to give such notice, he shall be fined not exceeding five thousand dollars, or may be imprisoned not exceeding six months, or both.

SEC. 12. It shall be the duty of the board of health appointed under the provisions of this act to procure, when by them deemed necessary, a suitable building, either by lease or construction, to be used exclusively by the health officer as a pest house, the expense of which shall be paid out of the Territorial treasury out of any funds not otherwise appropriated.

SEC. 13. The board of health shall give notice in such manner as they may think reasonable and most for the public good, of any and all regulations made by them under the provisions of this act, the expense or cost of which shall be paid out of the Territorial treasury, and the Territorial auditor is hereby authorized to draw his warrant on the Territorial treasurer for the same, upon the presentation of a bill for such cost of giving notices as provided for in this section, and which bill shall first be countersigned by the collector of customs, or his deputy, and which countersigning shall be *prima facie* evidence of its correctness.

SEC. 14. As compensation for the services of the health officer under the provisions of this act, he is hereby empowered, and it shall be lawful for him to charge and collect twenty dollars of every vessel inspected by him and found to be subject to

these regulations, and for which the vessel shall be liable, and may be recovered with costs of suit in any court having jurisdiction.

SEC. 15. All fines recovered under the provisions of this act and not otherwise provided for, shall be paid into the Territorial treasury.

SEC. 16. This act to take effect and be in force from and after its passage; and all acts and parts of acts conflicting with the provisions of this act, be and the same are hereby repealed.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 15, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 26, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

FOR THE PRESERVATION OF GAME.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person who shall buy or sell, or kill for the purpose of selling, any elk or deer, from the first day of February to the first day of July, or any pheasants, partridges, grouse, prairie chickens or quail, from the first day of April to the first day of August in each and every year, or who at any time shall wantonly destroy any animals heretofore mentioned, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding fifty dollars nor less than ten

dollars, one half to be paid to the person making the complaint. the other half to the county in which the offense is committed.

Passed the House of Representatives November 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 16, 1869.

WILLIAM McLANE,

President of the Council.

Originated in Council and transmitted by me to the Governor for approval November 24, 1869, and not returned within five days.

C. B. BAGLEY,

Chief Clerk of Council.

AN ACT

TO PROVIDE AGAINST DANGEROUS AND VICIOUS CATTLE.

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. 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.

Passed the House of Representatives November 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 16, 1869.

WILLIAM McLANE,

President of the Council.

Originated in House of Representatives. Transmitted by me to Governor for approval November 22, 1869. Not returned within five days.

ELWOOD EVANS,

Chief Clerk House of Representatives.

December 2, 1869.

AN ACT

TO PROVIDE FOR THE LEASING OF SCHOOL LAND OF WASHINGTON TERRITORY.

WHEREAS, The government of the United States has reserved certain lands for school and educational purposes, to-wit: the sixteenth and thirty-sixth sections in each township; and

WHEREAS, A large portion of said lands are well adapted to agriculture and pastoral purposes; and

WHEREAS, Said lands are yielding no revenue or income; therefore

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners of the several counties are hereby authorized and empowered to lease or rent said lands, or any portion thereof, for a number of years not exceeding six, or until said lands shall be sold, at a rent or interest not less than ten dollars per annum for each quarter section or any fractional part thereof, which said rent shall be invariably paid in advance and applied to the school funds.

SEC. 2. That nothing in the foregoing section shall be so construed as to authorize the cutting or otherwise destroying any of the timber on said lands.

SEC. 3. That all fencing and other improvements put upon said land, shall attach to and become a part of the realty at the expiration of said lease.

SEC. 4. That all laws in conflict with the provisions of this act, be and are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 24, 1869.

WILLIAM McLANE,

President of the Council.

Originated in the House of Representatives, and by me transmitted to the Governor for approval November 25, 1869, A. M. Not returned within five days.

ELWOOD EVANS,

Chief Clerk House of Representatives.

December 2, 1869.

AN ACT

RELATING TO COUNTY ASSESSORS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the general election in this Territory, when county officers are required to be elected by law, there shall be elected in each county a county assessor, who shall have the qualifications of a voter, and shall continue in office for two years and until his successor is elected and qualified.

SEC. 2. The said assessor shall, before entering on the dis-

charge of the duties of his office, give a bond to the county for which he was elected, with two or more sureties, to be approved by the board of county commissioners, in such penal sum as such board shall direct, conditioned for the faithful performance of his duties according to law, and shall take and subscribe an oath, faithfully and impartially to discharge the duties of his office according to law and to the best of his abilities.

SEC. 3. In addition to the other duties of assessor prescribed by the general revenue law, it shall also be his duty at the time of making his annual assessment, to take a census of all the inhabitants in their respective counties, comprising a complete list of all the white male inhabitants, their occupations, ages, nationality, whether married or single, citizens or aliens. Also a list of all female inhabitants, their ages, whether married or single; and also a list of all taxable half-breed Indians, negroes, mulattoes, Kanakas and Chinamen. The said lists shall be returned to the county auditor on or before the first Monday of May, to be filed in his office, and a copy of the same shall be forwarded by the auditor to the Territorial auditor, the substance of the same to be embodied by him in his report to the Legislative Assembly.

SEC. 4. That it may be competent for any assessor, in case of his being prevented by sickness or any other unavoidable cause as above described, to appoint some suitable person having the qualifications of a voter, his deputy, who shall perform all the duties of the assessor he represents, and for whose acts the said assessor shall be responsible; and said deputy shall before he enters on the discharge of the duties of his office, take and subscribe before the county auditor an oath faithfully and impartially to perform the duties devolving upon him, which oath shall be filed in the office of the county auditor.

SEC. 5. Each assessor shall receive a compensation of five dollars per day, for each day actually and necessarily employed in the discharge of the duties of his office, and such reasonable compensation for the copy of the assessment roll as the board of county commissioners may allow, which compensation shall be

paid out of any moneys in the county treasury not otherwise appropriated.

SEC. 6. Any vacancy in the office of assessor shall be filled by the county commissioners at any session of their board.

Passed the House of Representatives November 24, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 24, 1869.

WILLIAM McLANE,

President of the Council.

Originated in the Council and transmitted by me to the Governor for approval November 26, 1869, and not returned within five days.

C. B. BAGLEY,

Chief Clerk of Council.

AN ACT

TO PREVENT THE INTRODUCTION OF TEXAS CATTLE, OR CATTLE INFECTED WITH TEXAS CATTLE DISEASE, OR SPANISH FEVER, INTO THE TERRITORY OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the introduction of Texas cattle, or cattle infected with what is known as the Texas cattle disease or Spanish fever, into the Territory of Washington is hereby prohibited.

SEC. 2. Any person or persons introducing or bringing into said Territory any Texas cattle or cattle infected with the Texas cattle disease, or Spanish fever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the county jail for a term not exceeding twelve months, or fined in a sum not less than five thousand dollars, or be both fined and imprisoned, at the discretion of the court.

SEC. 3. Any person or persons offending as stated in section one of this act, shall be liable for any and all damages to any person or persons that may be injured by reason of the introduction of such Texas or diseased cattle.

SEC. 4. It shall be the duty of the sheriffs and constables of the several counties in the Territory, to arrest and bring before a justice of the peace for examination any person they have reason to believe has violated the first section of this act.

SEC. 5. Any justice of the peace in any county where there is a violation of the provisions of this act, shall on complaint made before him, issue his warrant of arrest for the person named in the complaint, and when arrested shall be examined before said justice, and if deemed guilty shall recognize in the sum of not less than five thousand dollars to appear before the next term of the district court to answer to the charge, and in default of bail be committed to the county jail until said term of court.

SEC. 6. All fines arising under this act shall be appropriated as follows: One-third to the officer making the complaint and arrest, one-third to the county for county purposes, and one-third to the school fund of the county in which the offense was committed.

SEC. 7. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 20, 1869.

WILLIAM McLANE,

President of the Council.

Returned November 30, 1869, by the Governor with his reasons for not approving the same, to the House of Representatives, in which the bill originated; and now, December 1, 1869, the House proceeding to reconsider the same, said bill passed the said House of Representatives, notwithstanding the Governor's objections, by the vote of ayes 20, noes 8.

ELWOOD EVANS,

Chief Clerk House of Representatives.

And now, December 1, 1869, said bill and the message of the Governor disapproving the same having been reported to the Council, the Council proceeded to reconsider the same, and said bill passed the Council notwithstanding the Governor's objections, by the vote of 7 ayes, noes 2.

C. B. BAGLEY,
Chief Clerk of Council.

AN ACT

TO SECURE TO ORPHANS AND CERTAIN OTHER CHILDREN IN THE TERRITORY OF WASHINGTON A COMMON SCHOOL EDUCATION.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all guardians and other persons in this Territory having, or who may hereafter have the immediate custody of any white child or children between the ages of eight and eighteen years, shall send the same to school at least three months in each year said child or children may remain under their supervision: Provided, That if the person having the custody of said child shall not be able to pay for its education as provided in this section, and shall satisfy the directors of that fact, such child shall be admitted free of cost.

SEC. 2. All time lost to any child in consequence of a school not being taught the required length of time, or from any other good reason, shall be made up the ensuing year or so soon as such disability is removed and a school is taught a sufficient time in their district to allow of such amend.

SEC. 3. In all cases where any person having the custody of any child shall fail to send said child to school the required length of time, provided that an opportunity has offered, and no good reason can be shown for the failure, then said person shall pay to the district clerk of his school district, on the presentation

of a warrant from the school directors, the sum of one hundred dollars, to be incorporated into the school fund and used for school purposes in said district; but the county commissioners shall have power to remit fines arising by virtue of this act, when in their opinion justice demands a remission.

SEC. 4. It shall be the duty of the directors of schools to examine the school schedules and make out and present to the clerk of their district, on or soon after the first day of November of each year, warrants for all money forfeited under this act for the year ending on the day above mentioned, and the time for collection specified in said warrants shall not extend beyond the first day of January of the succeeding year.

SEC. 5. Clerks of school districts shall have the same power to collect percentage for collecting money accruing under this act, that they already have for collecting other school money; and they shall report to the probate judge before the first day of December of each year the name and residence of every orphan child that failed to attend school as herein required, and the probate judge shall have power to remove such child, and place it in the care of some other person who will be likely to comply with the requirements of this act.

Passed the House of Representatives November 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 13, 1869.

WILLIAM McLANE,

President of the Council.

Originated in the Council and transmitted by me to the Governor for approval Nov. 24, 1869, and not returned within five days.

C. B. BAGLEY,

Chief Clerk of Council.

AN ACT

IN RELATION TO TERRITORIAL WARRANTS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall not be lawful for the Territorial treasurer to pay any money out of the Territorial treasury except it be on a warrant drawn by the Territorial auditor.

SEC. 2. Upon the presentation of any Territorial warrant or warrants to the Territorial treasurer, it shall be his duty, if there be no funds in the Territorial treasury, to indorse on said warrant or warrants, "not paid for want of funds," with the day and date of said presentation, and said warrant or warrants shall from said date draw legal interest till paid.

Passed the House of Representatives November 13, 1869.

GEORGE H. STEWARD,
Speaker of the House of Representatives.

Passed the Council November 15, 1869.

WILLIAM McLANE,
President of the Council.

Originated in House of Representatives. Transmitted by me to Governor for approval November 22, 1869.

ELWOOD EVANS,
Chief Clerk House of Representatives..

December 2, 1869.

AN ACT

FOR THE PROTECTION OF STOCK RAISERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral before sepa-

rating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral into which they may be driven before setting the herd or band at large.

SEC. 2. Any person violating section one of this act shall be deemed guilty of a misdemeanor, and on conviction thereof before a justice of the peace, shall be fined in any sum not exceeding one hundred dollars, and half the costs of prosecution; said fine so recovered to be paid into the school fund of the county in which the offense was committed; and in addition thereto shall be imprisoned until the fine and costs are paid.

Passed the House of Representatives November 16, 1869.

GEORGE H. STEWARD,
Speaker of the House of Representatives.

Passed the Council November 17, 1869.

WILLIAM McLANE,
President of the Council.

Originated in the House of Representatives and by me transmitted to the Governor for approval November 24, 1869. Not returned within five days.

ELWOOD EVANS,
Chief Clerk House of Representatives.

December 2, 1869.

AN ACT

RELATIVE TO THE VACATION OF TOWN PLATS.

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 persons 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 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.

Passed the House of Representatives November 13, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 15, 1869.

WILLIAM McLANE,

President of the Council.

Originated in the House of Representatives and transmitted by me to the Governor for approval Nov. 22, 1869, and not returned within five days.

ELWOOD EVANS,

Chief Clerk House of Representatives.

December 2, 1869.

AN ACT

TO ENABLE COUNTIES TO OBTAIN A REGISTRY OF OUTSTANDING COUNTY ORDERS WHEN SAID REGISTRY IS LOST.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That in counties where from any reason the record of county orders heretofore issued is incomplete, and the auditor is unable to supply the county treasurer with a register of the outstanding orders, it shall be lawful for the county auditor to give public notice, by posting thirty days at

the place of holding elections in each of the precincts of said county, to parties holding county' orders to present the same to said auditor, to be registered in a book prepared for the purpose of ascertaining the outstanding liability of the county by reason of the loss of a registry of the issue of said county orders.

SEC. 2. It shall be lawful for the county treasurer of a county by public notice posted as required in section one, or by advertising four successive weeks in any newspaper in the Territory, to notify holders of county orders that said treasurer is prepared to pay and discharge county orders issued between certain dates; after the expiration of which notice it shall be lawful for said treasurer to pay county orders next in order of priority of issue, though of subsequent date to the times embraced in said notice, notwithstanding orders of earlier date may still remain unrepresented and unpaid.

SEC. 3. County orders referred to in the notice of the county treasurer, which shall not be presented within the time named in said notice, shall not draw interest after the expiration of the notice, and upon presentation the county treasurer shall endorse the time of presentation if he has not funds to pay the same by reason of paying out all the funds applicable to the discharge of the outstanding liabilities of the county.

SEC. 4. Persons holding county orders who shall fail to comply with the notice given by the county auditor, as referred to in section one of this act, within the period named in said notice, shall upon presentation of said order have the time of presentation endorsed upon the said order, and said county order shall from that time rank in priority of payment from the date of said endorsement, and the county auditor shall register the same and furnish notice thereof to the county treasurer, who shall in paying said order be governed by the date of said endorsement, anything in former acts of the Legislative Assembly providing a different order of payment to the contrary notwithstanding.

SEC. 5. All acts and parts of acts in conflict with this, so far as applies to counties who have imperfect registries of their

outstanding indebtedness, be and the same shall conform to the sections of this act.

Passed the House of Representatives November 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 13, 1869.

WILLIAM McLANE,

President of the Council.

Originated in the Council and transmitted by me to the Governor for approval, Nov. 24, 1869, and not returned within five days.

C. B. BAGLEY,

Chief Clerk of Council.

AN ACT

AUTHORIZING UNITED STATES COAST SURVEY PARTIES TO ENTER UPON LANDS IN WASHINGTON TERRITORY, TO ERECT SIGNALS. &c.. AND TO PREVENT THE INJURY OF SAID SIGNALS.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person or persons engaged in and belonging to parties employed under and by virtue of an act of Congress, approved the 10th day of February, 1807, and the amendments thereto relating to the United States coast survey, may enter upon lands in this Territory, and clear and cut timber upon the same, and may erect any works, building or appendages requisite and needful for the purpose of exploring, surveying, triangulating, leveling, or doing such acts as are requisite to attain the objects of said acts of Congress, without being considered trespassers, provided no unnecessary injury be done to said lands.

SEC. 2. That where damages are caused to any inhabitants of the Territory by such entry, such person so injured and the

person or persons in charge of said coast survey party, shall agree upon the actual damages so incurred; and where they cannot agree, the party who shall have suffered said damage, may complain to the nearest justice of the peace in the county where such entry shall have been committed, who shall associate with himself two disinterested free holders of said county, one to be named by each of said parties; and said justice and free holders shall proceed to hear the complaint, and may, with or without view of the premises as they may determine, assess and award the damages incurred by the owner or possessor of said lands so entered: Provided, nevertheless, That the injured party shall have served five day's notice in writing of the time and place of the intended hearing, together with the name of the free holder so selected by him.

SEC. 3. That said magistrate and free holders shall, within ten days after making their said award, file the same in the office of the county auditor of the county where said lands lie, and said award shall be binding as a judgment and deemed conclusive as marking the assent of said parties, unless either party shall within ten days after filing the same, file their written exceptions thereto, of which filing of exceptions due notice shall be given to the adverse party; and the issue made up upon said report and exceptions shall be tried at the next term of the district court of the district wherein said county is a part, which issue shall be tried as other civil actions, except that judgment thereon shall be had at the first term.

SEC. 4. That any person so entering upon lands for the purposes aforesaid, may tender to the party injured compensation for any damage he may have suffered thereby, and if upon hearing, as hereinabove provided, the party refusing to accept such tender fails to recover greater damages or a judgment for a larger amount, the party or parties so entering upon lands, and causing such damages thereby, shall not be responsible for any costs.

SEC. 5. Justices of the peace and freeholders associated with them in the hearing of the above complaints, shall be enti-

tled to the same costs now provided by law for suits before justices of the peace and the cost of trial of such issues hereinbefore provided in the district court, shall be the same as in civil actions.

SEC. 6. That any person or persons who shall wilfully, maliciously or wantonly injure, deface, destroy or remove any instrument, signal, monument, building or appendage thereto, used or constructed, or being in this Territory and connected with, or relating to, or in any manner belonging to or forming a part of the labors of said coast survey parties, such parties so offending shall, for each offense, be deemed guilty of a misdemeanor, and shall be tried as parties guilty of misdemeanor are tried, according to the statutes of this Territory; and on conviction thereof such person, for each and every such offense, shall be fined in the sum of two hundred dollars, to be recovered as other fines are recovered, one-fourth of which shall go to the prosecutor, and the remaining three-fourths shall be paid into the county treasury of the county where the offense is committed, to go into the school fund of said county; to which fine may be added imprisonment in the county jail for one month, and any damage resulting to the United States of America in consequence of violating the provisions of this section, may be recovered in any court of competent jurisdiction.

Passed the House of Representatives November 12, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 15, 1869.

WILLIAM McLANE,

President of the Council.

Originated in House of Representatives and transmitted by me to Governor for approval November 22, 1869. Not returned within five days.

ELWOOD EVANS,

Chief Clerk House of Representatives.

AN ACT

TO ENFORCE JUDGMENTS UPON CONTRACTS ACCORDING TO THEIR TRUE INTENT AND MEANING.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the several courts within this Territory, in giving judgment or decree on a written contract for the payment or delivery of gold coin, legal tender notes or any other kind of lawful money specified in such contract, and in giving judgment or decree for the recovery of money received on deposit, or as agent or trustee, or otherwise for the use of another, shall, if either party require it, adjudge or decree that the principal sum so contracted or so received, and the interest thereon, but not the costs of the action or suit, shall be paid in the kind of money so specified in such contract, or in the kind of money so received for the use of another.

SEC. 2. That the several courts of this Territory in giving judgment or decree in an action or suit for the non-delivery or failure to account for gold dust received on deposit, or as agent or trustee, or otherwise for the use of another, shall, if either party require it, adjudge or decree that the damages assessed for such non-delivery or failure to account, shall be paid in gold or silver coin of the United States.

SEC. 3. A written contract to pay gold coin or its equivalent in gold dust or bars, if not performed according to its terms, shall thereafter, at the option of the party entitled to the benefit thereof, be deemed and held to be a contract to pay gold coin only, within the meaning of this act, and may be enforced accordingly.

SEC. 4. An execution to enforce a judgment or decree for a specified kind of money, shall require the sheriff to satisfy the same in the kind of money or currency specified in such judgment or decree, and in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale in any other kind of money than that specified in the execution. The sheriff shall pay over, according to law,

the kind of money recovered on such execution, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three times the amount of the money collected.

SEC. 5. The certificate of sale of real property on an execution to enforce a judgment or decree for a specified kind of money, shall state the kind of money received on such sale, and the notices of sale shall specify the kind of money in which bids may be made at such sale, which shall be the same as that specified in the judgment or decree, and the sheriff shall state in his return the kind of money received.

SEC. 6. The purchaser at a sale of real property for a specified kind of money shall be entitled to receive from the redemptioner, and redemptioners from each other, the kind of money specified in the certificate of sale: Provided, That no money shall be received in satisfaction of a judgment or decree for a specified kind of money, or upon an execution to enforce the same, other than the kind of money specified in such judgments, decree or execution: Provided further, That the gold and silver coins of the United States, to the respective amounts for which they are legal tenders, shall be received at their nominal values in payment of every such contract or liability, and of every such judgment, decree or execution.

SEC. 7. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 23, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 23, 1869.

WILLIAM McLANE,

President of the Council.

Originated in House of Representatives. Transmitted by me to Governor for approval November 25, 1869. Not returned within five days.

ELWOOD EVANS,

Chief Clerk House of Representatives.

December 2, 1869.

AN ACT

TO ESTABLISH THE AMOUNT AND PROVIDE FOR THE PAYMENT OF COSTS IN CERTAIN CASES.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That when any person shall be brought before a court, justice of the peace or other committing magistrate of any district, county, city or town in this Territory having jurisdiction of the alleged offense, charged with the commission of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city or town for or in which the said complaint is tryable. But if the court, justice of the peace or other magistrate trying said charge shall decide that the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant to pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law.

SEC. 2. When a grand jury upon a complaint submitted to them for investigation, fail to find a bill of indictment for an offense against the laws of the Territory, they shall also inquire whether the complaint is frivolous or malicious, and decide whether the county or complainant shall pay the costs, and make return of their finding in open court. Any complainant adjudged by said grand jury as liable for the costs, shall forthwith be brought into court and sentenced to pay the same or stand committed until such judgment is satisfied or complied with.

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 committing magistrate, six dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines.

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 auditor 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 reserve the amount from the amount of Territorial tax in his hands, or hereafter to be collected, and credit the same to the county as so much paid of its quota of Territorial tax.

SEC. 5. Whenever a 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 any sheriff is required to keep any Territorial convict sentenced to imprisonment in the penitentiary, said sheriff shall present his bill for keeping such convict, after the same is duly allowed and approved by the proper judge of the district court, to the county treasurer of his county, whose duty it shall be to pay the same out of any funds in his hands due from the county to the Territory, and upon presentation of the proper voucher, the Territorial treasurer shall credit the county with the amount so paid by said county on Territorial taxes.

SEC. 7. 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. 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 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.

SEC. 9. 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: 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 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 how many different capacities, or in however many different causes they may be summoned, notified or called upon to testify or attend in.

SEC. 10. 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.

SEC. 11. All costs collected against any person convicted of crime or misdemeanor, and all sums collected on recognizances of persons accused, or of witnesses in criminal cases for fines and forfeitures, shall belong to the county from which the case came.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 20, 1869.

WILLIAM McLANE,

President of the Council.

Originated in the House of Representatives, and transmitted by me to the Governor for approval November 22, 1869. Not returned within five days.

ELWOOD EVANS,

Chief Clerk House of Representatives.

December 2, 1869.

AN ACT

TO PROVIDE FOR COMPENSATION FOR THE QUARTERMASTER GENERAL OF WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of four hundred dollars be, and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, to John Murphy for compensation for services in the office of quartermaster for the years 1866, 1867, 1868 and 1869.

SEC. 2. That the Territorial auditor is hereby authorized and required to draw a warrant upon the Territorial treasury for the compensation provided herein.

SEC. 3. That the quartermaster general be hereafter allowed the sum of one hundred dollars per annum, to be paid out of the Territorial treasury, quarterly, for clerical service in said office of quartermaster general, and the auditor shall draw his warrant therefor.

SEC. 4. This act to take effect and be in force from and after its approval by the Governor.

Passed the House of Representatives November 30, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

PRIVATE AND LOCAL LAWS.

PRIVATE AND LOCAL LAWS.

AN ACT

TO DEFINE THE CORPORATE LIMITS OF THE TOWN OF OLYMPIA.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the town of Olympia shall be bounded as follows, to-wit: Commencing at a point on Budd's Inlet, where the northern boundary of section No. 11 intersects the shore; thence along the meandering of the beach southerly, to a point of intersection with the bay at the northern boundary of section No. 14; thence east on section line, between sections 14 and 11, to the northeast corner of section 14; thence south on section line, between sections 13 and 14 and sections 23 and 24; thence west, on the southern boundary of sections 22 and 23, to the south-west corner of section 22; thence north, on the west boundary of sections 22 and 15, to the north-west corner of section 15; thence east, on northern boundary of section 15, to a point of intersection with the western shore of Budd's Inlet; thence northerly along said western shore, following the meandering of the beach to the intersection of the northern boundary of section 10 with the beach; thence east across Budd's Inlet to the place of beginning.

SEC. 2. All acts or parts of acts in conflict with the provisions of this act, so far as the corporate limits of the said town of Olympia is concerned, are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives October 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 26, 1869.

WILLIAM McLANE,

President of the Council.

Approved October 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT.

AMENDATORY OF AN ACT ENTITLED "AN ACT TO INCORPORATE THE TOWN OF OLYMPIA."

ARTICLE I.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the town of Olympia shall be bounded as follows, to-wit: Commencing at a point on Budd's Inlet where the northern boundary of section No. 11 intersects the shore; thence along the meandering of the beach southerly, to a point of intersection with the bay at the northern boundary of section No. 14; thence east on section line, between sections 14 and 11, to the north-east corner of section 14; thence south on section line, between sections 13 and 14, and sections 23 and 24; thence west, on the southern boundary of sections 22 and 23, to the south-west corner of section 22; thence north on the west boundary of sections 22 and 15, to the north-west corner of section 15; thence east on northern boundary of section 15 to a point of intersection with the western shore of Budd's Inlet; thence northerly along said western shore, following the

meandering of the beach to the intersection of the northern boundary of section 10 with the beach; thence east across Budd's Inlet to the place of beginning.

SEC. 2. The inhabitants of said town of Olympia shall be, and are hereby constituted a body politic and corporate, by the name and style of the "Town of Olympia," and by that name they and their successors shall be known in law, and have perpetual succession, sue and be sued, plead and be impleaded in all courts whatsoever, and receive property, personal and real, within said town for public buildings, public works and town improvements, and may dispose of the same in any way for the benefit of the town; may purchase property beyond the limits of the town to be used for burial purposes and for the establishment of a hospital for the reception of persons infected with contagious diseases.

ARTICLE II.

SEC. 1. For the government of the said town of Olympia there shall be annually elected, in the manner hereinafter provided, the following officers: A board of trustees, (consisting of five members,) who shall hold their offices for one year, or until their successors shall be duly elected and qualified; one town treasurer, one town clerk, one town marshal and one town assessor, who shall hold their office for a like term, and until their successors are elected and qualified.

ARTICLE III.

SEC. 1. That a general election for all town officers of the corporation required under this act, shall be held on the first Monday in April of each year.

SEC. 2. No person shall be entitled to vote at any town election who shall not be an elector for Territorial offices, and who shall have resided in this town ten days next preceding the day of election; and no person shall be eligible to any office under this charter who is not a qualified voter of said town.

SEC. 3. At all elections for town officers the vote shall be by ballot, at the time and place designated by the board of trustees.

SEC. 4. That all vacancies happening before the annual election shall be filled by the board of trustees.

SEC. 5. That all elections for town officers shall continue for one day, during which time the polls shall be kept open from 10 o'clock A. M., to 4 o'clock P. M.

SEC. 6. The person who shall receive a plurality of votes for any office, shall be declared duly elected, and the clerk shall issue to him a certificate of election, and on presentation of the same to the board of trustees, he shall be sworn into office.

ARTICLE IV.

SEC. 1. The members of the board of trustees shall annually elect one of their number president of the board of trustees, who shall hold his office for one year, or until his successor shall be elected and qualified.

SEC. 2. The members of the board of trustees shall fix the time and place for holding their stated meetings, and may be convened by the president of the board of trustees at any time. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members.

SEC. 3. Any ordinance which shall have passed by the board of trustees shall, before it becomes a law, be signed by the president of the board.

SEC. 4. Said board of trustees shall have full power and authority:

1. To make all needful by-laws, ordinances and town regulations, not repugnant to the constitution or laws of the United States and the laws of this Territory.

2. To levy taxes for municipal purposes, not to exceed one-half of one per centum per annum upon all taxable property, as is shown by the assessment made for Territorial and county pur-

poses. But this shall not be construed as prohibiting said board from the addition of ten per centum penalty on delinquent tax payers, or such other penalty as may be prescribed by the laws of the Territory to secure the collection of taxes. Said board shall also regulate by ordinance the time of assessing and collecting said municipal taxes.

3. To prevent and restrain any disturbances or disorderly conduct, riot, drunkenness or any indecent and immoral practices within the limits of said town.

4. To appoint one of the justices of the peace residing within said town as committing magistrate, whose duty it shall be to hear all complaints of violation of the said ordinances, and to examine all parties arrested by the town marshal.

5. The roads, streets and alleys within said town limits shall be under the exclusive control of said board of trustees, who shall make all needful rules in regard to the improvement, repair, grading, cleaning, etc., etc., thereof. And for the purposes of this act said town shall not be included in any road district, but the road tax due by law within said town shall be collected by the town marshal at such times as may be directed by ordinance and expended under his direction as prescribed by ordinance.

6. To license, tax and regulate auctioneers, taverns, hawkers, peddlers, brokers, pawn-brokers and all offensive or noxious trades or occupations.

7. To license, tax and regulate hacks, cabs, hackneys, carriages, wagons, carts, drays or other vehicles, and to fix the rates thereof.

8. To make regulations to prevent the introduction of contagious diseases into the city, to remove persons affected with such or other diseases therefrom to suitable hospitals provided for the city for that purpose; to secure the protection of persons and property therein, and to provide for the health, cleanliness, ornament, peace and good order of the city.

9. To prevent and remove nuisances.

10. To provide for lighting the streets and furnishing the city with gas or other lights, and for the erection or construction of such works as may be necessary or convenient therefor.

11. To provide for the support, restraint and employment of vagrants and paupers.

12. To provide for the prevention and extinguishment of fires and for the preservation of property endangered thereby, and for the appointment or election of officers required for such purposes.

13. To establish and maintain a day and night police, or either of them.

14. To provide for the prevention or removal of all obstructions from the streets, cross and side walks, and for the cleaning and repairing of the same.

15. To provide for the erection of a city jail, house of correction and work-house and the government and management of the same.

16. To establish and regulate the fees and compensation of all officers of this municipal corporation, except when otherwise provided.

17. To provide for the punishment of a violation of any ordinance of the city, by fine or imprisonment, not exceeding one hundred dollars or thirty days, or both, or by a forfeiture or penalty not exceeding one hundred dollars, and for working any person sentenced to such imprisonment upon the streets or public squares during the term thereof.

18. To levy and collect each year a special tax not exceeding one quarter of one per centum, assessed by authority of the first subdivision of this section, for any specific object within the authority of this municipal corporation; but the ordinance providing therefor must specify the object thereof, and the estimated amount necessary therefor.

19. To borrow money to meet the necessary expenses of the corporation.

20. To appropriate money to pay the debts, liabilities and expenditures of the city, or any part or item thereof, from any fund applicable thereto.

21. To provide for the survey of the blocks and streets of the city, and for making and establishing the boundary lines of such blocks or streets, and to establish the grades of such streets.

22. To issue licenses for the sale of liquor or keeping of groceries within the corporate limits of said town of Olympia, in conformity with the requirements of the general laws regulating the issue of such license; and the board of trustees is hereby vested with the same power within such limits as is conferred by such general law upon the county commissioners of Thurston county, and the sum required to be paid by the applicant for such license shall be paid to the town treasurer instead of county treasurer.

23. To license, tax, regulate and restrain theatricals and other exhibitions, shows, public amusements, billiard tables and bowling alleys, and to suppress bawdy houses, gaming and gambling houses.

24. To make regulations and pass ordinances preventing domestic or other animals from running at large in the city limits.

25. To license, tax, regulate and restrain the keeping of dogs within the city limits.

ARTICLE V.

SEC. 1. The trustees shall receive no compensation for their services.

SEC. 2. The town clerk shall receive such compensation for his services as may be allowed him by ordinance.

SEC. 3. The marshal shall receive the same fees for his services as constables are entitled to for services of a similar nature, and for other services such compensation as may be provided for by ordinance.

ARTICLE VI.

OF THE POWER AND DUTIES OF OTHER OFFICERS OF THE CORPORATION.

SEC. 1. The committing magistrate is the judicial officer of the corporation, and shall have jurisdiction of all crimes defined by any ordinance of the town of Olympia, and of all actions brought to enforce or recover any forfeiture or penalty declared or given by any such ordinance.

SEC. 2. All civil or criminal proceedings before such committing magistrate, including all proceedings for the violation of any ordinance, shall be governed and regulated by the general laws of the Territory applicable to justices of the peace and justice courts in similar cases.

SEC. 3. The treasurer is receiver of taxes, and must receive and keep all moneys that shall come to the city by taxation or otherwise, and pay out the same upon the warrant of the clerk of the common council, countersigned by the presiding officer thereof.

SEC. 4. The treasurer must keep an account with the general fund, and a separate account with each special fund that may be raised for any special object, and when a warrant is drawn on any particular fund it can only be paid out of such fund.

SEC. 5. The treasurer must make a report of the receipts and expenditures to the common council at the first regular meeting in the months of December and June of each year, which report shall be published in any newspaper published in the town of Olympia.

SEC. 6. The assessor must annually make a correct list of all the property subject to taxation in the town of Olympia, with the valuation thereof, and certify and return the same to the clerk of the common council.

SEC. 7. A person feeling himself aggrieved by any such assessment, either in the valuation or listing of the property, may apply in writing to the council to have such assessment revised, and if the council deem the same erroneous, they must correct it. The party applying for such correction may be examined as a witness in relation to the matter if he desires it, or if the council requires it.

SEC. 8. The assessment of property must be made in the manner prescribed by law for assessing property for Territorial and county taxes, but the form of the assessment roll and the rule for ascertaining the ownership of property and in whose name it may be assessed, may be prescribed by ordinance, and the time

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

SEC. 9. The marshal is a peace officer and must execute all process issued by the committing magistrate, or directed to him by any magistrate of the Territory; he must attend regularly upon the sessions of the magistrate's court and the meetings of the trustees; he has power, by and with the approval of the council, to appoint one or more deputies, who shall possess the same power; he shall make arrests for a breach of the peace on the commission of a crime within the city limits, with or without warrant, as a peace officer may do under the laws of the Territory.

SEC. 10. The marshal shall exercise a vigilant control over the peace and quiet of the city, and he is the keeper of the city prison or house of correction, unless otherwise prescribed by ordinance.

SEC. 11. As collector of taxes the marshal shall collect all delinquent taxes and assessments when require by warrant, and pay the same to the treasurer monthly.

SEC. 12. The clerk of the board shall be elected by the trustees. It will be his duty to keep a fair and correct journal of its proceedings, and to file and keep all papers and books connected with the business of the trustees.

SEC. 13. All demands and accounts against the town must be presented to the clerk with the necessary evidence in support thereof, and he must submit the same to the trustees, who shall by a vote, direct whether the same shall be paid or any part thereof, as they may deem it just and legal.

SEC. 14. When the board of trustees orders any demand or account to be paid, if money has been appropriated for that purpose, and not otherwise, the clerk must draw a warrant upon the treasurer for the amount ordered to be paid, which warrant must be drawn on the special or general fund appropriated therefor, and must be signed by the clerk and countersigned by the president.

SEC. 15. The clerk must keep proper books of account,

showing therein all sums appropriated, the date thereof and out of what fund; the date and amount of all warrants drawn thereon and to whom payable, and all such other matters and things as may be prescribed by ordinance, or proper and necessary to a correct understanding of the finances.

SEC. 16. The official books and papers of all town officers are town property, and must be kept as such by such officers during their continuance in office, and then delivered to their successors.

SEC. 17. The official books and papers of any officer mentioned in this chapter may be inspected at any time by a committee of trustees appointed for that purpose.

SEC. 18. The clerk of the board of trustees is authorized to administer any oath required to be taken in connection with the duties of his office.

SEC. 19. The committing magistrate must keep a proper account of all fines, costs or other moneys received by him or paid into his court, when not acting as justice of the peace, and he must pay to the treasurer monthly all moneys mentioned in this section, and take duplicate receipts therefor, one of which he must file with the clerk.

SEC. 20. The marshal must keep a correct record of all arrests made by him or his deputy, showing the time, cause or complaint upon which said arrest was made, and must make a full and complete report in writing each month to the board of trustees.

ARTICLE VIII.

OF THE COLLECTION OF DELINQUENT TAXES.

SEC. 1. Whenever any municipal tax has been levied as provided and authorized, every part thereof shall bear interest at the legal rate from the time it becomes delinquent.

SEC. 2. The board of trustees must provide by ordinance within what time all taxes may be paid to the treasurer; and all

taxes not paid to the treasurer within such time are thereafter delinquent taxes, and must be collected as such.

SEC. 3. Within five days from the expiration of the time limited for paying taxes to treasurer, the treasurer must return the tax roll to the board, distinguishing thereon the taxes paid and those remaining unpaid.

SEC. 4. The board must thereafter order the clerk to deliver the tax roll to the collector, and issue and annex thereto a warrant directed to the collector, commanding him to proceed and forthwith to collect the delinquent taxes upon such roll in the manner provided by law, and pay the same to the treasurer, and return the warrant with his doings thereon, and the receipt of the treasurer for all moneys collected thereby and paid to the treasurer, to the clerk.

SEC. 5. Such warrant for the purpose of collecting such delinquent taxes shall be deemed an execution against property, and shall have the force and effect thereof against any person, firm or corporation against whom such taxes are levied or charged on the tax roll, and shall be executed and returned in like manner except as in this chapter otherwise provided.

SEC. 6. If no personal property be found whereon to levy the warrant, or if that levied upon be not sufficient to satisfy the same, it must be levied upon any real property of the person, firm or corporation against whom the tax is levied or charged, or sufficient thereof to satisfy such warrant, including interest, fees of officer, and all expenses of sale and executing the warrant.

SEC. 7. In case of a delinquent tax levied upon real property in the name of an owner unknown, the warrant shall be executed by levying upon each lot or part thereof of such property for the tax levied thereon, and selling it separately.

SEC. 8. When real property is sold for delinquent taxes, the person executing the warrant must immediately make a deed for such property to the purchaser, stating therein that the same is made subject to redemption as provided by law, and such sale shall have the effect to convey to the purchaser, subject to redemption as hereinafter provided, all the estate or interest therein

of the owner, whether known or unknown, together with all the rights and appurtenances thereunto belonging.

SEC. 9. Real property sold for delinquent taxes, as provided in this chapter, may be redeemed by the owner or his successor in interest, or by any person having a lien by judgment, decree or mortgage on such property, or any part thereof, separately sold, within three years from the date of the deed therefor, by the payment of the purchase money and twenty-five per cent. addition, together with interest upon the purchase money from the date of sale to the time of payment, at the legal rate, and the amount of any tax which the purchaser may have paid upon the property.

SEC. 10. Whenever any property, real or personal, sold for delinquent taxes, shall bring more than the amount of such taxes, with interest and costs and charges of collection, the surplus must be paid to the treasurer, and the person executing the warrant must take a separate receipt for such surplus, and file the same with the clerk on the return of the warrant. At any time thereafter the owner of the property sold, or his legal representative, is entitled to a warrant upon the treasurer for such surplus.

SEC. 11. The board of trustees may provide by ordinance within what time a warrant for the collection of delinquent taxes must be returned, and may order an alias warrant to issue for the collection of any such taxes not made on a previous one. All costs and charges for collecting delinquent taxes must be made on the warrant and collected as a part of the tax. The board of trustees may prescribe by ordinance the fees and compensation for collecting delinquent taxes, but the same shall in no case be paid out of the treasury.

ARTICLE IX.

SEC. 1. All officers required to be elected under this act shall, before entering upon the duties of their office, take an oath or affirmation of office before any person competent to administer oaths.

SEC. 2. All resolutions and ordinances calling for an appropriation for any sum exceeding one hundred dollars, shall lie over two meetings.

ARTICLE X.

SEC. 1. All acts and parts of acts heretofore passed in conflict with this act, are hereby repealed.

SEC. 2. This act to take effect and be in force from and after its approval by the Governor.

Passed the House of Representatives November 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 23, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO INCORPORATE THE CITY OF SEATTLE

CHAPTER I.

THE BOUNDARIES AND INCORPORATIONS OF THE CITY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the city of Seattle shall include within its limits all of sections three, four, five, six, eight, nine and ten, in township twenty-four north of range four east, section twenty-five, in township twenty-five north, range three

east, and sections twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three and thirty-four, in township twenty-five north, range four east, including the water fronting the same to the middle of Elliot's bay, all in the county of King and Territory of Washington.

SEC. 2. The inhabitants of the city of Seattle are hereby constituted and declared to be a municipal corporation by the name and style of the "city of Seattle," and by such name shall have perpetual succession, sue and be sued, plead and be impleaded in all courts of justice, and in all actions, suits or proceedings whatever, may purchase, hold and receive property both real and personal within said city, for public buildings, public works and city improvements; may lease, sell or dispose of the same for the benefit of the city; may purchase, hold and receive property, both real and personal, beyond the limits of the city to be used for burial purposes, for the establishment and maintenance of a hospital for the reception of persons afflicted with contagious or other diseases, for work houses and for houses of correction, and they shall have and use a common seal.

CHAPTER II.

OF THE GOVERNMENT OF THE CITY.

SEC. 3. The power and authority given to the municipal corporation of the city of Seattle, by this act, is vested in a mayor and common council and their successors in office, to be exercised in the manner hereinafter described.

SEC. 4. The common council shall consist of seven members, and they shall be elected for one year and shall hold their office until their successors are elected and qualified.

SEC. 5. The mayor shall be elected for one year, and shall hold his office until his successor is elected and qualified.

SEC. 6. There shall be elected, as hereinafter specified, a recorder, treasurer, marshal, and an assessor and collector, who

shall be officers in the municipal corporation. The recorder and marshal shall be elected for one year by the qualified voters of this corporation as hereinafter provided, and shall hold their offices until their successors are elected and qualified. The treasurer and the assessor and collector shall be elected by the common council, the votes of a majority of the members then constituting the council being necessary to elect, and they shall hold their offices until their successors are elected and qualified, liable however to be removed at any time by the council for malfeasance, inattention or incompetency.

SEC. 7. No person is eligible to any office in the municipal corporation who at the time of his election or appointment is not entitled to the privilege of an elector according to the laws of this Territory, and who has not resided in the city of Seattle for the six months next preceding such election or appointment.

CHAPTER III.

OF ELECTIONS.

SEC. 8. A general election for all city officers required to be elected under this act, shall be held on the second Monday in July, A. D., 1870, and on the same day of July each year thereafter.

SEC. 9. No person is qualified to vote at any election under this act, who does not possess the qualifications prescribed in section seven of this act for officers, and who shall have his name registered for five days next preceding such election in the manner hereinafter provided in this act, and all officers required to be elected by this act, except those elected by the common council, shall be elected by the qualified voters of the city.

SEC. 10. At all elections for city officers the vote shall be by ballot, at the time and place designated by the common council.

SEC. 11. The clerk of the common council under the direction of the council, shall give ten days notice by posting the same in at least five public places in said city, or by publication in some newspaper published in said city, of such general election, the officers to be elected, the place designated for holding the election and the judges and clerk appointed to conduct the same.

SEC. 12. All elections shall commence at nine o'clock A. M., and continue until five o'clock P. M. of the same day without closing the polls. If any judge of election fails to attend and serve at the proper time, the voters then present at the polls may elect another in his place; and if any clerk of election fails to attend and serve at the proper time, the judges of the election may appoint another in his place.

SEC. 13. Judges and clerks of the election must possess the qualifications of the voters, but a mistake or error in this respect, or a failure to give the notice required by section eleven of this act, shall not invalidate any election otherwise legal.

SEC. 14. On the first regular meeting of the common council next after such election, the returns thereof shall be canvassed by said council, and a written statement of such canvass shall be made and signed by the presiding officer of the council and attested by the clerk thereof, and immediately filed with the clerk of the council. Such written statement of the canvass shall contain the whole number of votes given at such election, the number given for any person for any office, and the names of persons elected and to what office.

SEC. 15. After such statement of the canvass is filed, the clerk of the council shall make and sign within two days thereafter a certificate of election for each person declared thereby to be elected, and deliver the same to him on demand.

SEC. 16. A certificate of election is primary evidence of the facts therein stated, but the council is the final judge of the qualifications and election of the mayor and of its own members, and in case of a contest between two persons claiming to be elected thereto, must determine the same.

SEC. 17. A contested election for any other office than that

of mayor or councilman, must be determined according to the laws of this Territory regulating proceedings in contested elections in county officers.

SEC. 18. The term of office of every person elected to office under this act shall commence on the tenth day after the canvass of the election returns by the council, and terminate accordingly, except as otherwise provided in this act; and by such time such person must qualify thereafter by taking and filing the oath of office, and give such official undertaking for the faithful performance of his duties as may be required, or he shall be deemed to have declined, and the office considered vacant.

SEC. 19. All officers elected or appointed by this act, before entering upon the duties of their office, must take and file with the clerk of the council an oath to the following effect:

“I, A. B., do solemnly swear that I will support the constitution and laws of the United States and the laws of this Territory, and that I will to the best of my ability faithfully perform the duties of the office of _____ during my continuance therein, so help me God.”

SEC. 20. All laws of this Territory regulating and governing general elections and proceedings and matters incidental thereto, shall apply to and govern elections under this act, except as herein otherwise provided.

CHAPTER IV.

OF VACANCIES IN OFFICE.

SEC. 21. An office becomes vacant upon the death or resignation of the incumbent. The office of mayor, treasurer, assessor and collector shall be deemed vacant whenever the incumbent thereof shall be absent from the city for the period of sixty days. The office of recorder and marshal shall be deemed vacant whenever the incumbent shall be absent from the city for

twenty days. The office of councilman may be deemed vacant whenever an incumbent shall fail to attend six regular consecutive meetings of the council, unless absent upon leave of the council first obtained.

SEC. 22. A vacancy in any office caused by a failure of the person elected to qualify therefor, as prescribed in section eighteen of this act, or made by or consequent upon the judgment of any court, or in any of the cases specified in section twenty-one, shall be filled by the council at a regular meeting, to continue until the successor is duly elected and qualified at the next general city election.

SEC. 23. An officer appointed to fill a vacancy must, within five days after being notified of the appointment by the clerk of the common council, qualify therefor as in the case of an officer elected, or he shall be deemed to have declined and the office be considered vacant.

CHAPTER V.

OF THE ORGANIZATION AND POWERS OF THE COUNCIL.

SEC. 24. The council must provide for the time and place of its regular meetings, at any of which it may adjourn to the next succeeding regular meeting, or to some specified time prior thereto, and it may be convened by the mayor at any time upon a day's notice given to each of the members.

SEC. 25. A majority of the members of the council shall constitute a quorum to do business, but a less number may meet and adjourn from time to time and compel the attendance of absent members.

SEC. 26. The council may adopt rules for the government of the conduct of its members and its proceedings. It must keep a journal of its proceedings, and on the call of one member must cause the ayes and naves to be taken and entered in its

journal upon any question before it. Its proceedings and deliberations must be public.

SEC. 27. The council may punish any member for disorderly or improper conduct at any meeting, or for refusing or neglecting to attend any regular meeting without sufficient excuse therefor, and may by a two thirds vote expel a member.

SEC. 28. The mayor is *ex-officio* president of the council and presides over its deliberations when in session, but he shall not vote on any question. In the absence of the mayor the council must appoint one of their own number as president, who shall act during the meeting or until the mayor attends.

SEC. 29. On the tenth day next following any general election there must be a regular meeting of the council, and such meeting is appointed by this act, and no notice thereof or call therefor is necessary.

SEC. 30. A majority of the whole number constituting the council as then provided by law, is a majority of the council or the members thereof, within the meaning of this act, and not otherwise, unless expressly so provided. The concurrence of a majority of a quorum is a sufficient majority to determine any question or matter other than the final passage of an ordinance.

SEC. 31. The style of every ordinance shall be "The city of Seattle does ordain as follows."

SEC. 32. The council has power and authority within the city of Seattle:

1. To assess, levy and collect taxes for general municipal purposes, not to exceed one-quarter of one per centum per annum upon all property, both real and personal which is taxable by law for Territorial or county purposes.

2. To license, tax and regulate auctioneers, hawkers, peddlers, brokers, pawn-brokers and all offensive or noxious trades or occupations.

3. To license, tax and regulate hacks, cabs, hackneys, carriages, wagons, carts, drays or other vehicles, and to fix the rates thereof.

4. To make regulations to prevent the introduction of con-

tagious diseases into the city; to remove persons affected with such or other diseases therefrom to suitable hospitals provided for the city for that purpose; to secure the protection of persons and property therein, and to provide for the health, cleanliness, ornament, peace and good order of the city.

5. To prevent and remove nuisances.

6 To provide for lighting the streets and furnishing the city with gas or other lights, and for the erection or construction of such works as may be necessary or convenient therefor.

7. To provide for the support, restraint and employment of vagrants and paupers.

8. To provide for the prevention and extinguishment of fires and for the preservation of property endangered thereby, and for the appointment or election of officers required for such purposes.

9. To establish and maintain a day and night police, or either of them.

10. To provide for the prevention or removal of all obstructions from the streets, cross and side walks, and for the cleaning and repairing of the same.

11. To provide for the erection of a city jail, house of correction and work-house and the government and management of the same.

12. To restrain and punish any disturbance or any unlawful or indecent practice.

13. To establish and regulate the fees and compensation of all officers of this municipal corporation, except when otherwise provided.

14. To provide for the punishment of a violation of any ordinance of the city, by fine or imprisonment, not exceeding one hundred dollars or thirty days, or both, or by a forfeiture or penalty not exceeding one hundred dollars, and for working any person sentenced to such imprisonment upon the streets or public squares during the term thereof.

15. To levy and collect each year a special tax not exceeding one quarter of one per centum, assessed by authority of the first subdivision of this section, for any specific object within the authority of this municipal corporation: but the ordinance pro-

viding therefor must specify the object thereof, and the estimated amount necessary therefor.

16. To borrow money on the faith of the city, or loan the credit thereof, or both.

17. To appropriate money to pay the debts, liabilities and expenditures of the city, or any part or item thereof, from any fund applicable thereto.

18. To provide for the survey of the blocks and streets of the city, and for making and establishing the boundary lines of such blocks or streets, and to establish the grades of such streets.

19. To exercise such power and authority as may be given to the council elsewhere in this act.

20. To regulate and restrain theatricals and other exhibitions, shows, public amusements, billiard tables and bowling alleys, and to suppress bawdy houses, gaming and gambling houses.

21. To make regulations and pass ordinances preventing domestic or other animals from running at large in the city limits.

22. To license, tax, regulate and restrain the keeping of dogs within the city limits.

SEC. 33. The power and authority given to the council by section thirty-two can only be enforced or exercised by ordinance, unless otherwise expressly provided, and a majority of the council may pass any ordinance not repugnant to the laws of the United States or this Territory, necessary or convenient for carrying such power and authority, or any part thereof, into effect.

CHAPTER VI.

THE MAYOR, HIS POWER AND DUTIES.

SEC. 34. The mayor is the executive of the corporation. It is his duty annually at the first regular meeting in July to communicate by message to the council a general statement of the condition and affairs of the corporation, and to recommend the

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

SEC. 35. The mayor shall take and approve all official bonds which the ordinances of the city may require any officer to give as a security for the faithful performance of his duty, or any bond which may be required of any contractor for the faithful performance of his contract, and when he approves such bond he must immediately file such bond with the clerk of the council.

SEC. 36. He shall perform such other duties and exercise such other authority as may be prescribed by this act, any city ordinance or any law of this Territory.

SEC. 37. Any ordinance which shall have passed the common council shall, before it becomes a law, be presented to the mayor for his approval; if he approves he shall sign it, if not, he shall within ten days return it with his objections in writing to the common council, who shall cause the same to be entered on their journal, and shall proceed to reconsider the same. If after such reconsideration, two-thirds of the members of the council shall agree to pass the same, it shall become a law.

SEC. 38. During any temporary absence of the mayor from the city, or if he be unable for any reason to act, the common council shall elect one of their own members, who shall be the acting mayor and perform all the duties of such office during such temporary absence or disability, except as otherwise provided in this act.

CHAPTER VII.

OF THE POWER AND DUTIES OF OTHER OFFICERS OF THE CORPORATION.

SEC. 39. The recorder is the judicial officer of the corporation, and shall hold a court therein, which shall be known as "the recorder's court for the city of Seattle."

SEC. 40. The recorder has jurisdiction of all crimes defined by any ordinance of the city of Seattle, and of all actions brought to enforce or recover any forfeiture or penalty declared or given by any such ordinance.

SEC. 41. The recorder is also *ex officio* a justice of the peace in and for King county, W. T., and has the jurisdiction and authority of said justice of the peace in both civil and criminal matters, and shall be subject to all the general laws of the Territory prescribing the duties of justice of the peace and the mode of performing them.

SEC. 42. All civil or criminal proceedings before the recorder, or in the recorder's court, including all proceedings for the violation of any city ordinance, are governed and regulated by the general laws of this Territory applicable to justices of the peace and justice courts in like or similar cases.

SEC. 43. The treasurer is receiver of taxes, and must receive and keep all moneys that shall come to the city by taxation or otherwise, and pay out the same upon the warrant of the clerk of the common council, countersigned by the presiding officer thereof.

SEC. 44. The treasurer must keep an account with the general fund, and a separate account with each special fund that may be raised for any special object, and when a warrant is drawn on any particular fund it can only be paid out of such fund.

SEC. 45. The treasurer must make a report of the receipts and expenditures to the common council at the first regular meeting in the months of December and June of each year, which report shall be published in any newspaper published in the city.

SEC. 46. The assessor must annually make a correct list of all the property subject to taxation in the city of Seattle, with the valuation thereof, and certify and return the same to the clerk of the common council.

SEC. 47. A person feeling himself aggrieved by any such assessment, either in the valuation or listing of the property, may apply in writing to the council to have such assessment revised,

and if the council deem the same erroneous, they must correct it. The party applying for such correction may be examined as a witness in relation to the matter if he desires it, or if the council requires it.

SEC. 48. The assessment of property must be made in the manner prescribed by law for assessing property for Territorial and county taxes, but the form of the assessment roll and the rule for ascertaining the ownership of property and in whose name it may be assessed, may be prescribed by ordinance, and the time of making such assessment and the return thereof and of applying to the council for a revision thereof must be prescribed by ordinance.

SEC. 49. The marshal is a peace officer and must execute all process issued by the recorder, or directed to him by any magistrate of the Territory; he must attend regularly upon the sittings of the recorder's court and the meetings of the council; he has power, by and with the approval of the council, to appoint one or more deputies, who shall possess the same power; he shall make arrests for a breach of the peace on the commission of a crime within the city limits, with or without warrant, as a peace officer may do under the laws of the Territory.

SEC. 50. The marshal shall exercise a vigilant control over the peace and quiet of the city, and he is the keeper of the city prison or house of correction, unless otherwise prescribed by ordinance.

SEC. 51. The collector shall collect all delinquent taxes and assessments when required by warrant, and pay the same to the treasurer monthly.

SEC. 52. The clerk of the common council shall be elected by the council. It will be his duty to keep a fair and correct journal of its proceedings, and to file and keep all papers and books connected with the business of the council.

SEC. 53. All demands and accounts against the city must be presented to the clerk with the necessary evidence in support thereof, and he must submit the same to the council, who shall

by a vote, direct whether the same shall be paid or any part thereof, as they may deem it just and legal.

SEC. 54. When the council orders any demand or amount to be paid, if money has been appropriated for that purpose, and not otherwise, the clerk must draw a warrant upon the treasurer for the amount ordered to be paid, which warrant must be drawn on the special fund appropriated therefor, and must be signed by the clerk and countersigned by the presiding officer of the council.

SEC. 55. The clerk must keep proper books of account showing therein all sums appropriated, the date thereof and out of what fund, the date and amount of all warrants drawn thereon and to whom payable, and all such other matters and things as may be prescribed by ordinance or proper and necessary to a correct understanding of the city finances.

SEC. 56. The official books and papers of all the city officers are city property, and must be kept as such by such officers during their continuance in office, and then delivered to their successors.

SEC. 57. The official books and papers of any officer mentioned in any chapter may be inspected at any time by a committee of the council appointed for that purpose.

SEC. 58. The clerk of the common council is authorized to administer any oath required to be taken in connection with the duties of his office.

SEC. 59. The recorder must keep a proper account of all fines, costs or other moneys received by him or paid into his court, when not acting as justice of the peace, and he must pay to the treasurer monthly all moneys mentioned in this section, and take duplicate receipts therefor, one of which he must file with the clerk.

SEC. 60. The marshal must keep a correct record of all arrests made by him or his deputy, showing the time, cause or complaint upon which said arrest was made, and must make a full and complete report in writing each month to the city council.

CHAPTER VIII.

OF THE COLLECTION OF DELINQUENT TAXES.

SEC. 61. Whenever any general or special tax has been levied, as provided and authorized in section thirty-two, every part thereof shall bear interest at the legal rate from the time it becomes delinquent.

SEC. 62. The council must provide by ordinance within what time all taxes, levied as provided and authorized in section thirty-two, may be paid to the treasurer; and all taxes not paid to the treasurer within such time are thereafter delinquent taxes, and must be collected as such.

SEC. 63. Within five days from the expiration of the time limited for paying taxes to treasurer, the treasurer must return the tax roll to the council, distinguishing thereon the taxes paid and those remaining unpaid.

SEC. 64. The council must thereafter order the clerk to deliver the tax roll to the collector, and issue and annex thereto a warrant directed to the collector, commanding him to proceed and forthwith to collect the delinquent taxes upon such roll in the manner provided by law, and pay the same to the treasurer, less his fees and costs of collection, and return the warrant with his doings thereon, and the receipt of the treasurer for all moneys collected thereby and paid to the treasurer, to the clerk.

SEC. 65. Such warrant for the purpose of collecting such delinquent taxes shall be deemed an execution against property, and shall have the force and effect against any person, firm or corporation against whom such taxes are levied or charged on the tax roll, and shall be executed and returned in like manner, except as in this chapter otherwise provided.

SEC. 66. If no personal property be found whereon to levy the warrant, or if that levied upon be not sufficient to satisfy the same, it must be levied upon any real property of the person, firm or corporation against whom the tax is levied or charged, or

sufficient thereof to satisfy such warrant, including interest, fees of officer, and all expenses of sale and executing the warrant.

SEC. 67. In case of a delinquent tax levied upon real property in the name of an owner unknown, the warrant shall be executed by levying upon each lot or part thereof of such property for the tax levied thereon, and selling it separately.

SEC. 68. When real property is sold for delinquent taxes, the person executing the warrant must immediately make a deed for such property to the purchaser, stating therein that the same is made subject to redemption as provided by law, and such sale shall have the effect to convey to the purchaser, subject to redemption as hereinafter provided, all the estate or interest therein of the owner, whether known or unknown, together with all the rights and appurtenances thereunto belonging.

SEC. 69. Real property sold for delinquent taxes, as provided in this chapter, may be redeemed by the owner or his successor in interest, or by any person having a lien by judgment, decree or mortgage on such property, or any part thereof separately sold, within three years from the date of the deed therefor, by the payment of the purchase money and twenty-five per cent. addition, together with interest upon the purchase money from the date of sale to the time of payment, at the legal rate, and the amount of any tax which the purchaser may have paid upon the property.

SEC. 70. Whenever any property, real or personal, sold for delinquent taxes, shall bring more than the amount of such taxes, with interest and costs and charges of collection, the surplus must be paid to the treasurer, and the person executing the warrant must take a separate receipt for such surplus, and file the same with the clerk on the return of the warrant. At any time thereafter the owner of the property sold, or his legal representative, is entitled to a warrant upon the treasurer for such surplus.

SEC. 71. The council may provide by ordinance within what time a warrant for the collection of delinquent taxes must be returned, and may order an alias warrant to issue for the collection of any such taxes not made on a previous one. All

costs and charges for collecting delinquent taxes must be made on the warrant and collected as a part of the tax. The council may prescribe by ordinance the fees and compensation for collecting delinquent taxes, but the same shall in no case be paid out of the treasury.

CHAPTER IX.

MISCELLANEOUS PROVISIONS.

SEC. 72. The city of Seattle is not bound by any contract or in any way liable thereon, unless the same is authorized by a city ordinance and made in writing, and by order of the council, signed by the clerk, or some other person in behalf of the city; but an ordinance may authorize any officer or agent of the city, naming him, to bind the city without a contract in writing, for the payment of any sum of money not exceeding fifty dollars.

SEC. 73. The city of Seattle shall be liable to any one for any loss or injury to person or property, growing out of any casualty or accident happening to such person or property on account of the condition of any street or public ground therein. But this section does not exonerate any officer of the city of Seattle, or any other person from such liability, when such casualty or accident is caused by the willful neglect of a duty enjoined upon such officer or person by law, or by gross negligence or willful misconduct of such officer or person in any other respect.

SEC. 74. No money shall be drawn from the city treasury but in pursuance of an appropriation for that purpose made by ordinance, and an ordinance making an appropriation of money must not contain a provision upon any other subject, and if it does, such ordinance as to such provisions shall be void, and not otherwise.

SEC. 75. A member of the council for words uttered in debate therein, shall not be questioned in any other place.

SEC. 76. The streets, roads and alleys within the corporate limits of the city of Seattle shall be under the exclusive control of the common council of said city, and said council shall have authority to make all needful rules in regard to the improvement, repair, grading and working thereof; and said city shall not be included in any road district, but the road tax which remain unpaid and is now due, shall be paid to the treasurer of said city, and the same be expended in improving the streets and roads of the city under the direction of the city authorities.

SEC. 77. The fiscal year of the city shall commence on the first day of July and end on the last day of June of each year.

SEC. 78. The indebtedness of the city of Seattle must never exceed in the aggregate the sum of five thousand dollars, and any debt or liability incurred in violation of this section, whether by borrowing money, loaning the credit of the city or otherwise, is null and void and of no effect.

SEC. 79. In any action, suit or proceedings in any court concerning any assesment of property or levy of taxes authorized by this act, or the collection of any such tax or proceeding consequent thereon, such assessment, levy, consequent proceeding, and all proceedings connected therewith, shall be presumed to be regular and duly done or taken until the contrary is shown; and when any proceeding, matter or thing is by this act committed or left to the discretion of the council, such discretion or judgment, when exercised or declared, is final and cannot be reviewed or called in question elsewhere.

SEC. 80. The city council is hereby authorized to grant the exclusive right to use the streets of said city for the purpose of laying gas pipes intended to furnish the inhabitants of said city with light, to any person or association of persons, for a term not exceeding twenty-five years; and the council may adopt such rules and regulations in granting such exclusive right as they may think proper, and as shall not be inconsistent with law.

SEC. 81. In making a deed for real property sold for delinquent taxes, it is not necessary to recite or set forth the pro-

ceedings prior to the sale, but it is sufficient if it substantially appear from such deed that the property was sold by virtue of a warrant from the city of Seattle, and the note thereof for a delinquent tax, and the amount thereof, together with the date of the sale and the amount paid thereat by the purchaser. The style of a warrant for the collection of delinquent taxes shall be in the name of the city of Seattle.

SEC. 82. The mayor and councilmen are not entitled to and must not receive any salary or compensation for their official service.

SEC. 83. All real property within the limits of the city of Seattle, not laid off in blocks at the time of making any assessment authorized by this act, must be assessed at its cash value per acre, or fraction thereof as the case may be.

SEC. 84. The corporate limits of the city of Seattle shall constitute one ward district, and the common council shall have the same authority that is now conferred by law upon the board of county commissioners of the several counties of this Territory to levy and assess a road tax of not less than three nor more than nine dollars on every person liable to perform labor on the public roads within the boundaries of said city, also to assess not less than two nor more than six mills on every dollar's worth of property as shown by the returns and assessment rolls of the assessor of said city of Seattle, which tax shall be collected and expended in improving the streets and roads in said city under the direction of the authorities of said city.

SEC. 85. 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 the same are hereby repealed, so far as they shall affect this act.

SEC. 86. This charter shall go into operation as soon as the law receives the signature of the presiding officers of the Legislative Assembly and be approved by the Governor; and until the first election under the provisions of this act shall have been held, the following persons are appointed to fill the offices created by this act for the city of Seattle: H. A. Atkins, mayor;

Ike. M. Hall, recorder; S. G. Callhoun, C. P. Stone, Jno. Collins, L. V. Wyckoff, Amos Brown, Frank Mathias, and A. S. Pinkham, members of the council; John T. Jordon, marshal.

SEC. 87. The mayor and recorder are constituted under this act a board of registration for the city of Seattle, and required to keep a register upon which shall be entered the names of the legal voters of said city, with a statement of the age, occupation, length of residence in said city, and if naturalized the date of such naturalization, and the State or Territory in which it was obtained, by each voter. Said board is authorized and shall have the power to examine under oath any and all persons asking to have their names entered upon said register, and in cases where doubt exists as to the right of any such person to have his name placed upon said register, may require the residence of such person to be proven by the testimony under oath of two registered voters of said city.

SEC. 88. The books of the board of registration shall be always open for the purpose of entering names upon said register and for correcting and revising the same; and the recorder shall make out a full list containing the names of all such persons as are entitled to vote at such election, and cause copies of the same to be posted up in four public places in said city, five days at least before such election, and no names shall be placed upon said poll list unless the same has been registered.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE.

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT AMENDATORY TO AN ACT TO INCORPORATE THE TOWN OF OLYMPIA."

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That subdivision twenty-one of section four of article four of an act entitled "an act amendatory to an act to incorporate the town of Olympia," or so much of said section as relates to the issuing of licenses for the sale of liquor or keeping of groceries in the corporate limits of the town Olympia, be and the same is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives December 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

AUTHORIZING A SPECIAL TAX IN THE COUNTY OF CLARKE TO PAY THE INDEBTEDNESS OF SAID COUNTY.

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 county of Clarke at the November term, A. D. 1869, of said board to levy a special tax collectable and payable the present year, on the assessment of said year, of one and one half per centum on every dollar's worth of taxable property of said county, as shown by the assessment

roll of said county for the year 1869, to be collected and paid in the same manner that other taxes are, except as far as the same may be changed by the provisions of this act, which special county tax shall be applied exclusively to the payment of the indebtedness of said county of Clarke: Provided, however, That said tax may be paid in county warrants, and in the case of the payment of any money on said tax, the money so paid shall be applied to the payment of the county orders of said county in the order of their priority.

SEC. 2. All persons liable to taxation under the provisions of section one of this act, may at any time before the first day of March, 1870, and until the sheriff shall have received the schedule of unpaid taxes as in this section hereinafter provided, pay the tax prescribed by said section one to the county treasurer, and the said county treasurer shall within ten days after the said first day of March, 1870, make out a schedule of such unpaid special tax in the form of a duplicate assessment roll, verified by his affidavit, and deliver the same to the county auditor, who shall add ten per cent. to the amount of such unpaid taxes, and forthwith issue a transcript of such schedule, with said ten per cent. added to such unpaid taxes, with a warrant attached thereto in the name of the United States, under his hand and seal of office, directed to the sheriff of said county of Clarke, commanding him to collect the taxes designated in such transcript by demanding payment of the persons charged therein, and making sale of the real estate, goods and chattels and other personal property of such persons if necessary, in like manner as prescribed by law for the collection of other taxes by said sheriff, and return the same to such county auditor on or before the thirtieth day of April next ensuing thereafter, and such county auditor shall charge said sheriff with the amount of money collected on such transcript.

SEC. 3. It shall be the duty of said board of county commissioners each year at their May term for the period of four years succeeding the passage of this act, unless said indebtedness shall be sooner extinguished, to levy a special tax of not to ex-

ceed one and one half per centum and not less than one per centum in any one year on every dollar's worth of taxable property in said county, which special tax shall be exclusively applied to the payment of the outstanding indebtedness of said county.

SEC. 4. The special tax provided for by this act, except for the present year as provided in section one, shall be levied and collected in the same manner as other taxes are levied and collected under the provisions of the law regulating the assessment and collection of Territorial and county revenue; but such special tax shall be a separate and distinct fund from the tax levied for county purposes under the provisions of the law regulating the assessment and collection of Territorial and county revenue, but may be paid or credited upon county orders, as is now provided by law for the payment of other county taxes.

SEC. 5. The fees of the county treasurer for receiving and disbursing the funds raised by such special county tax, shall be one per cent. on the amount received by him, and an additional one per cent. on the amount disbursed, for which percentage he may claim credit in his settlement with the board of county commissioners.

SEC. 6. The act entitled an "act providing a fund for extinguishing the indebtedness of Clarke county and to provide for the payment of current expenses," approved January 29, 1868. be and the same is hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives October 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 29, 1869.

WILLIAM McLANE,

President of the Council.

Approved October 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

FOR THE RELIEF OF S. B. LIBBY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of one hundred dollars be and the same is hereby appropriated out of any funds in the hands of the Territorial treasurer, for the payment of S. B. Libby for transportation of joint committee to Steilacoom to examine government buildings and Territorial penitentiary.

SEC. 2. That the Territorial auditor is hereby directed to issue a warrant to S. B. Libby upon the Territorial treasurer for said sum of one hundred dollars, payable out of any funds in the treasury.

SEC. 3. This act to be in force from and after its passage.

Passed the House of Representatives October 28, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 30, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 16, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO AMEND SECTION FIFTY-THREE OF CHAPTER SEVEN OF AN ACT ENTITLED
"AN ACT TO INCORPORATE THE CITY OF VANCOUVER."

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section fifty-three of chapter seven of an act entitled "an act to incorporate the city of Vancouver," be amended so as to read as follows:

“SEC. 53. The clerk of the common council shall be elected by the council. It shall be the duty of such clerk to keep a fair and correct journal of the proceedings of each session of the council and to file and safely keep all books and papers connected with the business of the council: Provided always, That the clerk shall not be a member of the said council at the time he shall so serve.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed the House of Representatives October 22, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 16, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 25, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO EMPOWER THE COMMON COUNCIL OF THE CITY OF WALLA WALLA TO PURCHASE A STEAM FIRE ENGINE AND TO LEVY A SPECIAL TAX TO PAY FOR THE SAME.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the common council of the city of Walla Walla be authorized and empowered to borrow the sum of four thousand dollars, and to levy annually a special tax of not more than four mills on the dollar on all the taxable property within the corporate limits of said city subject to taxation, to be collected in the same manner and at the same time that other municipal taxes are collected and paid; the proceeds of said special tax to be kept apart from the general funds of said city of Walla Walla and to be applied exclusively to the payment of the principal and interest of said loan: Provided.

That a majority of the legal electors of said city shall vote for said tax at a special election to be held for that purpose as hereinafter provided.

SEC. 2. That the money to be borrowed as provided by section one of this act be applied exclusively to the purchase of a steam fire engine for the use of the said city of Walla Walla.

SEC. 3. Before said tax shall be levied, the common council of said city of Walla Walla shall give notice of not less than ten nor more than twenty days, by publication in some newspaper published in said city, that a special election will be held in said city, setting forth the time at which said election will be held and the purpose of the same.

SEC. 4. At said election all the qualified electors of said city shall be entitled to vote, and the said special election shall be conducted in the same manner and be governed by the same rules that govern the general elections for municipal affairs in said city.

SEC. 5. The objects to be voted for at said special election shall be "for the tax" or "against the tax." If a majority of the legal votes of said city of Walla Walla cast at said special election, vote "for the tax," then the said common council shall have authority to levy said tax as specified in section one of this act.

SEC. 6. This act to be in force until the proceeds of said tax shall amount to sufficient to pay said sum so borrowed with the interest to accrue thereon, as provided in section one of this act, and no longer.

SEC. 7. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 16, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 25, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO REGULATE THE PERMANENT SCHOOL FUND OF WALLA WALLA COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners of Walla Walla county be and they are hereby required to collect as soon as due all the permanent school fund of said county, and to loan the same as fast as collected to said Walla Walla county at the rate of ten per cent. per annum interest, to be paid every six months in advance.

SEC. 2. The county commissioners of said county shall make a record of the loan of said school fund to said county, with the day and date of said loan, specifying the amount and the interest, and in said record shall require said interest to be paid in advance every six months from the date thereof. Said loan shall be recorded in the book of mortgages in which mortgages are recorded at the date of said loan, and shall note the page in the mortgage index.

SEC. 3. The county commissioners of said county shall provide for the prompt payment of the interest of said fund so loaned.

SEC. 4. Said interest shall be apportioned as other school funds, and paid on the order of the superintendent as in other cases.

Passed the House of Representatives November 22, 1869.

GEORGE H. STEWARD,
Speaker of the House of Representatives.

Passed the Council November 24, 1869.

WILLIAM McLANE,
President of the Council.

Approved November 30, 1869.

ALVAN FLANDERS,
Governor of Washington Territory.

AN ACT

FOR THE RELIEF OF LEVI SHELTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Territorial auditor be and he is hereby required to draw his warrant on the Territorial treasurer in favor of Levi Shelton, for the sum of twenty-five dollars, the same being in payment for stationery used in the Territorial library.

SEC. 2. The Territorial treasurer is hereby authorized and required to pay said warrant upon presentation, out of any moneys in his hands, or out of the first he may receive.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 24, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 29, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 3, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

FOR THE RELIEF OF ISAAC CARSON.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there be and is appropriated from the Territorial treasury, for the relief of Isaac Carson, keeper of the Territorial convicts, the sum of four hundred and seventy-

one dollars, out of any moneys not otherwise appropriated, the same being due to him for expenses incurred for retaking escaped convicts and obtaining the right to use the Gardner shackle for the term of two years.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 26, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO AUTHORIZE THE COUNTY COMMISSIONERS OF JEFFERSON COUNTY TO LEVY A SPECIAL SCHOOL TAX.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That special power be and is hereby granted to the county commissioners of Jefferson county to levy a special school tax not to exceed five mills on the dollar upon the assessed value of the real and personal property in said county subject to taxation, to be collected in the same manner as is or may be hereafter provided by law for the collection of Territorial and county taxes, for the purpose of raising funds sufficient to keep the public schools open nine months during each year.

SEC. 2. All acts and parts of acts inconsistent with the foregoing act, are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 16, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 25, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

AUTHORIZING J. G. CLINGER AND OTHERS TO CONSTRUCT A WHARF AT PORT TOWNSEND BAY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That J. G. Clinger and such other persons as he may associate with him, be and are hereby authorized to construct a wharf at Port Townsend bay, in the county of Jefferson, W. T., commencing at a sufficient distance above high water mark opposite claim number forty-two, situate in sections fifteen, sixteen and seventeen, in township number thirty, north of range one west; beginning at 2.85 chains from the meandered line on Port Townsend bay; thence west 80.72 chains to the north-west corner of said claim; thence south 40.40 chains; thence east 78.25 chains to the meandered line of said bay; thence north 25 degrees west 7.50 chains; thence north 4 degrees east 9 chains; thence north 19 degrees east 14 chains; thence north 24 1-2 degrees east 3.50 chains; thence north 32 degrees east 9.82 chains; thence west 2.35 chains to the place of beginning, containing 318.94 acres. Width of said wharf to be fifty feet, and to

extend in a south-eastern direction into the bay to a point where there shall not be less than twenty feet of water at low tide.

SEC. 2. That said J. G. Clinger and his associates may, in addition to the privileges granted in section one of this act, construct at the south-east end of said wharf an addition or additions to said wharf on either or both sides thereof, to form an L or T, neither of which additions shall exceed seventy-five feet square, and upon which said J. G. Clinger and his associates may erect buildings, warehouses or other necessary improvements.

SEC. 3. The said J. G. Clinger and his associates, their heirs or assigns, shall be entitled to receive such rates of wharfage as the board of county commissioners of the county of Jefferson, W. T., shall establish, except as herein provided. Said wharf shall be subject to the laws of Washington Territory regulating wharves, and shall be and remain the property of the said J. G. Clinger and his associates, their heirs and assigns: Provided, That the said J. G. Clinger and his associates shall within three years after the passage of this act commence to build said wharf, and shall within six months from commencing same have the same completed.

SEC. 4. All acts or parts of acts heretofore passed, conflicting with this grant or the provisions herein contained, be and the same are hereby repealed.

Passed the House of Representatives November 30, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

FOR THE RELIEF OF JOHN U. HOFSTETTER, SHERIFF OF STEVENS COUNTY,
WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of four hundred dollars be, and the same is hereby appropriated out of any money in the Territorial treasury, to pay John U. Hofstetter for the board, clothing, transportation and guard expenses incurred by said Hoffstetter in transporting an insane man (Stew,) from Fort Colville, in Stevens county, to Monticello, in July, 1868.

SEC. 2. The Territorial auditor is hereby instructed to issue to said John U. Hoffstetter a Territorial warrant for the above named sum on the Territorial treasury, payable out of any funds not otherwise appropriated.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives October 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 21, 1869.

WILLIAM McLANE,

President of the Council.

Approved October 27, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

FOR THE RELIEF OF J. O. TURNER, AUDITOR OF WHATCOM COUNTY.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sum of one hundred and one dollars be and the same is hereby appropriated out of

the Territorial treasury for the payment of J. O. Turner, auditor of Whatcom county, for expenses of attending as a witness in the matter of contest of the seat of Henry Roeder.

SEC. 2. It shall be the duty of the Territorial auditor to draw a warrant on the Territorial treasurer for the said sum of one hundred and one dollars in favor of J. O. Turner, and the treasurer is hereby authorized and directed to pay the same out of any money in the treasury not otherwise appropriated.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed the House of Representatives October 30, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 15, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 26, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO CHANGE THE NAME OF CHRISTIAN STROHMAIER TO THAT OF CHRISTIAN MAIER.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the name of Christian Strohmaier, a citizen of Walla Walla county, Washington Territory, and a native of the kingdom of Hanover, be and the same is hereby changed to that of Christian Maier.

SEC. 2. That wherever the name of Christian Strohmaier may be found in any and all acts, deeds, declarations, contracts, obligations and relations, either of a public or private nature.

made or entered into by him on and after the fourth day of May, A. D. 1857, his said name shall be and hereby is changed to that of Christian Maier, saving to the United States, the Territory of Washington, the said Christian Maier, and to all and every other person or persons, all and every right acquired in or by said acts. deeds, declarations, contracts, obligations or relations.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives October 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 16, 1869.

WILLIAM McLANE,

President of the Council.

Approved October 25, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO AUTHORIZE THE COUNTY COMMISSIONERS OF ISLAND COUNTY TO LEVY A SPECIAL TAX FOR THE ERECTION OF A COURT-HOUSE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of county commissioners of Island county, Washington Territory, be and they are hereby authorized and empowered to levy a special tax upon all the taxable property of said county, of three mills on the dollar, to be applied to the erection of a court-house for said county: Provided, That the general law relating to the powers of county commissioners to levy a tax, shall not abridge the powers herein conferred.

SEC. 2. The board of county commissioners of said Island county shall proceed at their first regular session after the passage of this act, to levy the tax in accordance with the provisions and for the purposes specified in section first of this act.

SEC. 3. The tax levied in accordance with the provisions of this act, shall be levied and collected in like manner and governed by the same laws as other taxes in this Territory are levied and collected.

SEC. 4. The board of county commissioners of said Island county, when said taxes are collected, shall proceed to the erection of a court-house at Coveland, the county seat of said county, making such contracts therefor as to them shall seem best, applying the taxes thereby received for such purpose.

SEC. 5. This act to take effect and be in force from and after its passage.

Passed the House of Representatives October 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 27, 1869.

WILLIAM McLANE,

President of the Council.

Approved October 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO LOCATE A TERRITORIAL ROAD FROM BOISFORT PRAIRIE, IN LEWIS COUNTY,
TO INTERSECT THE MILITARY ROAD AT A POINT BETWEEN HENRY JACK-
SON'S AND MONTICELLO, IN COWLITZ COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington, That T. W. Newland, William Jackson and P. O. Roundtree be, and are hereby appointed view-*

ers to view out and locate a Territorial road from Boisfort, Lewis county, on the nearest and best route, to a point on the military road at or near Henry Jackson's, in Cowlitz county.

SEC. 2. The said viewers shall meet at Boisfort on the first Monday in June, A. D. 1870, or within ten days thereafter, and having first taken an oath before some person qualified to administer the same, to faithfully discharge their duties under this act, they shall proceed to view and plainly mark out a road from Boisfort prairie to intersect the military road in Cowlitz county, according to the provisions of this act, and to make a report thereof to the county commissioners of Lewis and Cowlitz counties on or before the first Monday in January, 1871; and if such report is favorable the county commissioners of the said counties of Lewis and Cowlitz shall declare the same a Territorial road.

SEC. 3. The county commissioners of the above named counties shall cause the said report, together with their action thereon, to be recorded in the road books of their respective counties.

SEC. 4. The said viewers shall receive two dollars per day for all necessary time employed in the viewing and marking out the said road, to be paid out of the county treasury of the counties of Lewis and Cowlitz, in proportion to the time employed in either county. If either of the viewers refuse to act, the others may choose some person in his stead.

SEC. 5. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 12, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 13, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 19, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO CHANGE THE NAME OF THE TOWN OF TEEKALET TO PORT GAMBLE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the name of the town of Teekalet be and the same is hereby changed to Port Gamble.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 24, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 25, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

RELATIVE TO THE SALE OF SPIRITUOUS AND MALT LIQUORS IN WALLA WALLA COUNTY.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That no person or persons shall be permitted to sell spirituous, malt or fermented liquors or wines, in the county of Walla Walla, in less quantities than one gallon, without first having obtained a license therefor from the county auditor of the said county, for that purpose.

SEC. 2. Every person applying for a grocery license to sell spirituous liquors in a less quantity than one gallon, shall pay into the county treasury the sum of not less than fifty dollars

nor more than three hundred dollars per annum, the amount to be determined by the county commissioners of said county: Provided, That no license shall issue for a less period than six months.

SEC. 3. On the applicant producing to the county auditor of said county the receipt of the county treasurer for the sum stated in the foregoing section, they shall give him a license for the term his receipt may call for.

SEC. 4. Every person or persons applying for a license to sell spirituous liquors in a less quantity than one gallon, before receiving the same, shall execute to the county commissioners of said county a bond in the penal sum of five hundred dollars, with two good and sufficient sureties, to be approved by the county commissioners of said county of Walla Walla, conditioned that he will keep an orderly house, and that he will not permit any unlawful or riotous conduct in or about his house; and in case of a violation of any of the conditions thereof by any person or persons giving such bond, he shall be liable to pay a fine to the Territory of Washington in any sum not less than twenty-five dollars nor more than one hundred dollars, to be recovered before any justice of the peace in and for said county.

SEC. 5. That any applicant, before making such application as hereinbefore stated, in which the said applicant wishes to sell spirituous liquors, shall post notices in three of the most public places in the precinct, city or town, stating that in ten days after the date of said notices he will apply to the county auditor of the said county for a license to sell spirituous liquors in less quantity than one gallon: Provided, That persons twice licensed under the provisions of this act, shall not be required to give notice.

SEC. 6. If the notice shall be given as provided herein, license shall be granted to such applicant, in case no remonstrance is presented at the time appointed for the applying for said license: Provided, That if any remonstrance is presented as hereinbefore stated, it shall then be the duty of such person or persons signing such remonstrance to show cause why a license

should not be granted to such applicant: And provided further, That in all cases when a remonstrance shall be presented, the county auditor shall refer the case to the county commissioners at their next session.

SEC. 7. If in the opinion of the county commissioners, after hearing the reasons set forth by the person or persons signing the remonstrance as provided in section six of this act, that the person or persons making such application for a license to sell spirituous liquors in less quantities than one gallon, is of such character that he would not comply with the conditions as set forth in section four of this act, then no license shall be granted. .

SEC. 8. The county auditor, on the first day of each term of the United States district court held in said county, shall deliver to the grand jury an accurate list of all persons holding licenses under the provisions of this act within the county, which list shall show the date and expiration of such license. .

SEC. 9. No person or persons shall sell, give or cause to be sold or given, any intoxicating liquor to any minor under sixteen years of age, without first having obtained the consent of one of such minor's parents or guardians in writing, except for medical purposes.

SEC. 10. Any person violating the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof before any justice of the peace shall be fined in any sum not exceeding one hundred dollars and the costs of prosecution, and stand committed to the county jail until the same shall be paid or secured by a bond with good and sufficient sureties, to be paid within ninety days from its date.

SEC. 11. All licenses and fines arising under this act shall be paid into the county treasury for the use of common schools in Walla Walla county.

SEC. 12. This act to apply exclusively to Walla Walla county, and to be in force from and after its passage.

SEC. 13. All laws or parts of laws relating to the sale of spirituous liquors in less quantities than one gallon, so far as

they relate to the county of Walla Walla, be and they are hereby repealed.

Passed the House of Representatives November 17, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 19, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

IN RELATION TO LICENSES IN KING COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the rate of licenses in said county of King for drinking saloons shall be not less than three hundred dollars or more than six hundred dollars per annum, in the discretion of the county commissioners of said county; and no license shall be granted for a period of less than one year, nor at any time except during a regular session of the said board of county commissioners.

SEC. 2. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives October 26, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 30, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 16, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO LOCATE A TERRITORIAL ROAD FROM OYSTERVILLE TO BAKER'S BAY IN
PACIFIC COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That George N. Baker, Henry S. Gile and John Briscoe are hereby appointed to view out and locate a Territorial road from Oysterville to Baker's Bay by the nearest and most practicable route on the Shoalwater Bay side of the Peninsula in Pacific county.

SEC. 2. Said viewers or a majority of them shall meet at the county auditor's office on the 20th day of January, 1870, or as soon thereafter as practicable and after being duly sworn shall proceed to view and locate the said road between the points and upon the line hereinbefore designated. They shall make a true report of their proceedings to the county commissioners of said county within forty days of the completion of their labors, and when their report shall be approved by the said board, the said road shall be a Territorial road to be opened and kept in repairs as other Territorial roads, and the said commissioners shall be entitled to receive three dollars per day while discharging the duties herein imposed upon them, payable out of the county treasury of Pacific county.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

FOR THE INTRODUCTION OF EASTERN SHAD, ALEWIVES AND WHITE FISH INTO LAKES WASHINGTON AND UNION, AND THE TRIBUTARIES AND OUTLET STREAMS OF SAID LAKES, IN KING COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Frank Mathias and Joseph Cushman, their heirs and assigns, be and are hereby authorized to introduce into and stock lake Washington and lake Union in King county, Territory of Washington, with eastern shad, alewives and white fish, with the exclusive right for the term of thirty years, to catch and cure all alewives, shad and white fish in said lakes, and in all the tributary lakes and streams running into said lakes Washington and Union, and in all the outlet streams of said lakes Washington and Union, the Black river, Duwamish river, and the outlet stream of Union lake running into Salmon bay, so-called.

SEC. 2. The said Frank Mathias and Joseph Cushman shall within five years from the date of the passage of this act. introduce into and stock the beforenamed lakes, with either eastern alewives, shad or white fish, or all of them, as they shall determine.

SEC. 3. The said Frank Mathias and Joseph Cushman shall not by reason of these fisheries obstruct the free navigation of any of the beforenamed lakes or rivers, or any part thereof.

SEC. 4. The property, real and personal, of the beforenamed grantees in all that appertains to their fishing business carried on under this grant, shall not be taxed at a higher rate than other property in King county.

SEC. 5. The exclusive right is hereby given to Frank Mathias and Joseph Cushman, their heirs and assigns, to locate and establish fishing stations on the banks of Black river, Duwamish river or the outlet streams of lake Union, so-called, for the purpose of drawing seines or nets to catch alewives, shad or white fish, and they are authorized to take any private land, not exceeding one acre to each fishing station, by paying a reasonable compensation therefor.

SEC. 6. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives December 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 29, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO VACATE A PART OF THE TERRITORIAL ROAD FROM CARSON'S FERRY, ON PUYALLUP, TO CLARK'S CREEK, IN PIERCE COUNTY, AND TO VACATE THE COUNTY ROAD FROM MOOR'S FORD TO CARSON'S FERRY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Territorial road from Carson's ferry, on Puyallup river, to Clark's creek, and the county road from Moor's ford to Carson's ferry, be and the same is hereby vacated and abandoned.

SEC. 2. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 23, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 22, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 26, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO CHANGE THE NAME OF AMANDA SIDORA PORTER TO THAT OF AMANDA SIDORA GOODWIN, AND MAKE HER AN HEIR AT LAW OF LEWIS H. GOODWIN, M. D., OF THE CITY OF WALLA WALLA.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the name of Amanda Sidora Porter, an adopted child of L. H. Goodwin, M. D., of the city of Walla Walla, Washington Territory, be and the same is hereby changed to that of Amanda Sidora Goodwin.

SEC. 2. Said Amanda Sidora Goodwin shall be and hereby is made an heir at law of the said L. H. Goodwin, on equal footing with the children of said Goodwin.

SEC. 3. This act to take effect and be in force from and after its passage.

Passed the House of Representatives October 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 20, 1869.

WILLIAM McLANE,

President of the Council.

Approved October 27, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

IN RELATION TO ROADS AND HIGHWAYS IN CHEHALIS COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of county commissioners in Chehalis county, Washington Territory, shall levy and assess a road tax of not less than three nor more than nine dollars on every person liable to perform labor on the public roads.

Also to assess not less than two nor more than fifteen mills on every dollar's worth of property as returned by the county assessor, which tax shall be collected and expended in the same manner as is provided for by law regulating roads and highways now in force in this Territory.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 24, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 25, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

RELATING TO THE COUNTY SEAT OF YAKIMA COUNTY, W. T.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the next general election that may be held in this Territory, there shall be submitted to the qualified voters of Yakima county the question of location for county seat of said county.

SEC. 2. Each qualified elector is authorized to express his choice by placing upon his ticket the name of the locality by him preferred as the county seat; and the vote cast upon this proposition shall be canvassed in the same manner now required in the return of votes in the election of county officers, and the place receiving a majority of all the legal votes cast shall be deemed and considered the county seat of said county.

SEC. 3. It shall be the duty of the county commissioners at their next regular session after such general election, to cause the removal to the place so receiving the highest number of legal votes, of all books, archives and all other county property which by law is required, to be kept at the county seat.

SEC. 4. All acts and parts of acts conflicting with any of the provisions of this act be and the same are hereby repealed, and this act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 26, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 26, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO INCORPORATE THE TOWN OF TUMWATER.

ARTICLE I.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the town of Tumwater in said Territory shall be bounded as follows, viz: Commencing at the north-west corner of section twenty-five, in township eighteen north of range number two west; thence running west two miles to the north-west corner of section number twenty-seven; thence south one mile and a half to the quarter post between sections number thirty-three and thirty-four; thence east two miles to the

quarter post between sections thirty-five and thirty-six; thence north one mile and a half to the point of beginning.

SEC. 2. The inhabitants of the said town of Tumwater shall be and are hereby constituted a body politic and corporate, by the name and style of the town of Tumwater, and by that name they and their successors shall be known in law, and have perpetual succession, sue and be sued, plead and be impleaded in all courts whatsoever, and receive property, personal and real, within said town, for public buildings, public works and town improvements, and may dispose of the same in any way for the benefit of said town.

ARTICLE II.

SEC. 1. For the government of the said town of Tumwater there shall be annually elected, in the manner hereinafter provided, the following officers: A board of trustees, consisting of five members, who shall hold their office for one year, and until their successors shall be duly elected and qualified. Each trustee shall be a resident within said town, and there shall be appointed annually by the board of trustees one president, one clerk and one town marshal.

ARTICLE III.

SEC. 1. The general election of all town officers of the corporation required under this act, shall be held on the first Monday in December of each year.

SEC. 2. No person shall be entitled to vote at any town election who shall not be an elector for Territorial officers and a resident of the town thirty days next preceding the day of election, and who shall not have registered his name and place of residence with the clerk of the town board at least thirty days previous to the election at which said elector shall offer to vote: Provided, That the provisions of this act with regard to registration shall not take effect at the election to be held in said town in 1869.

SEC. 3. At all elections for town officers the vote shall be by ballot.

ARTICLE IV.

SEC. 1. The first election shall be held on the first Monday of December next, at the hall of Lee & Biles, in the town of Tumwater, and all the resident voters of the said town shall be allowed to cast their votes without restriction, and for the purpose of holding said election, James Biles shall be inspector, Clanrick Crosby and S. N. Cooper shall be judges, and shall hold said election under the same rules that elections are held in this Territory.

SEC. 2. The board of trustees shall fix the time and place for holding their stated meetings, and may be convened by the president at any time.

SEC. 3. The said board of trustees shall have full power and authority:

1. To make all needful by-laws and town regulations.
2. To levy taxes for municipal purposes not to exceed three mills on the dollar, per annum, upon all taxable property in said town, as is shown by the assessment made for Territorial and county purposes.
3. To make such regulations as shall promote the security of health, peace, cleanliness and good order within the said town.

SEC. 4. The board of trustees shall appoint one of their number a committing magistrate, to hear, determine and enforce all complaints of violations of town ordinances, and to examine all parties arrested by the town marshal.

SEC. 5. The roads, streets and alleys within said town limits shall be under the exclusive control of said board of trustees, who shall make all needful rules in regard to improvement, building, repairing, grading and cleaning the walks and streets in said town.

ARTICLE V.

SEC. 1. The trustees shall receive no compensation for their services as such.

SEC. 2. The marshal shall receive for his services the same fees as constables in like cases.

SEC. 3. The clerk shall also act as treasurer of said town, and shall receive for his services such compensation and give such bonds as the trustees may determine.

SEC. 4. The marshal shall also act as road supervisor.

SEC. 5. The board of trustees shall define the duties of all officers.

SEC. 6. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 22, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 25, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO AUTHORIZE THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY TO SELL COUNTY PROPERTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of county commissioners of Whatcom county be and they are hereby authorized to sell and dispose of the frame building near the court house

of said county, to the highest bidder, by auction or otherwise, the proceeds of which to be applied only for repairs of said court house, and for no other purpose.

SEC. 2. This act to be in force from and after its passage.
Passed the House of Representatives October 28, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 30, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 16, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

RELATING TO THE COUNTY SEAT OF SNOHOMISH COUNTY, W. T.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the next general election for county officers that may be held in this Territory, there shall be submitted to the qualified voters of Snohomish county the question of location for county seat of said county.

SEC. 2. Each qualified elector is authorized to express his choice by placing upon his ticket the name of the locality by him preferred as the county seat; and the vote cast upon this proposition shall be canvassed in the same manner now required in the return of votes in the election of county officers, and the place receiving a majority of all the legal votes cast for county seat shall be deemed and considered the county seat of said county.

SEC. 3. It shall be the duty of the county commissioners at their next regular session after such general election, to cause

the removal to the place so receiving the highest number of legal votes, of all books, archives and all other county property which by law is required to be kept at the county seat. The question of the location of said county seat may be contested in the same manner before the probate court of said county as is now provided by law in the case of a contest for a county office, with the same right of appeal to the district court.

SEC. 4. All acts and parts of acts conflicting with any of the provisions of this act, be and the same are hereby repealed, and this act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 24, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 20, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO RE-LOCATE THE TERRITORIAL ROAD FROM CARSON'S FERRY ON PUYALLUP RIVER, TO CLARK'S CREEK, IN PIERCE COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That A. J. Miller, J. P. Stewart and James W. Wright, or any two of them, be and they are hereby constituted a board of commissioners to view out and relocate a part of the Territorial road from J. Carson's ferry on the Puyallup river to the bridge on Clark's creek in Pierce county.

SEC. 2. Said commissioners shall meet at Carson's ferry on Puyallup river on the first Monday of February, A. D. 1870, 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 them, they shall proceed to view and locate and mark out a road on the best 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 Secretary of the Territory and the county auditor of Pierce county within sixty days from the completion of their labor, and when said report is 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 power granted in this act.

SEC. 5. And the commissioners to view out the said road shall receive two dollars per day out of any money in the treasury of said county of Pierce not otherwise appropriated.

SEC. 6. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 12, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 29, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 22, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO INCORPORATE JEFFERSON LODGE, NO. 12, INDEPENDENT ORDER OF GOOD
TEMPLARS.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the officers and members of Jefferson Lodge, No. 12, Independent Order of Good Templars, 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 Jefferson Lodge, No. 12, Independent Order of Good Templars.

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 any amount not exceeding one hundred thousand dollars; and the aforesaid to lease, grant, convey and dispose of in such manner as they may deem expedient.

SEC. 3. The officers of such lodge, upon an order made at any regular meeting 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 valid unless executed by the P. W. C. Templar, W. C. Templar and W. Treasurer, and shall be by them acknowledged in their official capacity, acknowledged before some person authorized to take acknowledgements 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 meeting of the same.

SEC. 5. Any paper executed and acknowledged as above provided, and certified by the W. Secretary, under the seal of his lodge, to be in accordance with the order made at a regular meeting of the same, shall be received, 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. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 12, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 30, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 22, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO LOCATE A TERRITORIAL ROAD FROM YELM PRAIRIE, IN THURSTON COUNTY,
TO THE TOWN OF TACOMA, IN PIERCE COUNTY.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That John Rigney, William Wagner, and James W. Law, or any two of them, be and they

are hereby constituted a board of commissioners to view out and establish a Territorial road from the military road on Yellu Prairie in Thurston county to the town of Tacoma in Pierce county.

SEC. 2. Said commissioners shall meet at Wagner's ferry on the first Monday of February, A. D. 1870, 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 them, they shall proceed to view and locate and mark out a road on the best 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 Secretary of the Territory and the county auditors of Thurston and Pierce counties, within sixty days from the completion of their labor, and when said report is 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. And the commissioners to view out the said road, shall receive two dollars per day out of any money in the treasury of said county of Pierce, not otherwise appropriated.

SEC. 6. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 12, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 26, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 22, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

AUTHORIZING THE COUNTY COMMISSIONERS OF THURSTON COUNTY, W. T., TO BORROW MONEY FOR THE PURPOSE OF BUILDING A COURT-HOUSE AND JAIL.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners of Thurston county be and they are hereby authorized and empowered in the name of the county, to borrow a sum of money not to exceed eight thousand dollars, upon which they may pay interest at any rate not to exceed one and one-half per cent. per month, to be appropriated for the purpose of building a court-house and jail at the county seat of said county.

SEC. 2. That the county commissioners shall at their regular spring term of each year, set apart not less than twenty-five nor more than fifty per cent. of all money paid into the county treasury for county purposes, for the purpose of securing the payment of said debt and interest created in accordance with this act.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives October 30, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 10, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 20, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO CHANGE THE NAME OF CHARLES WILLIAM FISHER TO THAT OF CHARLES WILLIAM DOWNEY, AND GIVING HIS CUSTODY AND GUARDIANSHIP TO HIS GRANDFATHER, WILLIAM R. DOWNEY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the minor son of George S. Fisher, now residing with his grandfather, Wm. R. Downey, named Charles William Fisher, be and the same is hereby changed to Charles William Downey, and that the said Charles William Fisher shall take and have his name hereafter that of Charles William Downey.

SEC. 2. The exclusive care and guardianship of said minor is hereby granted to his grandfather, Wm. R. Downey.

SEC. 3. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 16, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 29, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

ALLOWING THE TAX PAYERS OF PACIFIC COUNTY TO PERFORM PART OF THEIR ROAD LABOR ON TIDE WATERS IN REMOVING OBSTRUCTONS TO NAVIGATION.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That one-half of the poll road tax of Pacific county may be laid out on tide waters under the

direction of the supervisors of the several road districts in said county.

SEC. 2. But in no case shall the supervisor of any road district apply more than one-half of the poll road tax of his district for such purpose.

SEC. 3. This act shall take effect and be in force from and after the first day of January, 1870.

Passed the House of Representatives November 22, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 22, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 29, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

RELATING TO THE REGISTRATION OF COUNTY SCRIP IN THE COUNTY OF PIERCE, IN WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the auditor of Pierce county, Washington Territory, to notify all persons holding county scrip on said county to present the same for registration on or before the first day of August, eighteen hundred and seventy.

SEC. 2. The notice to the holders of said county scrip shall be given by publishing the same for six consecutive weeks in a newspaper published in said county known as the *Western Star*, immediately after the passage and approval of this act.

SEC. 3. The holders of said county scrip shall within the

time named in section one of this act, present the same to said auditor, who shall register each piece of said scrip so presented to him in a book to be provided by him at the expense of the county, in which book the auditor shall enter each piece of said scrip at full length, together with all endorsements thereon at full length, and shall be paid therefor by the county twenty cents per folio.

SEC. 4. All persons holding the scrip of said county who shall fail or refuse to present the same for registration as provided for in this act, shall be postponed in the payment of such scrip till there is a surplus in the county treasury of said county after paying all the scrip registered as aforesaid, and all the current expenses of said county; and said unregistered scrip shall not after the first day of August, 1870, draw any interest whatever.

SEC. 5. The holders of rejected county scrip in Pierce county, under the provisions of an act entitled "an act relating to the registration of county scrip," approved January 28, 1867, are hereby placed on the same footing as the holders of other scrip.

SEC. 6. This act to take effect and be in force from and after its approval by the Governor.

Passed the House of Representatives October 27, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 11, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 19, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

AUTHORIZING J. J. H. VAN BOKKELEN AND OTHERS TO CONSTRUCT A WHARF AT THE HEAD OF PORT TOWNSEND BAY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That J. J. H. Van Bokkelen and such other persons as he may associate with him, be and are hereby authorized to construct a wharf at the head of Port Townsend bay in the county of Jefferson, W. T., commencing at a sufficient distance above high water mark opposite lot number one, section number twenty-two, township number thirty north range one west; said wharf to be fifty feet in width, and to extend in an easterly direction into the bay to a point where there shall not be less than twenty feet of water at low tide.

SEC. 2. That said J. J. H. Van Bokkelen and his associates may, in addition to the privileges granted in section first of this act, construct at the easterly end of said wharf an addition or additions to said wharf on either or both sides thereof to form an L or T, neither of which additions shall exceed seventy-five feet square, and upon which said J. J. H. Van Bokkelen and his associates may erect buildings, warehouses or other necessary improvements.

SEC. 3. The said J. J. H. Van Bokkelen and his associates, their heirs or assigns, shall be entitled to receive such rates of wharfage as the board of county commissioners of Jefferson county, W. T., shall establish, except as herein provided. Said wharf shall be subject to the laws of Washington Territory regulating wharves, and shall be and remain the property of said J. J. H. Van Bokkelen and his associates, their heirs and assigns: Provided, That the said J. J. H. Van Bokkelen and his associates shall within two years after the passage of this act, commence to build said wharf, and shall within six months from commencing same have the same completed.

SEC. 4. All acts or parts of acts heretofore passed, con-

flicting with this grant or the provisions herein contained, be and the same are hereby repealed.

Passed the House of Representatives November 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 21, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO AUTHORIZE THE BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY TO BORROW MONEY.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of county commissioners of Jefferson county are authorized to borrow a sum or sums of money in gold coin, which said sum or sums shall not exceed in the aggregate five thousand dollars, and which sum or sums shall bear a rate of interest not to exceed one and one-half per cent. per month in gold coin.

SEC. 2. That the said board of commissioners shall apply the said sum or sums to the redemption of Jefferson county scrip, and to meet the current expenses of the said county in such a manner as to them may seem most advantageous to the interest of said county.

SEC. 3. That twenty per cent. of all county taxes hereafter assessed and collected, and of all saloon and billiard licenses be retained and applied to pay the interest on and extinguish said loans.

SEC. 4. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 13, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 12, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 22, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

RELATING TO LIQUOR LICENSES REQUIRED WITHIN THE CORPORATE LIMITS OF THE CITY OF VANCOUVER, WASHINGTON TERRITORY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the proceeds of all licenses which by existing laws are required to be paid for the selling at retail of any spirituous, malt or fermented liquors within the corporate limits of the city of Vancouver, shall be paid for as follows, to-wit: Sixty-six and two-thirds per centum shall be paid, by the officer required by this act to collect the same, into the county treasury of Clarke county, for the use of the general fund to pay the current expenses of such county, and thirty-three and one-third per centum thereof shall be paid into the treasury of the city of Vancouver by such officer for the use of said city: Provided, This act shall not be so construed as to change the amount to be paid for licenses except as is hereinafter expressly stated.

SEC. 2. Brewers who retail lager beer of their own manufacture in quantities not less than one quart, shall pay a license of one hundred and fifty dollars per annum.

SEC. 3. All licenses for the selling at retail of spirituous, malt or fermented liquors in said city of Vancouver, shall be paid for by the person applying for the same in any lawful money of the United States.

SEC. 4. Applications for licenses under the provisions of this act shall be made to the treasurer of said county of Clarke, who shall give to the person applying for the same a receipt in duplicate, and upon filing one of said receipts in the office of the county auditor of such county, said auditor shall issue under his hand and seal of office to said person, a license as contemplated by this act, for the length of time in such receipt specified, and charge said treasurer on the proper records of his office with the amount of money in such receipt stated. And it is hereby made the duty of the county treasurer within two days after the receipt of any money under the provisions of this act to pay one third of the same into the treasury of the said city of Vancouver, taking the treasurer's receipt in duplicate therefor, one of which he shall file with the clerk of the common council of said city, and the other he shall file in his office, which receipt shall be a voucher for such county treasurer in his settlement with the board of county commissioners for the amount of money therein stated.

SEC. 5. Any person violating any of the provisions of this act shall be liable to all the penalties provided for by existing laws in cases of violations of the general license laws of this Territory.

SEC. 6. All acts and parts of acts in any manner conflicting with the provisions of this act, be and the same are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 29, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 30, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO PROVIDE FOR THE PAYMENT OF CERTAIN CLERKS OF THE LEGISLATIVE ASSEMBLY FOR EXTRA SERVICES IN PREPARING THE LAWS AND JOURNALS FOR PUBLICATION.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there be and hereby is appropriated out of the Territorial treasury the sum of one hundred and twenty-five dollars for the payment of Elwood Evans, chief clerk of the House of Representatives, for the making up of the record and preparing the journal of the House for the public printer.

That the sum of one hundred and twenty-five dollars be appropriated to pay C. B. Bagley, chief clerk of the Council, for the making up of the record and preparing the journal of the Council for the public printer.

SEC. 2. The Territorial auditor shall, upon satisfactory proof that the services in this act mentioned have been performed, draw a warrant on the treasury of the Territory for the amounts hereby appropriated, for the services thus performed by said clerks, which warrant shall be paid out of any money in the treasury not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

Passed the House of Representatives December 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

RELEASING TO HANNAH E. SHORT, DEVISEE OF ESTHER SHORT, DECEASED, THE CLAIM OF THE TERRITORY OF WASHINGTON TO A CERTAIN TRACT OF LAND IN CLARKE COUNTY, CONVEYED TO WASHINGTON TERRITORY AS A SITE FOR A PENITENTIARY.

WHEREAS, Esther Short, the mother of Hannah E. Short, did on the tenth day of July, 1855, make and execute a bond unto the Territory of Washington, conditioned that if the Territory should build a penitentiary on certain ten acres of land in Clarke county, she would make, execute and deliver a good and sufficient deed for the same; and

WHEREAS, The said Esther Short did make, execute and deliver on the 23d day of February, 1858, a deed to the certain ten acres of land in said deed described, which said deed is recorded in book "B" of deeds of Clark county, page 265, and recorded therein on the 7th day of May, 1858; and

WHEREAS, The condition of said bond was never complied with on the part of the Territory, and said Territory did wholly fail to build a penitentiary on said lands, which was the sole consideration of said bond and deed; and

WHEREAS, The said Esther Short died, leaving a will devising all her property to Hannah E. Short; therefore

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the bond executed by Esther Short on the tenth day of July, 1855, and the deed made and executed by said Esther Short on the 23d day of February, 1858, and recorded in Clarke county record of deeds in book "B," page 265, be and they are hereby declared null and void.

SEC. 2. A copy of this act, certified to be such by the Secretary of the Territory, recorded by the said Hannah E. Short in the office of the county auditor of Clarke county, shall operate as a release of all title of the Territory of Washington in and to the lands described in said deed.

SEC. 3. The title to the lands in said deed described, is hereby declared to be in Hannah E. Short, in accordance with the provisions of the last will and testament of Esther Short, her mother.

SEC. 4. This act to take effect and be in force from and after its approval by the Governor.

Passed the House of Representatives November 17, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

AUTHORIZING J. J. H. VAN BOKKELEN AND ASSOCIATES TO BUILD AN AQUEDUCT.
LAY PIPES AND BRING WATER INTO THE CITY OF PORT TOWNSEND.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That J. J. H. Van Bokkelen, S. S. Bulkeley, J. G. Clinger, and their associates and assigns, be and they are hereby granted the privilege of building an aqueduct on the stream of water known as Chemacum creek, or at a lake of water on section line between sections nine and ten, township number twenty-nine north, range one west, as they may select, and bring water in pipes from the place so selected into and through the land lying between the place selected and the western boundary of the city of Port Townsend, and thence through the corporate limits of said city; and they are hereby authorized to lay down pipes from the place so selected to and along the alleys and streets of said city of Port Townsend, and through the said pipes to supply water for the use of said city and its inhabitants: Provided, Said privilege shall not exceed the term of fifteen years: And provided also, That such privilege shall not interfere with the rights of persons owning land on which said water pipes are laid.

SEC. 2. The said J. J. H. Van Bokkelen and associates shall on or before the first day of January, A. D. 1871, select or designate the place from which they intend to take their supply of water, and file notice of the same with the auditor of Jefferson county.

SEC. 3. The said J. J. H. Van Bokkelen and his associates and assigns, in making the necessary excavations along the route selected, and through the streets of said city of Port Townsend, for the purpose of lying down water pipes or for the replacement or repair of said pipes, shall not be allowed to obstruct such street or alley unnecessarily or for a longer time than is actually required for making such improvements.

SEC. 4. That the said J. J. H. Van Bokkelen, his associates and assigns, shall within a reasonable time after being required by any inhabitant of said city to be furnished with water, furnish such person with water as required, if said demand be accompanied by a sum of money in proportion to charges made to other persons for like accommodation, and a failure so to do, or a failure for an unreasonable length of time to keep sufficient pipes in good repair and to supply the city and the inhabitants thereof with water sufficient for their necessary wants, shall work a forfeiture of this charter, and the rights and franchise hereby granted shall then cease and determine.

SEC. 5. The charges to persons for water shall be uniform.

SEC. 6. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 30, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 30, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO LOCATE A TERRITORIAL ROAD FROM A POINT WHERE THE COUNTY ROAD CROSSES THE TOWNSHIP LINE NEAR R. B. STEADMAN'S, IN THURSTON COUNTY, TO THE COUNTY ROAD NEAR THE SOUTH LINE OF GEORGE WASHINGTON'S LAND CLAIM, IN LEWIS COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Jacob D. Bolander and Oliver Shead, of Thurston county, and Joseph Remley, of Lewis county, be and are hereby constituted a board of commissioners to view and locate a Territorial road from a point where the county road crosses the township line near R. B. Stedman's, in Thurston county, thence south to the corner of said Stedman's land claim; thence southwesterly, crossing Skookum Chuck near the west line of the claim known as the Webster mill claim; thence down the east side of said river to the county road near the south line of George Washington's land claim, in Lewis county.

SEC. 2. The said commissioners, or a majority of them, shall meet within three months from the passage of this act, at the house of Joseph Remley, and after being duly sworn faithfully and impartially to act as such commissioners, shall proceed to view and locate said road from point to point as described in section one.

SEC. 3. The said commissioners shall have authority to adjourn from time to time and from place to place as may be necessary, and shall have power to fill all vacancies that may occur in said board, and also to administer all oaths necessary to carry into effect the provisions of this act.

SEC. 4. Said commissioners shall make out a report, to be deposited with the auditors of Lewis and Thurston counties, and when so deposited, said road shall be a Territorial road, and shall be opened and kept in repair as other Territorial roads are.

SEC. 5. Said commissioners shall receive no compensation for their services except by voluntary contribution.

SEC. 6. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 17, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 19, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 26, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO LEGALIZE THE ACTS OF CERTAIN ROAD COMMISSIONERS AND COUNTY COMMISSIONERS OF KLIKITAT COUNTY IN THE LOCATION AND SUBSEQUENT ALTERATION OF A CERTAIN TERRITORIAL ROAD IN SKAMANIA AND KLIKITAT COUNTIES, AUTHORIZED BY ACT OF THE LEGISLATIVE ASSEMBLY, PASSED JANUARY 7, 1864.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the action of the road commissioners in the view and location of a certain Territorial road authorized by an act of the Legislative Assembly, passed January 7, 1864, entitled "an act to locate a Territorial road in Skamania and Klickitat counties," and a report of which was filed in the office of the auditor of Skamania county by said road commissioners on the 12th day of March, 1864, be and the same is hereby legalized, notwithstanding any irregularities or omissions on the part of the commissioners in the discharge of the duties enjoined upon them by the provisions of said act.

SEC. 2. That the action of the board of county commissioners of Klickitat county at the May term, A. D. 1869, in altering said Territorial road upon the petition of the citizens of

said county, be and the same is hereby legalized and declared valid, and said road as originally viewed and located by said road commissioners and recorded in the office of the auditor of Skamania county, and as subsequently altered by the board of county commissioners of Klickitat county according to the report of Chauncy Goodnoe, Joshua Brown and R. C. Wallace, viewers appointed by said board, be and the same is hereby declared a Territorial road, and it shall be the duty of the road supervisors of the several road districts, through which said road passes, to keep said road open and in good repair and work the same, like all established public highways are required to be worked, according to the provisions of the general road law.

SEC. 3. Every person who shall in any manner obstruct the aforesaid road, or injure any material used in the construction or repairs of said road, shall on conviction thereof be fined in any sum not exceeding five hundred dollars.

SEC. 4. All acts and parts of acts in any manner conflicting with any of the provisions of this act, be and the same are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives November 12, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 26, 1869.

WILLIAM McLANE,

President of the Council.

Approved November 22, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

AN ACT

TO APPOINT VIEWERS TO LOCATE A TERRITORIAL ROAD FROM McALLISTER'S BRIDGE ON THE ROAD LEADING FROM OLYMPIA TO STEILACOOM, BY GOVE'S BRIDGE OR FERRY, TO TACOMA, IN PIERCE COUNTY; FROM THENCE BY UPPER STUCK RIVER TO SLAUGHTER'S SCHOOL-HOUSE, ON WHITE RIVER; THENCE TO MUCCLESHOOT PRAIRIE AND ACROSS GREEN AND CEDAR RIVERS TO RATTLESNAKE PRAIRIE; THENCE TO SNOQUALMIE PRAIRIE TO INTERCEPT THE SNOQUALMIE PASS ROAD AT THIS POINT.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That D. W. C. Davidson, B. F. Brown and A. W. Stewart be and are hereby appointed viewers to view out and locate a Territorial road from McAllister's bridge, in Thurston county, on the road leading from Olympia to Steilacoom by Gove's bridge or ferry on Nisqually river; thence to the town of Tacoma, in Pierce county, to be located on the nearest, best ground, in the judgment of the viewers; from thence by the head of Stuck river to White river at Slaughter's school house; from thence to Mukleshoot prairie, on across Green and Cedar rivers to Rattle Snake prairie; from thence to Snoqualmie prairie, in King county, to intersect the Snoqualmie pass road at this point.

SEC. 2. The said viewers shall meet at the town of Tacoma on the first Monday of February, 1870, or as soon thereafter as possible, and having first taken an oath before some person qualified to administer the same, to faithfully discharge their duties under this act, they shall proceed to view and plainly mark out a road from McAllister's creek, in Thurston county, to Snoqualmie prairie, in King county, in accordance with the provisions of this act, and to make a report thereof to the county commissioners of Thurston, Pierce and King counties, on or before the first Monday in June next; and if such report is favorable, the county commissioners of the said counties of Thurston, Pierce and King shall declare the same a Territorial road.

SEC. 3. The county commissioners of the above-named counties shall cause the said report, together with their action thereon, to be recorded in the road book of their respective counties.

SEC. 4. The said viewers shall receive two dollars per day for all necessary time employed in the viewing and marking out said road, to be paid out of the county treasury of the counties of Pierce and King, in proportion to the time employed in either county. If for any cause the viewers appointed to view out this road do not meet at the time and place named in this act, the one or more so meeting shall appoint some suitable person or persons to act as viewers, who after being duly sworn to perform their duty as viewers of said road, their report and acts shall be as legal as the viewers named in this act.

SEC. 5. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 30, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 23, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 2, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

SECRETARY'S OFFICE,

Washington Territory.

I, JAMES SCOTT, Secretary of Washington Territory, do hereby certify that the foregoing are true copies of the laws passed at the second biennial session of the Legislative Assembly of Washington Territory, and now in force.

In witness whereof I have hereunto set my hand and official seal, at Olympia, this 20th day of April, 1870.

[SEAL.]

JAMES SCOTT,

Secretary of Washington Territory.

RESOLUTIONS.

RESOLUTIONS.

RESOLUTION

IN RELATION TO APPOINTING A COMMITTEE TO WAIT UPON THE GOVERNOR.

Resolved by the House, the Council concurring, That a joint committee consisting of three members of the House and two on the part of the Council, be appointed to wait upon his Excellency, the Governor of this Territory, and inform him that the Legislative Assembly is now organized and ready to receive any communication he may be pleased to make.

Passed the House of Representatives October 6, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 6, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

RELATIVE TO THE ELECTION OF TERRITORIAL OFFICERS.

Be it resolved by the Legislative Council, the House concurring, That both Houses of the Legislative Assembly meet in joint convention on Saturday, the ninth day of October, at the

hour of two o'clock P. M., in the hall of the House of Representatives, for the purpose of electing one Territorial Auditor, one Treasurer, one Territorial Librarian, and such other officers as are required to be elected by law.

Passed the House of Representatives October 8, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 8, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

RELATING TO REPORT OF STANDING COMMITTEES ON RULES AND ORDERS, ON
JOINT RULES AND ORDERS.

Resolved by the Council, the House concurring, That the standing committee on rules and orders of the Council, together with the like committee from the House, be and the same are hereby instructed to report to their respective Houses, at as early a day as practicable, joint rules for the government of both houses.

Passed the House of Representatives October 15, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 18, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

PROVIDING FOR A JOINT CONVENTION TO ELECT TERRITORIAL OFFICERS.

Be it resolved by the Legislative Council, the House concurring, That both houses of the Legislative Assembly of the Territory of Washington shall meet in the hall of the House of Representatives at the hour of 12 o'clock, meridian, on Saturday, the 30th day of October, A. D. 1869, for the purpose of electing persons to fill the following named offices, to-wit: One Territorial Auditor, Territorial Treasurer, Territorial Librarian, Brigadier General, Quartermaster General, Commissary General, Adjutant General and three Regents of the Territorial University.

Passed the House of Representatives October 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 28, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

CREATING A JOINT SELECT COMMITTEE TO VISIT THE GOVERNMENT BUILDINGS AT FORT STEILACOOM AND THE TERRITORIAL PENITENTIARY.

Resolved by the House of Representatives the Council concurring, That a committee consisting of two members on the part of the House, to act with such number as the Council may designate to act on the part of the Council, be appointed to examine the buildings at Fort Steilacoom, advertised to be sold by the quartermaster's department on the second of November, 1869, and to procure, if possible, the postponement of said sale, and to report what steps are necessary to procure a grant from the

United States of said buildings and the grounds upon which they stand, to the Territory of Washington, for the purpose of permanently establishing an asylum for the insane by the Territory.

Resolved further, That said committee be instructed to examine the Territorial prison and report upon the condition and management of the same.

Passed the House of Representatives October 13, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 13, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

RELATIVE TO THE INTRODUCTION OF NEW BUSINESS.

Be it resolved by the Council, the House concurring, That no new business be introduced in either branch of this Legislature after the 24th inst: Provided, That no business reported by the select code commission shall be excluded by this resolution.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 13, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

PROVIDING FOR THE PUBLICATION AND DISTRIBUTION OF CERTAIN LAWS IN PAMPHLET FORM.

Resolved by the Council, the House concurring, That there shall be printed by the public printer, immediately after the close of the present session, five hundred copies each, containing the following laws, in pamphlet form, to-wit: School law, revenue law, election law and road law; and the said laws as soon as published shall be distributed by the Secretary among the various counties of the Territory, according to number of votes cast in each county at the last election, the same to be forwarded to the different county auditors by the Secretary, at the expense of the Territory.

Passed the House of Representatives November 23, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

RELATIVE TO SAN JUAN ISLAND.

Resolved by the House, the Council concurring, That the American citizens now resident upon San Juan Island have just cause of complaint for being so long continued under martial law and for being deprived of the rights and privileges accorded to other citizens of the Territory; and

Resolved further, That the people of Washington Territory believe it to be the duty of the United States government at an early day to assert the rights secured by the treaty of 1846,

and cause the removal of British troops from said island of San Juan, and to permit the exercise of jurisdiction by the civil authorities of the United States and of Washington Territory thereon.

Resolved, That the Secretary of the Territory be requested to forward copies of this resolution to the President of the United States, the President of the Senate and the Speaker of the House of Representatives.

Passed the House of Representatives November 22, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 22, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

RELATIVE TO THE DUTIES OF THE TERRITORY TO THE MEMORY OF DOCTOR
MARCUS WHITMAN.

WHEREAS, Dr. Marcus Whitman, a citizen of the United States, and a native of the State of New York, did, in the year 1836, proceed to the Walla Walla valley, now a part of Washington Territory, but then a part of Oregon Territory, and in the joint occupancy of the United States and Great Britain, and by the order of the American Board of Commissioners for Foreign Missions, did then and there establish an American Mission and settlement; and

WHEREAS, The said Whitman, knowing the vast resources and mineral wealth of Oregon Territory, and the intention of the government of the United States to dispose of the same for a trivial consideration to the government of Great Britain, from not being aware of its immense value; and

WHEREAS, To prevent the sale and transfer of said Territory, and the loss to the United States of that vast and inestimable wealth, said Whitman did, in the dead of winter, at his own private expense, cross the continent amid the snows of the Rocky Mountains and the bleakness of the intervening plains, inhabited by savage Indians, and reached Washington City, and informed the government of the United States of the great value of said Territory, and thereby prevented the sale and loss of said Territory to the United States; and

WHEREAS, Said Whitman then returned to said Territory and conducted the first emigrant wagons to said Territory, thereby increasing said American settlement in Oregon Territory, and residing there himself until he was brutally murdered by the savages whom he was instructing in the arts of civilization; and

WHEREAS, We, the Legislative Assembly of the Territory of Washington, as representatives of a free and independent people, inhabiting a part of the country saved to the United States by the personal efforts aforesaid of the said Dr. Marcus Whitman, do acknowledge our gratitude to him for the same; therefore

Be it resolved by the House, the Council concurring, That a joint committee, consisting of three on the part of the House and two on the part of the Council, be appointed to inquire and report to each House whether it is not a duty the people of Washington Territory owe to themselves and to posterity to erect, at the cost of said Territory, a suitable monument over the grave of said Dr. Marcus Whitman, with proper inscriptions thereon, to perpetuate and commemorate said noble and patriotic acts of said deceased.

Passed the House of Representatives October 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 22, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

CREATING A JOINT SELECT CODE COMMITTEE.

Resolved by the Legislative Assembly of the Territory of Washington, That a joint select committee consisting of the practicing attorneys in the two Houses to be called the select code committee be appointed, to whom shall be referred the compilation and report of Elwood Evans upon the laws of the Territory, and such other matters as either House may refer to them. Such committee shall have the following powers:

1. To appoint a clerk.
2. To suggest amendments to said laws, but to embody such amendments in an appendix to bills reported by them.
3. To sit during the session of the Assembly.
4. To make such report or recommendations in regard to the subject matters under their care as they shall deem for the interests of the Territory.

Passed the House of Representatives October 27, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 28, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

RELATIVE TO COMPENSATION OF ELWOOD EVANS.

WHEREAS, The Hon. Elwood Evans having been engaged in the compilation and codification of the laws of Washington Territory for the last two years, at least seven months of that time; and

WHEREAS, The said Elwood Evans having been engaged by the joint select committee of both Houses of this Legislature, in arranging and compiling said laws, and that we recognize the arduous labor performed; therefore be it

1. *Resolved by the Council, the House concurring,* That the sum of one thousand dollars be and the same is hereby appropriated out of any money in the Territorial treasury not otherwise appropriated, for the compensation of said Elwood Evans for services rendered as code commissioner and clerk of said joint select committee.

2. *Resolved,* That the Territorial auditor is hereby directed and required to draw a warrant on the Territorial treasury for the amount named in the joint resolution in favor of said Elwood Evans.

Passed the House of Representatives December 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

FOR THE RELIEF OF EDWIN EELLS.

WHEREAS, Edwin Eells having paid out of his salary as enrolling clerk of the Council, the sum of twenty-five dollars for assistance in facilitating the business of the Council; therefore be it

Resolved, the House concurring, That the sum of twenty-five dollars be, and is hereby appropriated out of any funds in the Territorial treasury not otherwise appropriated, and that the Territorial auditor be, and is hereby directed to draw his order

on the Territorial treasurer for the sum of twenty-five dollars in favor of Edwin Eells.

Passed the House of Representatives December 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

RELATIVE TO DR. MARCUS WHITMAN.

WHEREAS, The Legislative Assembly passed a joint resolution requiring the President of the Council and the Speaker of the House to appoint a joint select committee to take into consideration the duty of Washington Territory to the memory of Dr. Marcus Whitman; and

WHEREAS, Said committee has been appointed and have requested Hon. J. E. Wyche to deliver an address before a joint convention of this Assembly relative to the life, character and public services of said Dr. Whitman; and

WHEREAS, Hon. J. E. Wyche has consented to deliver such address; therefore

Resolved, That this Legislative Assembly meet in joint convention in the hall of the House of Representatives at 2 o'clock P. M. on this, the 17th day of November, 1869, to listen to said address.

Passed the House of Representatives November 17, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 17, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

RELATIVE TO THE LEGISLATURE TAKING A RECESS.

WHEREAS, A large amount of business is now in the hands of committees of the House and Council which will require time to examine and report upon; therefore in order to facilitate the business before the Legislature,

Resolved by the House, the Council concurring, That the Legislative Assembly of Washington Territory adjourn on Saturday the 30th of October, 1869, to Monday the 8th of November, 1869, and that the several committees have leave to meet from time to time during the recess.

Passed the House of Representatives October 27, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 27, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

IN RELATION TO AN APPROPRIATION FOR CAPITOL OR GOVERNMENT BUILDINGS FOR WASHINGTON TERRITORY.

WHEREAS, By act of Congress approved March 3, 1857, there was appropriated the sum of thirty thousand dollars for the erection of capitol buildings for this Territory, which sum was sent in a draft to Hon. O. B. McFadden, then chief justice of the Territory, to be by him turned over to the then Governor of the Territory, Hon. Fayette McMullen, upon his giving the required bonds, which he declined doing, and thereupon Judge McFadden returned the draft to the government; and

WHEREAS, The said draft was again transmitted to Judge McFadden, who turned the same over to Hon. H. M. McGill, then acting Governor of the Territory, who after expending a small sum in clearing and preparing the grounds, for a plan of building, etc., he subsequently returned the balance in his hands (nearly the whole amount,) to the general government; and

WHEREAS, The failures to carry out the legitimate purpose of said appropriation was the fault of the officers appointed by the general government, and no fault can be attached to the people of the Territory or their officers in the premises; and

WHEREAS, The present accommodations are neither suitable, convenient, nor comfortable for the purpose of the Legislative Assembly and the business of the Territorial government, nor do they afford proper accommodations for the Territorial library and the safe keeping of the books, documents, papers, etc., belonging to the Territory, and are highly discreditable to the oldest organized Territory in the United States; therefore

Be it resolved by the Legislative Assembly of the Territory of Washington, That our delegate in Congress, Hon. Selucius Garfield, be and is hereby instructed to use his best efforts to secure from the Congress of the United States about to assemble a re-appropriation of fifty thousand dollars, (\$50,000,) or such sum as may be sufficient to erect suitable buildings for the Legislative Assembly and government of Washington Territory.

Passed the House of Representatives November 26, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,

President of the Council.

RESOLUTION

RELATIVE TO PAYMENT OF ADDITIONAL ENROLLING CLERKS.

Be it resolved by the Legislative Assembly of the Territory of Washington, That the Territorial auditor be and is hereby directed to draw warrants on the Territorial treasurer for services in the enrollment of bills as follows, viz: A warrant in favor of Thomas Prosch for one hundred dollars; a warrant in favor of Fred. Holmes for one hundred dollars; a warrant in favor of P. D. Moore for one hundred dollars; a warrant in favor of J. J. Gilbert, for ten dollars; a warrant in favor of C. W. Lowe for fifteen dollars; a warrant in favor of — Hyam for ten dollars; and the Territorial treasurer in hereby directed to pay said warrants out of any money in the treasury not otherwise appropriated.

Passed the House of Representatives December 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,

President of the Council.

MÈMORIALS.

MEMORIALS.

MEMORIAL

ASKING A GRANT OF SWAMP AND TIDE LANDS FOR SCHOOL PURPOSES AND
INTERNAL IMPROVEMENTS.

To the Senate and House of Representatives of the

United States of America in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent to your honorable bodies, that although the climate, productiveness of soil and the extensive and valuable natural resources of the Territory, as well as its geographical position, all tend strongly to invite emigration to our borders, and also that although the attention of densely populated districts is turned to the great advantages our Territory affords to enterprising settlers, yet the condition of our roads and public highways, and the absence of them in and through fertile sections where they are much needed, are great and serious obstacles to the early and rapid settlement of our country by permanent residents. And your memorialists would further represent that there are obstacles to navigation in several streams running in and through fertile sections of our Territory which could be removed at a moderate cost, but our people are unable, without aid from the general government, to meet the expenses of the said highly important internal improvements, therefore your memorialists would earnestly pray your honorable bodies to grant to the Territory of Washington the swamp lands, or such lands as are subject to overflow by tides and streams or

otherwise swampy and unreclaimed, lying within the boundaries of our Territory and unoccupied, which are now or may be hereafter surveyed, the proceeds of the sales of which, under the direction of a commission appointed by the Territorial Legislature, shall be appropriated to the above named internal improvements. And your memorialists would recommend that the act making the said appropriation or grant to the Territory of Washington, name a commission consisting of the Surveyor General and the Register and Receiver of the Land office at Olympia, Washington Territory, to determine which are swamp and tide lands of such as have been or may hereafter be surveyed, who shall reserve the same from public sale and entry for homestead and pre-emption, and who shall assign the same to the Territory for the purposes herein named, and to report every three months to the "Swamp and Tide Land Commissioners."

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives November 22, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 20, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

ASKING FOR THE REMOVAL OF DUNCAN ROCK.

*To the Honorable Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of Washington Territory, would respectfully represent to your honorable bodies, that the commerce of Washington Territory is greatly endangered by the existence of what is known as Duncan Rock; said rock

lying at the mouth of the Straits of Juan de Fuca, about two miles from the southern shore of said Straits, and in the direct pathway of vessels entering the Straits, and especially dangerous during stormy weather. The rock is small and is visible at about half tide. It would be impossible even to make use of it as a location for a light house, and hence your memorialists would earnestly ask for an appropriation of such a sum as would be deemed sufficient to remove or destroy said rock, to be expended in such a manner as your honorable body may direct.

Your memorialists would further represent that the amount necessary to destroy or remove said rock would be but small, and bear no proportion to the benefits that would accrue to the commerce of Washington Territory and the northern Pacific coast; and we therefore commend this memorial to your favorable consideration.

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives October 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 26, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO THE BUOYING OUT OF THE BAR AND CHANNELS OF SHOAL-WATER BAY.

*To the Honorable Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, beg leave to represent to your honorable bodies that there are vessels constantly plying between San Fran-

cisco and this bay, carrying oysters, lumber and produce, and that such vessels are liable at any time to ground on the sand bars adjacent to the channels, thereby rendering cargoes of a perishable nature liable to such delay as might result in the total loss of such cargoes.

WHEREAS, By the official survey of said bar and bay in 1855 it is shown that vessels of the largest size can enter said bay with perfect safety; therefore your memorialists respectfully and earnestly pray that your honorable bodies will immediately appropriate a sufficient sum of money to buoy out the bar and channels of said bay.

And your memorialists as in duty bound will ever pray.

Passed the House of Representatives October 26, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 28, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

ASKING AN APPROPRIATION TO ERECT A CUSTOM HOUSE AT PORT TOWNSEND,
WASHINGTON TERRITORY.

To the Honorable Senate and House of Representatives

of the United States in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, beg leave to represent to your honorable bodies, that there is no suitable available building at Port Townsend for Custom House purposes, the one now in use being unfit, and the steadily increasing commerce of the country is of sufficient proportions to warrant and demand better facilities for Custom House purposes.

We therefore respectfully petition your honorable bodies at early convenience, to make an appropriation liberal in its provision for the purpose herein specified.

Passed the House of Representatives November 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 17, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

PRAYING FOR THE RE-ESTABLISHMENT OF THE MILITARY HEADQUARTERS OF
THE DEPARTMENT OF THE COLUMBIA AT FORT VANCOUVER, W. T.

To the Honorable, the Secretary of War of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent that at a very early period, to-wit, in the year A. D. 1850, the military authorities established a military reservation at Fort Vancouver, W. T. At an expenditure of vast sums of money, large, commodious and comfortable quarters were erected for the officers and soldiers, all of which are in a good state of preservation, and are of sufficient capacity to accommodate not only the troops who may be necessary to garrison the post, but also all the officers and men attached to the headquarters of the department of the Columbia; substantial warehouses located on the bank of the Columbia river have been built, which can hold all the various stores and supplies needed in the quartermaster's and commissary's department; a large wharf has been built by the government adjacent to said storehouses, where vessels can lie in safety and have their cargoes discharged; stables and granaries and all kinds of work shops have been built and are in good condition; a bountiful sup-

ply of fresh, wholesome water can be procured for all necessary uses and to protect government property against the damages of fire; a fire engine and all the necessary apparatus has been procured and a company organized to man the same; the reservation is beautifully located on the banks of the Columbia river, readily accessible at all seasons of the year to vessels of the largest size; from this point routes converge in all directions to the different military posts of the department, and to all points of importance both in Oregon and in Washington Territory; there is daily communication by mail and express carried by steamers to Portland, Oregon, and also to Dalles city and other points east of the Cascade mountains; the Western Union Telegraph company have established an office there, having the same facilities for telegraphic communication as Portland, Oregon; all the improvements made by the government have been made with a view to permanency; the title and right of possession to the reservation is undisputed; the capacity of the post is sufficient to quarter a full regiment of troops, but at the present time and for some time past only a single company of troops are stationed there, and a large number of officer's quarters, offices, stables and sheds, store rooms and barracks are vacant and unoccupied. Until the year A. D. 1866, Fort Vancouver was used as the headquarters of the department of the Columbia; prior to that time it had been the headquarters of the district of Oregon. In the year 1866, for some reason not known to your memorialists, the General commanding the department, with his Aids-de-camp and Adjutant General, established his office at Portland, Oregon. Shortly after the Chief Quartermaster and Chief Commissary followed, and then the Medical Director and Chief Paymaster and all other officers belonging to the staff of the commanding General. For all these officers offices had to be furnished at exorbitant rents. Fuel furnished at Fort Vancouver by government contract at \$3 94 1-2 per load in coin, is commuted at Portland at the exorbitant rate of \$14 00 per cord in currency, making at least a difference of \$8 00 per-cord; civilian employees had to be paid high wages to perform services which were

rendered by soldiers on extra duty at Fort Vancouver; stables were rented at high rates, and many other expenses incurred which would have been unnecessary if the headquarters had remained at Fort Vancouver. The following is the military force now stationed at the city of Portland, to-wit: One Lieutenant-Colonel commanding the department, six Majors, two Captains and two Lieutenants, and about thirty-five enlisted men, including non-commissioned staff and band.

The committee of the Legislative Assembly to whom was referred the subject matter contained in this memorial, having investigated the facts, have reported the following summary of the additional costs incurred each month by the government in having said headquarters established in Portland, which by your memorialists are believed to be true and correct, and which sums would be saved to the government by the re-establishment of said headquarters at Fort Vancouver:

1. Rent of offices at \$3,600, coin, per annum, or \$4,800 in currency.....	\$ 400 00
2. Commutation of quarters for one Lieutenant-Colonel, per month.....	72 00
3. Commutation of quarters for six Majors, per month.....	432 00
4. Commutation of quarters for two Captains, per month.....	108 00
5. Commutation of quarters for two Lieutenants, per month.....	72 00
6. Commutation for fuel of above named commissioned officers, allowance being about forty-six cords per month, and reckoning difference of price between Portland and Vancouver at \$8 00 per cord, in currency....	368 00
7. Drayman's wages, per month.....	100 00
8. Hire of stable, per month.....	100 00
9. Commutation of forage for twenty-two horses for commissioned officers, approximated at \$16 per month for each horse.....	352 00
10. Rent of building for enlisted men, about.....	100 00

11. Extra pay of ten enlisted men, per month----- 105 00

Total per month.....\$2,204 00

There are other expenses incurred by the government which would be avoided by the re-establishment of headquarters at Fort Vancouver. Your memorialists have not sufficient data to form a correct estimate of the actual accounts, but respectfully represent to you upon information and belief, that the clerical force in the Chief Quartermaster's office could at the same time discharge the clerical duties in the Deputy Quartermaster's office at Fort Vancouver, thus saving several thousand dollars per annum to the government. All the provisions and supplies for some thirty-five enlisted men are being shipped from Fort Vancouver to Portland at a useless expense; large accounts are paid for wharfage and many other incidental expenses incurred, the details of which are not accessible to your memorialists.

And what advantage has accrued to the government by the removal of the headquarters? It is true that the pay of the officers stationed at headquarters is nearly double by way of commutation for quarters, fuel, forage, etc., and that they are enabled to live in the elegance and luxury of city life, while the people, burdened with taxation, have to pay some forty thousand dollars per annum for this privilege. But your memorialists understand the object of maintaining the military service of the country to be the protection of the government, the people and their interests, and not a system devised to increase the emoluments of its officers to the detriment of the public weal. The government does not own a foot of soil in the city of Portland, and over a million of dollars has been expended to make Fort Vancouver what it has been until 1866—the principal centre of all military operations on the Northern Pacific coast.

The people of the Territory of Washington having no vote in the halls of Congress are nevertheless required to bear the same burdens of taxation, and they have viewed with much satisfaction the efforts of the present national administration to establish economy and retrench the expenses in the different departments of the government, and therefore your memorialists being fully

satisfied that the re-establishment of said headquarters at Fort Vancouver would save at least \$40,000 per annum to the government, respectfully and earnestly hope that this memorial may receive your early consideration, and that such order be made in the premises as shall in your judgment seem best for the interest of the government.

And as in duty bound your memorialists will ever pray.

Resolved by the Council, the House concurring, That Hon. S. Garfielde, our Delegate in Congress, be and he is hereby requested to earnestly urge upon the Secretary of War the granting of the prayer of this memorial, and that certified copies of this memorial be furnished by the Secretary of the Territory to Hon. S. Garfielde and the chairman of the Committee on Military Affairs of both houses of Congress.

Passed the House of Representatives November 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 17, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO FORTIFICATIONS IN THE TERRITORY OF WASHINGTON.

*To the Honorable Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington humbly sheweth: That much capital has been invested in the lumbering, shipping and natural branches of our industry. That in case of war the lives of our people and every dollar thus invested would be at the mercy of the enemy.

That even our Territorial capitol, at Olympia, containing the archives, records and other valuables would be unprotected.

Your memorialists earnestly implore your honorable bodies to locate, build and maintain such fortifications on Puget Sound, on such points and in such manner as the War Department in its wisdom may deem proper and expedient.

Passed the House of Representatives October 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 22, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATING TO AN APPROPRIATION FOR A WAGON ROAD FROM BELLINGHAM BAY, WHATCOM COUNTY, TO SEATTLE, KING COUNTY, W. T.

*To the Honorable Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that the appropriation made by Congress some ten years ago to make a military road from Steilacoom to Bellingham bay, was insufficient for the construction of said road, and that no land communication at this time exists between Bellingham bay and Seattle. That such communication is felt to be a great public necessity, and that a good wagon road from Seattle to Bellingham bay would pass through Snohomish county and a portion of King and Whatcom counties, thus affording an easy and direct passage of immigrant wagons from Seattle to the counties below, and would greatly facilitate the settling up of those vast sections of country so rich in agricultural and mineral resources.

Your memorialists therefore pray your honorable bodies to pass an act at as early a day as may be convenient, appropriating public lands situate in any part of Washington Territory, sufficient for the completion of said military road.

Resolved by the Legislative Assembly of the Territory of Washington, That the Secretary of the Territory of Washington be and he is hereby requested to forward a copy of the foregoing memorial and this resolution to our Delegate in Congress, Hon. Selucius Garfield, who is hereby instructed to use his influence to obtain the early passage by Congress of an act in conformity with the prayer of this memorial.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 16, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

PRAYING CONGRESS FOR AN AMENDMENT TO THE GENERAL BANKRUPTCY ACT.

*To the Honorable Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of Washington Territory, respectfully pray the Congress of the United States to so amend the forty-ninth section of an act of Congress, approved March 2, 1867, entitled "an act to establish a uniform system of bankruptcy throughout the United States," as to confer and vest in the several Territorial district courts the jurisdiction, power and authority conferred by said act in case of bankruptcy in district courts of the United States, and authorizing

the appointment of a register in bankruptcy in each judicial district of the several Territories.

The present law affords no adequate remedy in cases of bankrupts residing in the Territories. The supreme court of the Territory recognizing the fact has never adopted or prescribed any rules, nor has there been a register appointed, although a number of petitions have been filed and bankrupts as well as creditors are anxiously awaiting relief from some source. The supreme court of the Territory has held that it requires the presence of at least two judges to transact any business. That tribunal meets annually at the seat of government, in Olympia, and remains in session generally about two weeks; it convenes in the month of December, a season of the year when travel from some portions of the Territory is rendered extremely difficult and attended with much hardship. At other seasons of the year the judges of said court are engaged in the discharge of their judicial duties in their respective districts, and owing to the great distance between the several seats of justice and the difficult mode of communication, it is only very seldom that a quorum of said court can assemble in any portion of the Territory for the purpose of transacting business. Therefore the general bankruptcy act is practically a nullity in the Territory.

Trusting that the subject matter of this memorial may receive your earnest attention, your memorialists as in duty bound will ever pray.

Resolved by the Council, the House concurring, That the Secretary of the Territory be and he is hereby requested to forward certified copies of this memorial to the chairman of the Judiciary committee of each house of Congress, and also to our Delegate in Congress, the Hon. S. Garfielde.

Passed the House of Representatives November 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 16, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

ASKING FOR MAIL SERVICE FROM PORT ANGELES TO NEEAH BAY.

To the Honorable Postmaster General of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent the great inconvenience and expense to which the residents of that portion of this Territory lying west of Port Angeles, and contiguous to the Straits of Juan de Fuca, comprising a distance of sixty miles, are subject for want of any mail facilities, and would respectfully recommend that proposals be solicited and contract be awarded for carrying a weekly mail over route number 15,431, from Port Angeles to Neeah bay at the next letting of mail contracts for this Territory.

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives October 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 25, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO CARRYING THE MAILS TO SAN JUAN ISLAND.

To the Honorable Secretary of War:

Your memorialists, the Council and House of Representatives of the Territory of Washington, beg leave to represent, that the mails between San Juan Island and Victoria, British Columbia, should be carried from Port Townsend, W. T., to San Juan Island; that all mail matter to said island passes through Port Townsend, thence to Victoria and thence to said island, a

distance of sixty-five miles and through a foreign port; that the distance from Port Townsend to San Juan Island is but thirty-six miles; that the mails can be carried between the latter points for less money than the former; that as it now is there is no reliable communication from any United States port to said island; that in the opinion of your memorialists such communication is imperatively required not only by the military of the United States on said island, but by hundreds of citizens of the United States residing there; that we believe a more speedy and reliable communication from Port Townsend to the island would advance the interests of the military and our citizens located thereon, pending the negotiations in regard to the sovereignty of said island, as we most respectfully represent.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 24, 1869.

WILLIAM McLANE.

President of the Council.

MEMORIAL

ASKING AN APPROPRIATION FOR CLEARING DRIFT WOOD FROM STATUKMHAMISH RIVER.

*To the Senate and House of Representatives of
the United States of America in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectively represent to your honorable bodies, that the Statukmhomish river valley is one of vast extent and fertility, but is not navigable on account of drift wood obstructions, and that the settlers on said river are not able to clear the river of obstructions at their own expense, and as a con-

sequence further settlement of this beautiful valley is greatly retarded.

Your memorialists therefore earnestly pray your honorable bodies to make an appropriation of eight thousand dollars to be used in removing the obstructions referred to.

As in justice your memorialists will continue to pray.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 23, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

PRAYING FOR MAIL SERVICE FROM PORT TOWNSEND TO COVELAND, VIA
EBEY'S LANDING.

To the Honorable Post Master General of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that under contract No. 15,412, from Seattle to Whatcom, it takes one week for a letter to go from Teekalet, Port Ludlow and Port Townsend to Coveland. Your memorialists would therefore respectfully pray that a semi-weekly route from Port Townsend to Coveland via Ebey's Landing be established, connecting with the mail between Olympia and Port Townsend, for the following reasons:

1. There is a daily communication between Port Townsend and Teekalet and Port Ludlow.
2. The distance between Port Townsend and Ebey's Landing is seven miles by water; from Ebey's Landing to Coveland, three miles by land, making the distance ten miles.

Your memorialists would further state, that by the route

asked for, some five hundred persons would be accommodated with more speedy and certain mail facilities.

We would therefore respectfully pray that a route be established between the above named places, and that proposals for carrying the mail be advertised for said service to commence on July 1, 1870; and as in duty bound, your memorialists will ever pray.

Passed the House of Representatives October 25, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 26, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO A NAVAL ARSENAL AND DRY DOCK IN THE TERRITORY OF WASHINGTON.

*To the Senate and House of Representatives of the
United States of America in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, humbly sheweth that by the accession of Alaska, Puget Sound has become the central entrepot of the North Pacific coast; that the lands bordering on our waters abound with inexhaustible beds of superior coal, quarries of stone and excellent timber for ship building.

Your memorialists therefore earnestly pray your honorable bodies to appropriate such sums of money and take such needed steps as may locate, build and maintain a Naval Arsenal on Puget Sound, in Washington Territory.

Your memorialists also pray your honorable bodies to appropriate such sums of money as may be needed to locate, build and

maintain a dry dock on Puget Sound, not only for the use of naval vessels, but also for the accommodation of our merchant fleet.

Passed the House of Representatives October 21, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 22, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO LIGHT HOUSES IN WASHINGTON TERRITORY.

*To the Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, humbly sheweth, that the commerce of our Territory will be greatly facilitated by the erection and maintenance of a light house on the following headlands, viz:

On "Point-no-Point," on the western shore of Admiralty Inlet.

On "Alki Point," on the eastern shore of Admiralty Inlet.

On "Point Defiance," at the entrance of Puget Sound.

Passed the House of Representatives October 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 22, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

ASKING CONGRESS TO ALLOW SETTLERS ON UNSURVEYED LANDS TO APPLY THEIR TERMS OF RESIDENCE PREVIOUS TO A SURVEY. TO THE PERFECTION OF THEIR HOMESTEAD RIGHTS.

*To the Honorable Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that a large number of our citizens reside upon unsurveyed lands; that owing to the inadequate price paid by the government for surveying the public lands, they are likely still to be compelled to continue the possession of their improvements without a title, and we deem it but just to settlers in the Territory so situated, that when the land is surveyed and made liable to homestead entry, that the time they have actually resided on their claims previous to the survey of their lands should be applicable upon the term required by law to perfect their homestead rights.

Passed the House of Representatives December 2, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 2, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

TO SECRETARY OF TREASURY AS TO PAY OF THE PRESENT LEGISLATIVE ASSEMBLY.

TO THE HON. GEORGE S. BOUTWELL,

Secretary of the Treasury of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington now in session at Olympia, respectfully represent, that there are no funds in the hands of the Secretary of the Ter-

ritory to pay them their travel and allowance at this session; that many of the members have come a long distance and with but limited means; that unless the appropriation made by Congress for the session of December, 1869, is made available for the present session, they will be forced to sell their certificates at a large discount, and suffer many inconveniences. We therefore earnestly pray that you will be pleased to order the transfer of that appropriation to the credit of the Secretary of the Territory, that it can be made available as part payment to the members for their services at the present session.

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives October 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 20, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO ANNEXATION OF BRITISH COLUMBIA.

To his Excellency the President of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully call attention to a memorial of the citizens of Vancouver Island and British Columbia in reference to the annexation of said territory to the United States.

Your memorialists regard the movement of vital importance to this coast, as well as that of the government itself. Its maritime, commercial and political importance is invaluable, possessing as it does vast mineral resources, coal for steam purposes, agricultural advantages, as well as inexhaustible forests of tim-

ber. Victoria harbor would furnish a convenient seaport to all vessels bound to our northern possessions, as well as to our naval fleet visiting these waters, and possesses advantages as a whaling station.

For these and many other reasons we would urgently request your Excellency to take such steps as will bring about a speedy acquisition of said territory at an early day.

Passed the House of Representatives November 23, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 23, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

IN RELATION TO THE "DEFERRED TENTH AUGUST, 1857, CLAIMS."

*To the Honorable Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectively represent to your honorable body, that great injustice has been done to the people of this Territory in the delay of payment of the just claims of our citizens growing out of the Indian war of 1855 and 1856, in our midst. The people of this Territory and the then Territory of Oregon aided in every manner possible the prosecution of the war to a successful termination; they delivered up their property in many instances at its coin value at the call of the government, and received in return, in a depreciated currency, one-third the appraised value, and in some instances one-half, and that, too, uncomplainingly, because they knew that the institutions of the

country, in order to their preservation, frequently require personal sacrifice on the part of the good, law-loving and law-abiding citizens.

Your memorialists further represent that a certain class of claims growing out of the said war, known as the "deferred 10th of August, 1857, claims," have as yet received but little notice; that the same have not been audited. Your memorialists think that a period of twelve years and over is a sufficiently long time to wait for the payment of any meritorious demand or just claim, and therefore pray your honorable body to pass such acts or make such orders in relation to said "deferred 10th August, 1857, claims" as will insure the auditing and payment of the same at an early day, or their prompt rejection.

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives November 29, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 25, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATING TO THE INCREASE OF MAIL SERVICE FROM THE CITY OF WALLA WALLA, W. T., TO THE CITY OF LEWISTON, I. T.

*To the Senate and House of Representatives of
the United States of America in Congress assembled:*

The Legislative Assembly of the Territory of Washington represent, that estimating from 1863 up to this time the permanent population, wealth, trade, travel and mail matter has quadrupled north-east of the city of Walla Wall along the present mail route to Lewiston, embracing Waitsburg, Milton Mills and the flourishing and rapidly increasing settlements on the Touchet,

Toucanon, Pataha, Alpowa. That north-east of Lewiston there are the cities of Oro Fino, Warren's Diggings, Elk city, Moose creek, Florence city, and many mining camps solely dependent on said mail service for their mail matter. Your memorialists further represent, that in all the last aforesaid country the permanent population, wealth, trade, travel and mail matter has increased more rapidly than that between Walla Walla and Lewiston, and yet the mail service by which said sections of country alone is supplied with mail matter and the travel is accommodated, remains the same as in 1863.

Therefore, your memorialists, the Legislative Assembly of the Territory of Washington, do respectfully pray your honorable body to pass an act to increase the mail service on said mail route from weekly to tri-weekly mail service, and that the same be immediately done.

And your memorialists as in duty bound will ever pray.

Passed the House of Representatives October 19, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 21, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO MAIL SERVICE FROM OLYMPIA TO KAMILCHIE.

To the Honorable Post Master General of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that mail services having been discontinued on that part of mail route No. 15,402 running from Olympia to Kamilchie, a distance of twenty miles, the mail having been carried on said route about six

years previous to the time of discontinuance, leaving the inhabitants without mail facilities for the last eighteen months.

Your memorialists would further state that the steady increase of inhabitants, now about sixty in number, demand mail services on said route, being wholly without mail facilities, the nearest post office being sixteen miles distant. Your memorialists therefore pray services may be placed on said route at as early a day as practicable; and as in duty bound your memorialists will ever pray.

Passed the House of Representatives November 22, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 22, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATING TO THE ESTABLISHMENT OF A LAND OFFICE AT WALLA WALLA CITY, W. T.

*To the Honorable Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent that the establishment of a land office at the city of Walla Walla, Washington Territory, is a matter of vital importance and pressing necessity to all the people of Washington Territory who reside east of the Cascade mountains, and that Congress in justice and right ought immediately to act in this matter, for the following reasons, to-wit: The only land office at which these people can enter their homestead and pre-emption land claims is at Vancouver, west of said Cascade mountains, and about two hundred and fifty

miles distant from Walla Walla. The most of the homestead claimants have yet to make their final homestead proof; and the same is true of the pre-emption land claimants. There are in the counties of Klickitat, Yakima, Walla Walla and Stevens no less than two thousand homestead and pre-emption claimants, who, if a land office be not established at Walla Walla city, will be compelled to go to Vancouver to make final proof and enter their lands, at an average actual outlay of coin for traveling expenses of one hundred and fifty dollars, while the government receives of the homestead settler, in all, twenty-two dollars legal tenders, for one hundred and sixty acres, and from the pre-emptionist, two hundred dollars currency. Again, in Eastern Washington Territory not one fifteenth part of the fertile and arable land has been surveyed or settled, and it is hard indeed to draw from the agriculturist of that section of Washington Territory such an immense amount of money as will under the present land office arrangement, be inevitable. All this, besides much valuable time to said people, may be saved by the establishment of a land office at the city of Walla Walla, W. T., at the cost of less than two thousand dollars per annum to the general government.

In view of the foregoing and of many other facts bearing on this question, which we cannot embrace in this memorial, we, the Representatives and Councilmen of Washington Territory, in our capacity assembled as law-makers, do earnestly request and pray you to pass an act establishing at once a land office at said city.

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives October 22, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 25, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATIVE TO THE NORTHERN PACIFIC RAILROAD.

*To the Honorable Senate and House of Representatives
of the United States in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that

WHEREAS, The general government has fully and wisely committed itself to the policy of extending, with judicious discrimination, direct and substantial aid in the construction of great highways of trade and travel within its territorial boundaries; and

WHEREAS, The Northern Railroad, incorporated by act of Congress approved July 2, A. D. 1864, to be constructed near the forty-sixth parallel of latitude, connecting Puget Sound and the Columbia river with the great basin of the St. Lawrence, which together furnish a navigable water line stretching half way across the continent; and

WHEREAS, Looking at the short distance across the Atlantic from commercial Europe to the mouth of the river St. Lawrence, and the great wants of trade of the east; at the great centres of trade, American and English, that environ the St. Lawrence, the lakes and their tributaries; at the comparative short distance of the route from the head waters of lake Superior to Puget Sound; at the verging sweep of the coasts of America and Asia, thereby diminishing the distance from land to land; looking also at the character of the route, well watered and timbered, with abundance of coal, and capable of sustaining an almost uninterrupted broad belt of population across the continent on either side of the road; and

WHEREAS, This road presents a direct, feasible and eligible route across the continent which will open the Territories of Dacotah, Montana, Idaho, Oregon and Washington, to civilization,

settlement and commerce, and stimulate the development of their great agricultural and mineral resources, and which will invite the commerce of Japan and China to our Pacific coast and across the continent, thereby increasing the national wealth and revenue, and promoting our foreign and domestic trade and the general industry of our people; and

WHEREAS, Washington Territory, from her geographical position and the character of her great and varied natural resources, is deeply and especially interested in the promotion of the prosperity and the development of the resources of the North West.

Therefore in view of these facts, your memorialists would regard the construction of the North Pacific Railroad as a work of great national importance, alike demanded by the commercial necessities of the American people and the never-ceasing wants of trade for shorter, quicker and cheaper routes of trade and travel between Western Europe and Eastern Asia.

And your memorialists most respectfully but earnestly ask your honorable bodies to pass an act granting assistance to the Northern Pacific Railroad equal to that of the most favored route, or such assistance as will secure its early construction and completion.

And for this your memorialists, as in duty bound, will humbly and unceasingly pray.

Passed the House of Representatives November 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 22, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

ASKING A GRANT OF GOVERNMENT BUILDINGS AND GROUNDS AT FORT STEILACOOM.

*To the Senate and House of Representatives of
the United States of America in Congress assembled:*

Your memorialists, the Legislative Assembly of Washington Territory, do most earnestly and respectfully represent, that the means now at the command of the people of this Territory are wholly inadequate to erect or provide a suitable asylum for the insane; that the present revenues of the Territory are barely sufficient to pay for the administration of justice, the keeping of the insane, and other kindred subjects.

Your memorialists would further state that the government grounds and buildings at Fort Steilacoom have recently been abandoned by the War Department as no longer needed for military purposes, and have been offered for sale. Your memorialists believe that if the buildings should be sold without the land, (as has been proposed,) they will bring a merely nominal sum, as they are of but little value for removal. That said buildings are admirably adapted for an insane asylum, and their situation and surroundings all that could be desired for the object in view, and that if granted to the Territory they would enable it in a few years to provide a pleasant and desirable home for the insane and relieve it from its present embarrassment.

Wherefore your memorialists pray that the military reserve land at Fort Steilacoom, with the garden reserve, consisting in all of seven hundred and twenty-eight acres of land, together with the government buildings situated thereon, be granted to the Territory of Washington, to be used and held by the said Territory for the purpose of an insane asylum, and for such other purposes as they may desire to apply the same.

Be it resolved by the Legislative Assembly of the Territory of Washington, That the Territorial Secretary be requested to forward forthwith to our Delegate in Congress, the Hon. S. Garfield, a copy of the memorial relative to the government build-

ings at Fort Steilacoom, and that he be requested also to forward a copy of the same to the Secretary of the War Department.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

RELATING TO AN APPROPRIATION FOR A WAGON ROAD FROM SEATTLE ON PUGET SOUND, W. T., TO UMATILLA, IN THE STATE OF OREGON.

*To the Senate and House of Representatives of the
United States of America in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent to your honorable bodies, that the citizens of King county have expended (including the Territorial appropriations,) thirteen thousand dollars in opening a wagon road from Seattle, via the Snoqualmie Pass in the Cascade mountains, to the open country east of said mountains; that said sum was wholly insufficient to build a road suitable for wagons, teams, etc.; that it is now almost impassible by reason of its incompleteness, and will soon become entirely so unless a large sum of money be expended in a partial relocation and a thorough working of said road.

The construction of a good wagon road over the route herein proposed is a matter of great importance to the people of Washington Territory, would be used by thousands of persons anxious to make their homes here, and afford facilities for the government to the transportation of Indian and military supplies.

The early and thorough completion of this road would insure the early settlement of the extensive and fertile valleys of the Yakima and Kitetass, and furnish the settlers a near and easy route for the transportation of their supplies, and a ready market for their products, agricultural and mineral.

The interests of the different places on the Sound require better mail facilities; a daily line of stages carrying the mail now runs from Umatilla, in Oregon, through Idaho, to Indian Creek Station, on the Union Pacific Railroad, and a daily mail from Umatilla to Seattle is greatly needed.

Your memorialists therefore pray your honorable bodies to pass an act at earliest convenience, appropriating public lands in any part of the Territory sufficient for the completion of said wagon road.

And your memorialists as in duty bound will ever pray.

Be it resolved by the Legislative Assembly of the Territory of Washington, That the Secretary of the Territory be and he hereby is requested to forward a copy of the foregoing memorial and this resolution to the Hon. Selucius Garfiede, our Delegate in Congress, who is hereby instructed to use his influence for the early passage of an act in conformity with this memorial.

Passed the House of Representatives November 16, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 22, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

TO HAVE THE STEAMER CARRYING THE U. S. MAILS ON ROUTE NUMBER 15,406, BETWEEN OLYMPIA, W. T., AND VICTORIA, V. I., CALL AT THE TOWN OF TACOMA.

To the Honorable Postmaster General of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, respectfully represent, that the United States mail is now carried on route number 15,406 by steamer, and that the town of Tacoma is but four miles from the present traveled route by said steamer on her way from Steilacoom city to Seattle. Your memorialists would state from the shortness of the distance and small increase of travel to connect the town of Tacoma with route number 15,406; the growing demand for this mail service, the increase of commercial business, the growth of population, its many buildings which are being daily erected as dwellings for its inhabitants, and business houses for its merchants and mechanics, its growing and steady increase in trade and in commerce, its growing importance in the development of the Territory.

Your memorialists would further represent, that the town of Tacoma has now in full operation one of the largest and finest manufacturing saw mills in Washington Territory, and said mill will require one hundred men to keep it to work at its full capacity in manufacturing lumber.

Your memorialists would further represent that there is now being established at the town of Tacoma a large ship yard for the building and repairing of ships.

Your memorialists would further represent, that the town of Tacoma is situated four miles from Point Defiance up Commencement or Puyallup bay near the mouth of the Puyallup river, and is the trading point for the settlers on that large, growing and rich valley on said river, and to show the importance of the town of Tacoma, we would state that a steamer is now running to this point semi-weekly.

And your memorialists would further represent, that in the

advertisements now published for bids to carry the United States mails in Washington Territory on route number 15,406, to commence July, 1870, this important and growing town of Tacoma has been left out or omitted in said advertisement, and your memorialists would ask that you include the town of Tacoma in letting the contract to carry the United States mail on route number 15,406.

And your memorialists would ask that if an increase of mail service is put on this route, number 15,406, between Olympia and Port Townsend, by semi-weekly trips, we pray that the town of Tacoma be included in said increase service.

And your memorialists as in duty bound will ever pray.

Passed the House of Representatives November 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 20, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

PRAYING A CHANGE IN CARRYING THE MAILS ON ROUTE NO. 15,424 FROM
WALLA WALLA TO FORT COLVILLE, W. T.

To the Honorable Post Master General of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, respectfully represent, that in the year 1860, the Post Office Department established route No. 15,424 for the transportation of mails from Walla Walla to Fort Colville, in Stevens county, W. T.; that the mails have been carried upon the route as then established until the fall of 1867; that since the date last aforesaid, the mails have been carried on said route

No. 15,424, via Waitsburg and Tucanon, in Walla Walla county, thence via Upper Spokane bridge to Fort Colville, in Stevens county, W. T.

Your memorialsts further represent, that Waitsbug, Tucanon and other offices are directly on route No. 15,424, from Walla Walla, W. T., to Lewiston, I. T., and can be supplied with all necessary mail facilities by said route without any additional expense to the government.

Your memorialists further represent, that as at present arranged the mails are carried on said route, in order to reach Fort Colville, a distance of 285 miles, making the schedule time, on the trip, of 12 days; but that mail matter is frequently delayed for four weeks, to the great detriment and inconvenience of many citizens. Your memorialists show that the said route No. 15,424 can be materially shortened and afford better mail facilities and accommodations by having the mails carried thereon as formerly when the route was first established, to-wit: Leaving Walla Walla, passing thence via Palouse ferry on Snake river, Cow creek, Big lake, Lower Spokane bridge to Fort Colville, in Stevens county, W. T., a distance of 210 miles.

Your memorialists therefore pray that the change herein indicated may be made at as early a day as practicable.

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives October 20, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council October 22, 1869.

WILLIAM McLANE,

President of the Council.

MEMORIAL

ASKING FOR THE ESTABLISHMENT OF A MAIL ROUTE FROM ROCKLAND TO KEMBERLAN'S RANCHO, IN KLICKITAT COUNTY, AND MAIL SERVICE FROM SEATTLE TO UMATILLA.

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, that there is no mail service performed in or through the counties of Klickitat and Yakima in this Territory, and that the fertility of the soil, salubrity of the climate and other natural advantages are inviting a rapid settlement of said counties by a class of intelligent and enterprising citizens who require mail facilities. Mail matter for the last two years has been obtained by the citizens of Yakima valley at an average cost of over twenty-five dollars per annum to each man or family. We therefore earnestly solicit the establishment of mail service from Seattle to Umatilla, and the establishment of mail route and service from Rockland via Columbus to Kimberlan's Rancho, in Klickitat county; and your memorialists will ever pray, &c.

Resolved, That the Secretary of the Territory be respectfully requested to transmit copies of the foregoing memorial to the Post Master General, the Postal Agent of the district embracing this Territory, and to our Delegate in Congress.

Passed the House of Representatives November 23, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council November 23, 1869.

WILLIAM McLANE,

President of the Council.

LIST

OF THE

STATUTES OF A GENERAL NATURE,

PASSED SESSION 1869.

	<i>Page.</i>
CIVIL PRACTICE. An act to regulate the practice and proceedings in civil actions.....	3
COUNTY AND TERRITORIAL REVENUE. An act to provide for the assessing and collecting county and Territorial revenue, approved Dec. 2, 1869.....	176
An act to amend an act entitled "an act to provide for the assessing and collecting Territorial and county revenue," approved Jan. 1867,".....	358.
<i>Nota.</i> The last act obsolete, its provisions being found in act approved December 2, 1869, <i>vide</i> Sec. 32, p. 185.	
CRIMINAL PRACTICE. An act relative to crimes and punishments and proceedings in criminal cases.....	198
ROADS, FERRIES, BRIDGES, &c. An act in relation to roads, ferries, bridges and travel on public highways,.....	266
COUNTIES AND COUNTY LINES. An act defining county lines in Washington Territory.....	291
SETTLEMENT OF INTESTATE'S ESTATES. An act authorizing the settlement of estates of persons dying intestate, without administration.....	298
COUNTY COMMISSIONERS. An act to provide for the election of county commissioners and defining their duties.....	303
COUNTY AUDITOR. An act in relation to county auditor.....	310
DISTRIBUTION OF LAWS. An act to provide for the distribution of the laws and journals of the Legislative Assembly.....	316
HUSBAND AND WIFE. An act defining the rights of husband and wife.....	318

	<i>Page.</i>
FENCES. An act concerning fences.....	323
JOINT CONVENTIONS. An act providing for the holding of joint convention to elect Territorial officers.....	327
AGRICULTURAL AND MECHANICAL FAIRS. An act for the benefit of agricultural and mechanical fairs.....	328
TERMS OF COURT. An act to regulate the times of holding supreme court and the several district courts in the Territory of Washington.....	329
An act to fix the time of holding certain terms of certain district courts of the Territory of Washington, (obsolete).....	389
An act to repeal section second of an act entitled "an act to fix the time of holding certain terms of certain district courts of the Territory of Washington, approved Oct. 16, 1869," (obsolete).....	383
CORPORATIONS. An act to provide for the formation of corporations.....	330
CHINESE, MONGOLIAN AND KANAKA POLICE TAX. An act to repeal all police tax laws discriminating against Chinese, Mongolians and Kanakas.....	351
SALMON, <i>Inspecting and packing of</i> . An act relative to the inspecting and packing of salmon.....	352
WEIGHTS AND MEASURES, <i>Uniform Standard of</i> . An act establishing a uniform standard of weights and measures, and to create the office of sealer thereof.....	353
ADMISSION AS A STATE. An act submitting to the voters of Washington Territory at the next general election a proposition for calling a convention to frame a State constitution and to apply for admission of the State of Washington into the Union....	354
DOMESTIC ANIMALS AND SHEEP. An act to repeal an act for the protection of sheep and other domestic animals, approved January 29, 1868.....	356
INSANE ASYLUM. An act to authorize the purchase of the government buildings at Fort Steilacoom for an insane asylum.....	356
PENITENTIARY. An act to locate the site for the penitentiary, and appropriate money to defray expenses thereof.....	358
GLANDERS. An act to prevent the introduction and spread of a disease known as the glanders.....	360
HOGS. An act to prevent hogs trespassing in certain counties.....	362
FEEES AND COSTS. An act to regulate fees and costs.....	364
NOTARIES PUBLIC. An act in relation to notaries public.....	375
INFECTIOUS DISEASES AMONG ANIMALS. An act to prevent the spread of contagious or infectious diseases among domestic animals.....	377

	<i>Page.</i>
OATHS AND AFFIRMATIONS. An act in relation to oaths and affirmations.....	378
LIMITED PARTNERSHIPS. An act to authorize the formation of limited partnerships.....	380
LIBEL. An act defining libel and providing for the punishment thereof.....	383
CLAPBOARDS OR SHAKES. An act to repeal an act entitled "an act to establish a standard for the measurement of clapboards or shakes".....	385
ASSIGNMENT OF JUDGES. An act assigning the judges to the several districts in the Territory.....	385
QUARTZ MINING CLAIMS. An act in relation to quartz mining claims.....	386
PIERCE COUNTY. An act for the relief of Pierce county.....	388
SURVEY OF LUMBER. An act to regulate the measurement and survey of lumber in the log, and fix the compensation therefor....	391
QUARANTINE. An act in relation to the quarantine of vessels....	394
GAME. An act for the preservation of game.....	399
DANGEROUS AND VICIOUS CATTLE. An act to provide against dangerous and vicious cattle.....	400
LEASING OF SCHOOL LANDS. An act to provide for the leasing of school land of Washington Territory.....	401
COUNTY ASSESSORS. An act relating to county assessors.....	402
TEXAS CATTLE. An act to prevent the introduction of Texas cattle, or cattle infected with Texas cattle disease or Spanish fever, into the Territory of Washington.....	404
EDUCATION OF ORPHANS. An act to secure to orphans and certain other children in the Territory of Washington a common school education.....	406
TERRITORIAL WARRANTS. An act in relation to Territorial warrants.....	408
STOCK RAISERS. An act for the protection of stock raisers.....	408
TOWN PLATS. An act relative to the vacation of town plats.....	409
REGISTRY OF COUNTY ORDERS. An act to enable counties to obtain a registry of outstanding county orders when said registry is lost.....	411
U. S. COAST SURVEY SIGNALS. An act authorizing United States coast survey parties to enter upon lands in Washington Territory, to erect signals, etc., and to prevent the injury of said signals.....	413
SPECIFIC CONTRACT LAW. An act to enforce judgments upon contracts according to their true intent and meaning.....	416

	<i>Page.</i>
COSTS. An act to establish the amount and provide for the payment of costs in certain cases.....	418
QUARTERMASTER GENERAL. An act to provide for compensation for the Quartermaster General of Washington Territory.....	421
ERRATUM. On page 390, the times for the passage and approval of an act entitled "an act to fix the time of holding certain terms of certain district courts of the Territory of Washington," are published in foregoing laws as having occurred in "November." The bill passed both houses in October, and was approved October 16, 1869, instead of "November" 26, 1869.	

INDEX.

INDEX

TO THE

FOREGOING GENERAL STATUTES.

| *The first column of figures refers to the page, the second to the section.* |

A

	<i>Page.</i>	<i>Sec.</i>
ABATEMENT—		
death, marriage or other disability, nor transfer of interest.		
no cause of.....	6	17
successor in interest may maintain action within one year	<i>ib.</i>	<i>ib.</i>
action for personal injury survives to wife and children..	<i>ib.</i>	18
of nuisance, mode of proceeding.....	145	561
ABETTOR—		
in duel, actions for damages against, in favor of widow of		
the slain.....	4	8
in kidnapping, how punished.....	204	37
ABORTION—		
defined and punishment prescribed.....	205	40
ABSENCE—		
from Territory deducted in period of limitation of actions	10	37
of witnesses, motion to continue trial.....	50	209
of witness not indorsed on indictment; Territory cannot		
continue trial.....	249	225
ACCESSARY—		
before the fact and principal, distinction abrogated.....	229	134
after the fact, who deemed and punishment.....	229	136

ACCESSARY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
after the fact, punishable regardless of conviction of principal	229	136
ACCOUNT—		
limitation of action upon	10	33
mutual, when limitation begins to run	<i>ib.</i>	<i>ib.</i>
when mutual, ceases to be current	<i>ib.</i>	<i>ib.</i>
items of, need not be set forth in pleading	24	91
must be filed if demand be made	<i>ib.</i>	<i>ib.</i>
effect of failing to furnish copy to adverse party	<i>ib.</i>	<i>ib.</i>
court may require further	<i>ib.</i>	<i>ib.</i>
examination of, may be submitted to referee	61	253
court may order referee to take and report	<i>ib.</i>	<i>ib.</i>
debts due upon, taxable as personal property	176	3
of sheriff, acting as tax collector, what shall contain	188	
of agent appointed by Governor to demand a fugitive from justice payable by Territory	233	152
of supervisor of roads, what shall contain and settlement	278	33
against estate of intestate, settled without administration	300	6
against county, to be audited by county commissioners	305	11
against county, to be kept by clerk of county board, and open to public inspection	305	13
of receipts and expenditures of county, to be published when	306	16
against county to be audited by county auditor	310	5
current, to be kept by county auditor with county treasurer	311	6
annual exhibit made by county auditor, when and what	311	
of county warrants issued	312	
of incorporation to build road, &c., annual to be filed in county auditor's office	347	15
settlement of, of county officers by auditor; fee prescribed	369	3
of lumber, logs or timber measured by surveyor general, to be recorded	392	6
deputy surveyors of logs, &c., to keep, and report quarterly	392	7
of lumber surveyed, to be reported to Governor semi-annually	394	13
ACCUSED—		
rights of	198	
shall not be held to answer alleged crime or offense, except	<i>ib.</i>	1
shall have the right to be heard by self and counsel	<i>ib.</i>	2

INDEX.

569

ACCUSED—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
right to confront and produce witnesses.....	198	2
shall have compulsory process for witnesses.....	<i>ibid</i>	
to have a speedy public trial by impartial jury.....	<i>ibid</i>	
shall not be convicted unless upon confession or verdict.....	198	3
shall not be held to answer twice for same offense.....	<i>ib.</i>	4
when may be tried on new indictment.....	199	5
shall not be punished until legally convicted.....	<i>ib.</i>	6
shall be tried at next term after imprisoned.....	<i>ib.</i>	7
when may be bailed on own recognizance.....	<i>ibid</i>	
shall be discharged if not indicted, except.....	<i>ibid</i>	
entitled to bail, except for murder in the first degree....	297	8
indicted, shall be admitted to bail, when.....	<i>ibid</i>	
extradition of, may be demanded of Governors of other Territories or States.....	233	152
of offenses committed in other States and territory, sur- render of.....	234	
form of indictment.....	240	183
indictment must be direct and certain as to.....	241	184
ACKNOWLEDGMENT—		
to take case out of statute of limitations must be in writing.....	11	45
by wife, to mortgage of homestead exempted.....	86	340
to release, by tenant for life or years, of proceeds of sale of real property in suits of partition.....	139	535
county auditor authorized to take.....	312	11
to inventory of separate estate of married woman.....	319	3
of marriage contracts.....	321	
of instruments affecting estate of married woman.....	322	
of articles of incorporation.....	330	2
notary public authorized to take, and fee.....	375	2
of articles of limited partnership.....	380	
ACQUITTAL—		
may be pleaded in bar of second trial.....	198	4
on ground of variance, not a bar to new indictment....	198	5
indictments against several, any one or more may be con- victed or acquitted.....	243	200
in indictments for offenses consisting of degrees.....	251	253
of prisoner, discharges all liability for costs.....	265	315
of party charged with having a horse with glanders, com- plaining party to pay costs.....	361	2

ACTIONS, CIVIL—

	<i>Page.</i>	<i>Sec.</i>
common law forms abolished.....	3	2
to enforce private rights, but one form called civil action.	<i>ib.</i>	<i>ib.</i>
parties to, how designated.....	<i>ib.</i>	3
to be prosecuted in name of party in interest.....	<i>ib.</i>	4
brought by assignee, same defense as between original parties.....	4	<i>ib.</i>
except assignee of negotiable notes before maturity.....	<i>ib.</i>	<i>ib.</i>
by executors, trustees, etc., beneficiary need not be joined when married woman is a party, when husband must be joined.....	<i>ib.</i>	6
when married woman may sue alone.....	<i>ib.</i>	6
for injuries to person, character or property of husband and wife, either or both.....	<i>ib.</i>	7
by widow or children of party killed in duel.....	<i>ib.</i>	8
for injury or death of child or ward.....	<i>ib.</i>	<i>ib.</i>
for seduction of daughter or ward by parent or guardian	<i>ib.</i>	10
for seduction of unmarried female, in her own name.....	5	11
by defendants, appointment of guardians <i>ad litem</i>	5	
all parties in interest must be joined.....	<i>ib.</i>	14
when one may sue or defend for a number.....	<i>ib.</i>	15
against persons severally liable.....	6	16
shall not abate, if cause survive.....	6	17
for personal injury, survives to wife, &c., when.....	6	18
for recovery of purchase money, and specific performance of contract.....	6	19
bringing in of new parties by court, when.....	6	20
when new parties introduced, requisites of notice.....	6	21
substitution of third person for defendant, when.....	7	22
intervention by new party, on his petition.....	7	
<i>Time of commencement of, or limitation of—</i>		
general provisions concerning.....	8	25
statute of limitations to be pleaded by answer.....	<i>ibid</i>	
for the recovery of real property or possession thereof...	8	26
upon a judgment or decree.....	8	27
upon a contract in writing or written instrument.....	8	27
for rents and profits of use of real estate.....	8	27
of waste or trespass on real property.....	8	28
for taking, detaining or injuring personal property.....	8	28
for specific recovery of personal property.....	8	28
for injury to the person or rights not otherwise provided for.....	8	28

INDEX.

571

ACTIONS, CIVIL—(Continued.)	Page.	Sec.
upon a parol contract or liability.....	9	28
for relief against fraud.....	9	28
against sheriff or officer for malfeasance or misfeasance, except escape.....	9	28
against sheriff for failure to pay money collected on execution.....	9	28
upon statutory penalty or forfeiture to party aggrieved..	9	28
for seduction and breach of marriage promise.....	9	28
for libel, slander, assault, assault and battery and false imprisonment.....	9	29
for statutory penalty or forfeiture to Territory.....	9	29
against sheriff or officer for escape.....	9	30
for penalty by private prosecutor.....	9	31
for penalty to Territory brought by prosecuting attorney	9	31
for other relief not specially provided for.....	9	32
upon mutual and current account.....	10	33
same limitation extended to Territory, county or public corporation.....	<i>ib.</i>	34
when deemed as commenced.....	<i>ib.</i>	35
attempt to commence, defined.....	<i>ib.</i>	36
where party is absent or concealed.....	<i>ib.</i>	37
exceptions as to parties laboring under disabilities.....	<i>ib.</i>	38
survivorship of, in case of death of party.....	11	39
by alien enemy, continuance of war to be deducted.....	11	40
stay by injunction or prohibition, not included in time..	<i>ib.</i>	41
where judgment is reversed in court of error or appeal..	11	42
disability must exist, when cause of action accrues.....	<i>ib.</i>	43
all disabilities must be removed before limitation runs...	<i>ib.</i>	44
new promise must be in writing to take case out of statute	12	45
date of last payment, time when statute begins to run...	<i>ib.</i>	46
if barred in State or Territory where cause accrued, cannot be maintained.....	12	47
for recovery of lands sold for taxes.....	195	71
<i>Venue of—</i>		
when shall be commenced, where subject of is situated..	12	48
when to be tried, where the cause of, arose.....	<i>ib.</i>	49
against a corporation.....	13	50
when in the district where defendant is served.....	<i>ib.</i>	51
against non-residents, plaintiff may designate district....	<i>ib.</i>	<i>ib.</i>
<i>Change of venue—</i>		
when the court or judge may order.....	13	52

ACTIONS, CIVIL—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
when new county has been created.....	14	54
costs of such change.....	15	56
order may be vacated when, and no other allowed.....	<i>ib.</i>	57
when the change shall be deemed complete.....	15	58
<i>Manner of commencement—</i>		
defendant to be served with copy of complaint and notice clerk to file complaints on date received by him.....	<i>ib.</i>	59 60
what causes shall be heard.....	16	<i>ib.</i>
requisites of service of notice.....	<i>ib.</i>	
when publication may be resorted to.....	17	63
service by publication defined.....	<i>ib.</i>	64
form of notice by publication.....	18	66
where service is had on one or more defendants, jointly, or jointly and severally liable.....	<i>ib.</i>	67
service, how proven.....	19	68
court acquires jurisdiction from time complaint is filed..	<i>ib.</i>	69
effect of voluntary appearance.....	<i>ib.</i>	70
<i>Pleadings in—</i>		
forms of abolished, and this code to be rule to judge suf- ficiency of.....	19	71
on the part of plaintiff.....	20	72
of the complaint.....	<i>ib.</i>	
of demurrer by defendant.....	<i>ib.</i>	
of the answer.....	20, 21	
of counter-claim and set-off.....	21	
of amendment of complaint, service of and answer....	20	78
striking out sham and irrelevant pleadings.....	21	
verification of.....	23	
general rules of.....	24	91
on instrument of writing or items of account.....	<i>ib.</i>	92
construction of.....	<i>ib.</i>	<i>ib.</i>
striking out irrelevant and redundant matter, and making certain.....	<i>ibid</i>	
judgment of court of special jurisdiction.....	24	94
conditions precedent.....	<i>ib.</i>	95
private statute or right derived therefrom.....	25	96
libel and slander.....	<i>ib.</i>	
for recovery of possession of distrained property.....	<i>ib.</i>	99
several causes may be united in complaint, when.....	<i>ib.</i>	100
material allegations undenied, effect of.....	26	101
material allegation defined.....	<i>ib.</i>	102

ACTIONS, CIVIL.—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
mistakes in and amendments, and herein of variance	26, 27	
not verified or subscribed may be stricken out	27	109
where plaintiff ignorant of defendant's name	28	110
errors and defects disregarded, not affecting substantial rights of adverse party	<i>ib.</i>	111
supplemental, allowed by court	29	112
<i>Provisional remedies—</i>		
defendant may be arrested, when	28	113
claim to recover personal property	35	140
when injunction or restraining order may be granted	38	157
when property may be attached	41	172
when receiver may be appointed and herein of deposits in court	48	196
<i>Issues and trial of—</i>		
issues, how arise and kinds of	49, 50	
trial of	50	208
continuance of cause for absence of witness	50	209
formation of trial jury and challenge	51	210
mode of trial	54	225
verdict	58	240
trial by the court	60	
trial by referees	61	
arbitration and award	64	
new trial	67	
submitted cases	73	
<i>Judgment in—</i>		
definition of and when may be given	69	
of non-suit	<i>ib.</i>	
on failure to answer	70	
by confession	72	
mode of taking and entering	74	
lien of, revival of	78	79
<i>In particular cases—</i>		
claim to property levied on or attached	89	
re-examination on writ of error or appeal	116	
set-off	121	
costs in	123	
to recover and affecting real estate	128	
of partition of real property	133	
of waste and trespass	143	
of nuisance	144	

ACTIONS, CIVIL— <i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
of foreclosure of mortgage.....	145	
<i>ne exeat</i>	149	
of sureties against principals.....	150	
on official bonds, fines and forfeitures.....	152	
by and against public corporations and officers.....	154	
<i>habeas corpus</i>	156	
mandate and prohibition.....	160	
information.....	162	
by and against executors.....	165	
contempts and their punishment.....	167	
on foreign judgments.....	171	
for recovery of lands sold for taxes.....	195	71
for false return or fraudulent act of sheriff, in tax proceedings.....	195	73
<i>Miscellaneous provisions—</i>		
interest in shall not exclude party as witness.....	103	384
husband and wife shall not be witnesses for or against each other, except.....	104	387
of introduction of new party.....	172	684
all process to be directed to sheriff.....	172	
what slanderous words and terms are actionable.....	173	689
civil practice act as far as applicable to govern in actions pending.....	175	699
satisfaction of party injured is bar to prosecution, when..	246	215
<i>On forfeited recognizances—</i>		
default to be entered, and judgment.....	260	287
<i>In other cases provided by statute—</i>		
by road supervisors, for delinquency.....	276	27
against a party charging ferriage without license.....	284	53
for violation of laws of travel on highways, suit against driver a bar to, against employer.....	289	60
in settlement of intestate's estate without administration..	300	7
for and against counties, may be prosecuted or defended by county commissioners.....	305	11
on claims disallowed by county commissioners.....	309	29
against county auditor for incorrect certificate of search..	314	23
of trespass for violation of fence law.....	324	3
for collection of expense of party fence.....	325	6
for damages under fence law, procedure and rights of defendant.....	326	
by corporation for lands appropriated to its use.....	348	

ACTIONS, CIVIL—(Continued.)

	<i>Page.</i>	<i>Sec.</i>
to prevent the spread of disease known as glanders.....	360	
respecting the business of a limited partnership.....	381	8
against health officer under law regulating quarantine of vessels.....	395	3
to be satisfied in specie of the contract.....	416	

ACTIONS, CRIMINAL—

no pleading in civil action to be used as evidence in.....	23	90
no person held to answer, except.....	198	1
rights of party, accused.....	198	2
no person shall be convicted except on confession of guilt or verdict.....	198	3
when former trial shall be a bar to second.....	198	4
when a trial may be had on new indictment.....	198	5
party accused shall be tried, when.....	199	6
how far common law is applicable.....	199	9
limitation for murder and arson when death ensues.....	200	10
limitation for offenses punishable in penitentiary.....	200	10
limitation for all other offenses.....	200	10
felonies and misdemeanors defined.....	200	11
offenses against the lives and persons.....	200	
offenses against property.....	206	
offenses against public peace.....	214	
offenses against public justice, and by and against officers	215	
offenses against public policy.....	220	
offenses against morality and decency.....	225	
offenses against public health.....	227	
Indian testimony competent in prosecution of sale of spirits to an Indian.....	228	133
distinction between accessory before fact and principal abolished.....	229	135
accessary after fact may be tried, regardless of trial of principal.....	229	136
finer collected to go into general county fund.....	230	137
penalty for refusal to kill horse with glanders.....	361	
for violating law prescribing fees and costs.....	373	
for bringing infected stock into Territory.....	377	1
libel defined and punishment thereof.....	383	
violating laws providing for surveying of lumber in the log.....	393	10
surveyor general of logs or deputies making false certifi-		

ACTIONS, CRIMINAL—(<i>Continued.</i>)	Page.	Sec.
cates, penalty.....	393	12
violation of quarantine regulations.....	397	9
violation of game laws.....	399	
penalty for keeping dangerous or vicious cattle.....	400	
penalty for introducing Texas cattle.....	404	2
penalty for violating law for protection of stock raisers..	408	1
penalty for defacing U. S. coast survey signals &c.....	415	6
<i>Jurisdiction and place of trial of—</i>		
when offense has been committed in two counties, may be tried in either.....	230	138
on boundary line, or within one hundred rods, in either..	<i>ib.</i>	139
larceny in one, property taken to another, in either.....	<i>ib.</i>	140
wound in one, death in another, in either.....	231	141
the words county and district convertible terms.....	232	147
venue may be changed on motion of defendant.....	249	229
jurors from certain counties may be excluded, when.....	250	231
<i>Indictment, trial, judgment, &c.—</i>		
of the formation and duties of grand jury.....	236 to	238
finding and presentation of indictment.....	238	
all forms of pleading heretofore existing abolished.....	240	
indictment first pleading on part of Territory.....	240	
requisites and form of indictment.....	240	
indictment must be direct and certain as to.....	241	184
when defendant indicted under erroneous name, true name may be substituted.....	<i>ib.</i>	185
indictment must charge but one crime, means may be averred in alternative.....	<i>ib.</i>	186
how time may be averred, except.....	<i>ib.</i>	187
as to erroneous allegation of person injured.....	<i>ib.</i>	188
where crime involves taking of or injury to animal.....	<i>ib.</i>	189
words construed according to usual acceptation.....	<i>ib.</i>	190
the words of a statute need not be strictly followed.....	<i>ib.</i>	191
tests of sufficiency of indictment prescribed.....	242	192
defects in form disregarded not tending to prejudice of defendant.....	<i>ib.</i>	193
presumptions of law nor matters of judicial notice need not be stated.....	<i>ib.</i>	194
pleading of judgment of court of special jurisdiction....	<i>ib.</i>	195
pleading private statute or right derived therefrom.....	243	196
in libel, extrinsic facts need not be set forth.....	<i>ib.</i>	197
as to instrument lost, in indictment for forgery.....	<i>ib.</i>	198

INDEX.

577

ACTIONS, (CRIMINAL—(Continued.))	Page.	Sec.
for perjury or subornation thereof	243	199
against several defendants, one or more may be acquitted	<i>ib.</i>	200
when clerk shall issue warrant	244	201
process upon, requisites, service, etc.	<i>ib.</i>	202
amount of bail to be fixed by judge and endorsed on warrant	<i>ib.</i>	203
defendant to be informed by officer of his authority	<i>ib.</i>	205
recognizance, bail or deposit in lieu thereof	<i>ib.</i>	
in capital crimes defendant to be served with copies	246	213
in felonies, entitled to copy of indictment without fees	<i>ib.</i>	214
for offenses in which remedy is given by civil action in satisfaction of injured party, proceeding may be stayed	246	215
when <i>nolle prosequi</i> may be allowed by court	<i>ib.</i>	216
how docketed	247	217
arraignment of defendant	<i>ib.</i>	
on pleading guilty court to determine punishment	<i>ib.</i>	218
pleading guilty to murder, jury to try degree	<i>ibid</i>	
defendant refusing to plead, plea of not guilty entered	247	219
court to assign counsel	249	220
on arraignment, defendant shall declare name	248	24
if indicted under wrong name true name shall be used	<i>ib.</i>	222
in misdemeanors, may appear by counsel on arraignment witnesses may be compelled to attend	248	223
continuance to Territory not permitted without witness' name endorsed on indictment	249	225
competency of witnesses as prescribed in civil actions	<i>ib.</i>	226
physicians, clergymen and priests not protected from tes- tifying	<i>ib.</i>	<i>ib.</i>
in what, Indians are competent witnesses	<i>ibid</i>	
of confessions of defendant	249	227
rules of evidence in civil actions applicable, how far	<i>ib.</i>	228
change of venue on motion of defendant	<i>ib.</i>	
issues and trial, law in civil actions governs		
right of peremptory challenge	251	
when a challenge to panel shall be allowed	<i>ib.</i>	236
challenges for cause, law in civil actions govern	<i>ib.</i>	237
who shall be incompetent to serve in trial of capital case oath to the jury	<i>ib.</i>	238 239
parties except in capital case may agree to trial by court in all cases where imprisonment may follow, party accused must be present at trial	252	240 <i>ib.</i> 241

ACTIONS, CRIMINAL—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
in offenses punishable by fine, case may be tried on filing		
bond.....	<i>ib.</i>	242
trial to be conducted as in civil actions.....	<i>ib.</i>	243
jury shall not be allowed to separate, except.....	<i>ib.</i>	244
a view may be ordered by court.....	<i>ib.</i>	245
defendants jointly indicted may claim separate trials....	<i>ib.</i>	246
a defendant may be discharged to give testimony, when..	<i>ib.</i>	247
said discharge a bar to another prosecution.....	<i>ibid</i>	
when mistake has been made in charging offense.....	253	248
when court may order venue of indictment to be corrected	<i>ib.</i>	249
in such cases jury discharged without prejudice to prose-		
cution.....	<i>ib.</i>	250
in offenses consisting of degrees, a conviction or acquittal		
when a bar.....	<i>ib.</i>	251
in offenses consisting of degrees, jury may find in lower		
grade.....	<i>ib.</i>	252
defendant may be found guilty of any offense included in		
the one charged.....	<i>ib.</i>	253
where several are indicted, jury may acquit one or more.	<i>ib.</i>	254
when jury may be ordered to reconsider verdict.....	254	255
when defendant is acquitted on plea of insanity.....	<i>ib.</i>	256
of the rendition of the verdict.....	<i>ib.</i>	257
the court shall fix the punishment.....	<i>ib.</i>	258
form of verdict.....	<i>ibid</i>	
judgment to be entered on verdict, and liability of defend-		
ant for costs.....	254	259
of new trials and arrest of judgment.....	255	
exceptions allowed to defendant as in civil cases.....	256	265
judgments and execution.....	<i>ib.</i>	
of writs of error and appeals.....	260	
<i>Recognizance, bail &c—</i>		
every person on indictment, entitled to, when.....	199	7
all offenses bailable, except.....	199	8
of parties charged with commission of offenses in other		
States or Territories.....	235	
amount of bail to be endorsed on warrant.....	244	203
amount of bail to be endorsed on writs of attachment..	245	204
may be taken in open court, and minuted.....	245	208
officer may justify bail.....	245	209
taken by peace officer to be certified to clerk of court....	245	210
deposit may be made in lieu of bail.....	245	211

ACTIONS, CRIMINAL—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
when court shall direct a default to be noted of witnesses to testify in.....	248	224
<i>Suits on forfeited recognizances—</i>		
judgment to be entered against principal and sureties...	260	287
execution may be stayed till next term of court when...	260	288
conditions of stay.....		<i>ibid</i>
if principal be produced judgment may be vacated.....	260	289
justice of peace to certify recognizance, and prosecuting attorney to bring suit.....	265	313
shall not be barred or defeated, for omission to take default.....	265	314
<i>Miscellaneous provisions—</i>		
in actions concerning property, what shall be deemed a variance.....	231	142
construction of the term "person".....		<i>ib.</i> 143
construction of words implying number or sex,.....		<i>ib.</i> 144
offenses heretofore committed not affected by this act, except.....		<i>ib.</i> 145
proceedings in pending cases to conform to this act.....		<i>ib.</i> 146
each judicial district may be regarded, if necessary, as one county.....	232	147
when a search warrant may issue, procedure.....		<i>ib.</i>
extradition and demanding of fugitives.....	233	
the county wherein offense committed, to be charged with cost of custody of prisoner.....	263	307
when sheriff of county in which court is held, to keep prisoner.....		<i>ibid</i>
jail of county where court is held, free to prisoners.....	264	308
one dollar allowed for board of prisoner.....		<i>ibid</i>
cost of conveying prisoner to place of trial.....	264	309
fine and forfeiture to go to county where offense committed.....		<i>ib.</i> 310
school officers to make complaint of violation of school laws.....		<i>ib.</i> 311
road supervisors to complain of violation of road laws..		<i>ibid</i>
constables and sheriffs to complain of all offenses.....		<i>ibid</i>
Governor vested with powers of pardon, commutation and respite.....		<i>ib.</i> 312
provisions as to recognizances taken by justices of peace and magistrates.....	265	
how far party acquitted is liable for costs.....	265	315

ACTIONS, CRIMINAL—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
bail to justify as in civil cases, when required.....	265	316
officer in making arrest may break into inclosure, &c....	266	317
plea of benefit of clergy abolished.....	<i>ib.</i>	318
the criminal practice declared to be in force, how far....	<i>ib.</i>	319
ADJOURNMENT—		
by court while jury absent.....	58	239
final, of court, if jury out discharges the jury.....	<i>ibid</i>	
power to grant, by referees.....	62	257
power of, by arbitrators or majority of them.....	66	272
of sale, by sheriff when allowed and how to proceed.....	94	358
ADMEASUREMENT OF DOWER—		
proceedings in suit by tenant in dower.....	131	503
ADMINISTRATION—		
damages for death, subject to, as other personal property	165	666
when put in issue, how far inventory may be contradicted		
or avoided.....	166	662
when estate of intestate may be settled without.....	298	
who are entitled to settle estate of intestate without, order		
of priority.....	<i>ib.</i>	2
act authorizing settlement of estates without, must be com-		
plied with within 40 days of death of intestate.....	299	4
proceedings in settlement of intestate's estate, without....	299	
ADMINISTRATORS—SEE EXECUTORS AND ADMINISTRATORS.		
ADULTERY—		
charge of, actionable.....	173	688
open and notorious, how punished.....	225	126
ADVERSE CLAIM—		
by third party, in suits for the recovery of personal prop-		
erty.....	37	149
to property levied upon or attached, procedure.....	89	347
when made, duties of sheriff and other officers.....	90	348
party making shall be plaintiff, and sheriff and plaintiff		
in execution the defendants.....	90	349
judgment in such actions.....	<i>ib.</i>	350
ADVERSE PARTY—		
affinity within third degree to judge, venue may be		
changed.....	13	52
certain relation to, ground of challenge for cause.....	52	216

INDEX.

581

ADVERSE PARTY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
trial of challenge for cause and exceptions.....	53	220
judgment creditor may be ordered to institute action against party claiming interest in property of judgment debtor attached.....	102	381
examination of.....	106	398
may be required to answer interrogatories.....	107	399
penalty for refusing to make answer.....	<i>ib.</i>	403
not compelled to answer, if will criminate him.....	<i>ib.</i>	408
AFFIDAVIT—		
by defendant, for substitution of other party demanding same debt or property.....	7	22
for change of venue civil action, what shall contain.....	13	52
to entitle party to service by publication, in certain cases	17	63
of party serving notice other than officer.....	19	68
of printer to publication of notice.....	<i>ib.</i>	<i>ib.</i>
in verification of pleadings.....	23	89
for issue of warrant of arrest in civil actions.....	29	115
in claims to recover personal property, what shall contain by party other than defendant, in actions to recover per- sonal property.....	35	141
to obtain a restraining order or writ of injunction.....	37	149
each party may read, on hearings for injunction.....	38	152
of disobedience to injunction, attachment for contempt..	39	155
on hearing for reinstatement of injunction.....	40	164
for issue writ of attachment of property, what shall contain.....	41	170
in motions to dissolve attachment.....	42	173
in motions to dissolve attachment.....	47	191
in motion to continue trial, what must be shown.....	50	209
in settling bills of exception to charge of court.....	63	262
in motion for new trial.....	68	
to set aside a default.....	72	292
of defendant, in judgments by confession, what shall contain.....	73	298
of judgment creditor, in motion to revive judgment....	80	320
to have execution issued to another county.....	83	325
that homestead claim is worth over one thousand dollars.	86	341
in claim to property levied on or attached.....	89	347
in proceedings supplementary to execution.....	101	376
in proceedings to perpetuate testimony.....	113	419
denying genuineness of book, record, etc., proposed to be read in evidence.....	115	425

AFFIDAVIT—(Continued.)	Page.	Sec.
to fee bills and disbursements to be taxed as costs	124	465
for service by publication in suits of partition	134	509
of non-residence of lien creditor in suits of partition	137	524
to writ of <i>ne exeat</i> , what shall contain	149	576
delinquency in suits on official bonds, fines and forfeitures	152	594
of fear that one illegally in custody may be taken out of jurisdiction, summary proceeding thereon	158	622
for issue of writ of mandate or prohibition	160	632
for a contempt not committed in presence of court or officer	169	670
to make justice's judgment a lien on real estate	174	695
person liable to taxation to make to list of property	180	16
by sheriff, to return of delinquent taxes	189	47
false making of, deemed perjury	215	75
for issue of search warrant, what shall contain	232	148
to challenges of panel of grand jurors	236	158
of defendant for change of venue, what shall contain	249, 250	
to causes of new trial and arrest of judgment	255	261
of sealer of weights and measures to accuracy	253	3
fee for notary public certifying	376	2
taken before notary, does not require official seal	276	5
of amount of labor performed in holding quartz mining claims	387	5
 AFFINITY—		
of judge within the third degree to adverse party, cause for change of venue	13	52
to adverse party within fourth degree, challenge for cause	52	216
to offender, penalty for harboring such offender	229	135
 AFFIRMATIONS—SEE OATHS AND AFFIRMATIONS.		
may be administered to persons having conscientious scruples against taking oath	379	5
false, is to be deemed perjury	379	6
 AFFRAY—		
offense defined and punishment prescribed	215	73
 AGENT—		
of a corporation, may be served with complaint and notice	16	62
may verify pleadings	23	89
of a corporation or in any fiduciary capacity, may be ar-		

AGENT—(Continued.)

	<i>Page.</i>	<i>Sec.</i>
rested for fraud, &c.	29	114
of plaintiff, may be examined in respect to payments, &c., in actions commenced by publication.	71	291
examination of in proceedings supplementary to execu- tion	101	376
may make affidavit for issue of writ of <i>ne exeat</i>	149	576
fraudulent conversion of property by, embezzlement.	210	
selling without license, liable to prosecution.	220	95
if indicted, principal compelled to testify, and <i>vice versa</i>		<i>ibid</i>
to demand fugitives from justice, appointed by Governor.	233	152
accounts of, to be paid out of Territorial treasury.	233	152
may be appointed by county commissioners to sell real estate.	305	12
rights of foreign insurance corporations, doing business by	338	25

AGREEMENT—

written, limitation of actions upon.	8	27
parol, limitation of actions upon.	9	28
to refer an issue of fact, or try by court instead of jury.	50	208
by jurors upon a verdict in civil actions.	58	
for trial by referees.	61	254
to refer matter of controversy to arbitration.	64	
submitted cases upon, without action.	73	300
for revival and continuance of judgment and lien thereof.	79	318
of waiver of exemption, requisites of.	88	344
upon amendments to answers, in taking depositions.	110	408
of parties, to commissioner to take depositions.	112	415
by tenant for life or years, to release real estate from his interest.	139	
by parties interested in sale of real estate by referees.	141	
not contained in mortgage, mortgagee confined to mort- gage itself.	146	564
party making, to pay tax and failing, remedy to tenant.	195	70
when none, who shall pay taxes when real estate is sold.	196	78
fight by, an affray, punishment.	215	73
to conceal or compound crime, punishment.	224	117
to try a criminal case, by jury less than twelve.	250	231
of the jury trying criminal case.	254	257
what, shall not be made in any marriage contract.	322	19
between local authorities and corporations as to appropri- ation of lands for uses of corporation.	344	6
as to damages of trespassing by hogs.	362	5

AGREEMENT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
in formation of limited partnerships.....	380	
as to damages by the entry of coast survey parties.....	414	2
AGRICULTURAL FAIRS—		
marshals, appointment to preserve order.....	328	1
qualifications and powers of such marshals.....	328	2
ALDERMAN—		
of a city, may disperse rioters and command the peace...	214	70
ALIEN—		
enemy, continuance of war deducted from time of limitation.....	11	40
enumeration of, in census by county assessors.....	403	3
ALLEGATION—SEE PLEADING, ACTION, COMPLAINT, ANSWER.		
of complaint, must be denied by answer.....	21	80
of answer, must be replied to by plaintiff.....	22	84
if within personal knowledge of agent or attorney, he may verify.....	23	89
when Territory or officer thereof is party to suit, person knowing may verify.....	<i>ib.</i>	<i>ib.</i>
party answering, if subject to criminal prosecution thereby need not be verified.....	<i>ib.</i>	90
of pleading liberally construed with view of substantial justice.....	24	92
if indefinite and uncertain, amendment may be ordered..	<i>ib.</i>	93
of jurisdiction of special court, if controverted, must be proven.....	<i>ib.</i>	94
of performance of conditions precedent, when must be proven.....	<i>ib.</i>	95
in actions for libel and slander.....	25	
of defendant of lawful possession, sufficient in actions to recover possession of distrained property doing damage material, if not denied, taken as true.....	25	99
material, defined.....	<i>ib.</i>	102
of being misled by pleading, relief by court.....	<i>ib.</i>	103
of variance and failure of proof.....	<i>ib.</i>	
in pleadings, how to be regarded on trial.....	172	68:3
in indictments, must be direct and certain as to what....	241	184
as to time of commission of offense, how made, etc.....	<i>ib.</i>	187
as to person injured or intended to be injured.....	<i>ib.</i>	188

ALLEGATIONS—(Continued.)	Page.	Ser.
how a judgment of court of special jurisdiction may be stated.....	242	195
in indictments for libel.....	243	197
in indictment for forgery on destroyed instrument.....	<i>ib.</i>	198
in indictments for perjury.....	<i>ib.</i>	199
 ALLEY—		
appropriation of, by a private corporation locating road.	344	
vacation of, by county or municipal authorities.....	409	
 ALTERNATIVE—		
first writ of mandate shall be in the, when.....	161	633
means of commission of offense, may be alleged in the...	241	186
 AMENDMENTS—		
of complaint, copy thereof to be served on defendant....	20	78
of pleading, to render definite and certain.....	24	93
of pleading, where party alleges he has been misled.....	26	103
when ordered by court, because of immaterial variance..	26	104
in claims to personal property, where special interest proven instead of ownership.....	27	106
may be permitted by court on terms at any time before judgment.....	27	107
when made, pleading to be newly filed and complete in itself.....	27	108
when motion to strike out has been allowed.....	28	109
of verdict of jury, when insufficient or informal.....	58	242
of return or proceedings in hearings on <i>habeas corpus</i>	157	615
to writs of <i>habeas corpus</i> , for defects therein or informalities.....	159	627
when a defendant is indicted by erroneous name.....	241	185
when mistake has occurred in charging offense in indictment.....	253	248
where venue of offense is improperly laid in indictment..	254	249
in writs of error on criminal cases, supreme court shall consider as made.....	262	297
 ANCESTOR—		
seizure of within twenty years, to maintain real action, when.....	8	26
 ANIMALS—		
certain, exempt from attachment and execution.....	87	342

ANIMALS—(Continued.)	<i>Page.</i>	<i>Sec.</i>
driven through Territory, subject to taxation, where.....	194	
stealing of certain, felony, punishment.....	208	50
cruelty to, a misdemeanor, punishment.....	227	127
description of, in indictments.....	241	189
rates of toll chargeable upon.....	287	64
breaking into enclosure, owner liable for damages, when.	324	3
domestic, act for protection, of repealed.....	356	1
diseased with glanders, penalty for keeping.....	360	
act preventing the trespassing of hogs in certain counties	362	
act to prevent the spread of infectious diseases.....	377	
penalty for keeping dangerous or vicious.....	400	
penalty for introducing Texas cattle, or those infected with Spanish fever.....	404	
 ANSWER—		
statute of limitations can only be pleaded by.....	8	25
when objections to complaint must be taken by.....	20	79
to amended complaint.....	<i>ib.</i>	78
when, defendant deemed to have waived objection.....	21	79
what shall contain.....	<i>ib.</i>	80
counter claim, when may be pleaded by.....	<i>ib.</i>	81
may set forth a number of defenses but be separately stated.....	21	81
to residue, after demurrer to part.....	<i>ib.</i>	82
sham, frivolous and irrelevant may be stricken out.....	<i>ib.</i>	83
when, states new matter plaintiff may reply.....	22	84
may be demurred to by plaintiff.....	<i>ib.</i>	85
new matter in, not replied to entitles defendant to judg- ment.....	<i>ib.</i>	86
in actions for libel or slander, truth and mitigating cir- cumstances may be alleged.....	25	98
title to real property need not be averred, but possession in actions for distrained personal property.....	<i>ib.</i>	99
every material allegation of, uncontroverted deemed as true.....	26	101
controverting complaint forms an issue of fact.....	50	205
judgment on failure to.....	70	
set-off must be pleaded by.....	122	454
when tender is pleaded, as to costs.....	124	468
in actions to recover and affecting real estate.....	128	
in suits of partition.....	134	510

ANSWER—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
in informations.....	163	646
in suits upon certain foreign judgments.....	171	682
refusal to, on arraignment, plea of not guilty to be entered in actions for damages for appropriation of lands by pri- vate corporations.....	247	219
	349	5
 APOTHECARY—		
selling poison without labelling, penalty.....	227	129
 APPAREL—		
wearing, of every person and family exempt from exe- cution.....	87	342
 APPEALS—SEE WRITS OF ERROR.		
reversal on, if plaintiff die and action survive, represen- tatives may commence new action.....	11	42
decision by the court or referees, deemed excepted to, when.....	64	265
shall not affect lien of judgment, and date of judgment is commencement of lien.....	79	319
depositions used in inferior court may be used in appellate court.....	110	411
mode of taking to supreme court.....	120	447
in hearings of, by supreme court, what shall be regarded.	121	448
from justice's courts, appellant liable for costs when.....	125	470
to supreme court, costs within discretion of court.....	126	476
to judgment of district court on writs of mandate and prohibition.....	161	641
allowed on proceedings for contempt, but will not stay certain other proceedings.....	171	680
to supreme court in criminal cases, allowed.....	260	290
allowed to defendant for all errors.....	261	290
by prosecuting attorney, when allowed.....	261	<i>ib.</i>
when to be taken.....	<i>ib.</i>	291
transcript of the record and what shall contain.....	<i>ib.</i>	
powers of the supreme court over judgments.....	<i>ib.</i>	296
supreme court to consider all errors which appear on record.....	262	297
when, shall operate as a stay of proceedings.....	<i>ib.</i>	
defendants jointly tried, any may take.....	<i>ib.</i>	300
when defendant shall be discharged and when remanded.	<i>ib.</i>	301
shall not be discharged for informality or defect.....	363	302

APPEALS— <i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
limitation for taking, in criminal cases.....	134	305
from assessment of damages in opening roads.....	270	9
by supervisor of roads, from judgment of justice of peace, in action for official delinquency.....	279	35
from decision or order of the county commissioners court	308	29
from award of damages in appropriations of land by private corporations	349	
from award of damages for entering land for erection of coast survey signals.....	414	3
 APPEARANCE—		
of infant, by guardian.....	5	13
voluntary, of defendant equivalent to personal service...	19	70
to make motion, when not a full appearance to action...		<i>ibid</i>
by defendant, entitles him to move for bonding of attached property	46	188
when defendant may move to discharge attachment improperly issued.....	47	190
of defendants, in confession of judgment avoids necessity of acknowledging confession.....	73	296
of guardian of infant, makes guardian liable for costs....	125	471
without counsel in criminal prosecutions, court may assign	248	220
may be by counsel, on arraignment for offense punishable by fine only.....	248	223
in offenses punishable by imprisonment, defendant must be present.....	252	241
in offenses punishable by fine only, when defendant need not be present.....	252	242
of defendant in criminal case, to receive judgment, how compelled, &c.....	256	
 APPOINTMENT—		
by court, of guardian for infant party.....	5	
by judge or clerk, of person to serve process.....	16	61
to be endorsed upon process to be served.....		<i>ibid</i>
of receivers, in civil actions.....	48	196
party, attorney or person interested, shall not be receiver	48	197
of referees, in civil actions, qualifications of.....	61	255
of arbitrators, by agreement of parties.....	64	
of commissioner, to take depositions out of Territory....	111	415
of commissioners to convey real estate, civil actions.....	127	480

APPOINTMENT—(Continued.)	<i>Page.</i>	<i>Sec.</i>
of referees, in action by tenant in dower.....	131	503
of referees, in actions for partition of real property.....	134	
of referees, in actions for partition to distribute proceeds to lien holders.....	136	
of suitable person to discharge a duty, who may make..	172	687
of agents to demand fugitives from justice.....	233	152
by the court of foreman of grand jury, by grand jury of their clerk.....	137	163
of viewers and surveyors in location of roads.....	267	
of reviewers and surveyor for alteration of road.....	271	
of road supervisors, by county commissioners.....	273	19
of appraisers, under act authorizing settlement of intes- tate's estates without administration.....	299	3
of agent to sell real estate belonging to a county.....	305	12
of trustee to manage wife's separate estate, on petition of wife.....	320	8
of marshals to preserve order at agricultural and mechan- ical fairs.....	328	
of commissioners to purchase government buildings at Fort Steilacoom for an insane asylum.....	356	
of commissioners to locate Territorial penitentiary.....	358	
of appraisers of damages occasioned by trespassing of logs.....	362	5
of notaries public.....	375	
of surveyor general of logs, and deputies.....	391	
of board of health, Puget Sound collection district.....	394	
of health officer for said collection district.....	395	
of appraisers of damages for entry of land by U. S. coast survey parties.....	414	
APPORTIONMENT—		
of county revenue, Territorial and school tax by county commissioners at May term.....	183	24
APPRAISEMENT—SEE ASSESSMENT OF DAMAGES.		
of property, claimed to be exempt from attachment or execution.....	89	346
of property, by assessor for purposes of taxation.....	180	
of estate of intestate settled without administration.....	299	3
APPROPRIATION—Of Lands by Corporations.		
may be made by corporation for corporate purposes....	343	
corporations may enter upon land between termini of		

APPROPRIATION— (<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
roads for certain purposes	343	1
sufficient for line of road, canal, and necessary structures	343	2
when made, owner to be compensated in damages	<i>ibid</i>	
changes of line and grade may be made	343	3
public lands, roads, streets and alleys subject to	344	4
if in a town, local authorities to designate	344	5
if local authorities refuse, right not defeated	<i>ibid</i>	
of the placing of gates and charges of toll	344	6
width of road or track, and duties of corporation	344	7
in erection of necessary bridges and ferries	345	8
notice to be given, &c., upon completion of road	245	9
after expiration of ten years, county may purchase	347	16
mode of proceeding in	348	
action to secure land, and fix compensation therefor	348	
such action to be tried as civil, except	348	2
suit to be against whom	348	3
of the complaint and service of process	348	4
answer of defendant, what may contain	349	
view, when ordered	349	6
judgment for corporation and effect thereof	349	8
appeal may be taken, but cannot stay proceedings	349	9
costs of action, who liable	349	10
effect of new trial or reversal of judgment	350	11
acceptance of damages by defendant, waives right of appeal	350	12
private property may be appropriated to use of public corporations	350	13
method of, conformable to foregoing provisions	<i>ibid</i>	
 APPROPRIATIONS—		
for purchasing government buildings at fort Steilacoom for insane asylum	356	
for expenses of commissioners locating penitentiary	358	
for relief of Pierce county, expenses for improvement of jail adopted as penitentiary	388	
for payment of quarter master general	421	
 ARBITRATION—		
controversies except relating to title of real estate may be submitted to	64	266
agreement of submission to be in writing, what shall contain	65	267

INDEX.

591

ARBITRATION—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
arbitrators to be sworn	65	268
award how to be made, what to contain and to whom delivered		<i>ibid</i>
copy of award to be delivered to prevailing party		<i>ibid</i>
if not excepted to or controversy settled to be entered as judgment		<i>ibid</i>
compensation of arbitrators fixed, and how and by whom paid	65	269
a failure of party to appear subjects delinquent to costs. except		<i>ibid</i>
arbitrator failing to attend, penalty		<i>ibid</i>
exceptions to award, what allowed and how made	65	270
action of court upon exceptions to award	66	271
power of arbitrators or majority	66	272
evidence and compelling attendance of witnesses	66	273
same power to punish contempt as justice of peace	66	274
costs to be taxed against losing party and how collected	66	275
award affirmed by district court, same as a judgment	66	276
ARBITRATORS—SEE ARBITRATION.		
to be sworn, duties of in making award	65	268
compensation of and penalty for failure to attend	65	269
misbehavior of, cause for rejecting award	66	270
powers of	66	272
acceptance of a bribe, reward or present, penalty	216	78
ARGUMENT—		
order in civil actions	55	225
the practice in civil actions, to govern in criminal prosecutions, except	252	243
ARRAIGNMENT—		
of defendant, procedure	241	
on plea of guilty, except in capital cases, court to hear evidence to fix punishment	247	1
plea of guilty in charges of murder, jury to determine degree	247	218
refusal to plead or answer, plea of "not guilty" to be entered	<i>ib.</i>	219
appearing without counsel, court to assign, when	248	220
interrogation as to name, true name to be substituted	<i>ib.</i>	221
for misdemeanors punishable by fine only, may appear by counsel on	<i>ib.</i>	222

ARREST—*In Civil Actions.*

Page. Sec.

SEE BAIL, CONTEMPT, ATTACHMENT.

shall not be made, except upon order of court or judge of supreme court.....	28	113
causes for which allowed.....	<i>ib.</i>	114
before allowed, court must be satisfied of its legality....	29	115
court to fix amount of bail and plaintiff's bond.....	30	116
clerk shall require plaintiff to do certain things before is- suing order.....	30	117
defendant may apply for vacation of order or reduction of bail.....	<i>ib.</i>	118
warrant not to issue until filing of complaint.....	<i>ib.</i>	119
sheriff to serve defendant and furnish copy of warrant..	31	120
service of the warrant by taking defendant into custody.	<i>ib.</i>	121
plaintiff liable for sheriff's fees and board of prisoner...	<i>ibid</i>	
neglect by plaintiff to pay fees, defendant entitled to dis- charge.....	<i>ibid</i>	
bail of defendant, how and when given, conditions of...	31	122
warrant to contain statement of cause of arrest and amount of bail.....	31	123
of surrender of defendant by bail or himself.....	32	124
bail may arrest defendant to secure their discharge.....	32	125
bail, how proceeded against.....	<i>ib.</i>	126
causes by which bail may become exonerated.....	<i>ib.</i>	127
return of sheriff, where defendant has been discharged on bail.....	<i>ib.</i>	128
failure of plaintiff to notify sheriff of exception to bail, exonerates sheriff.....	33	129
justification of bail excepted to by plaintiff.....	<i>ib.</i>	130
of the qualifications of bail.....	<i>ib.</i>	131
manner of justification of bail.....	33	132
the approval of bail by court or officer exonerates sheriff.	<i>ibid</i>	
defendant may deposit amount mentioned in order, in lieu of bail.....	34	133
such deposits shall be paid into court within ten days, proceedings.....	<i>ib.</i>	134
on giving bond, deposit to be refunded.....	<i>ib.</i>	135
such deposit to discharge judgment, surplus to be refund- ed.....	<i>ib.</i>	136
in case of escape, sheriff liable as bail.....	<i>ib.</i>	137
if judgment against sheriff unsatisfied, action on official bond.....	35	138

INDEX.

593

ARREST—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
when bail shall be liable to sheriff.....	35	140
for disobedience to injunction or restraining order.....	40	166
of judgment debtor, on execution against the person....	82	324
defendant shall not be arrested if he deliver property to satisfy judgment.....	83	327
shall be imprisoned within jail liberties, at expense of whom.....	84	328
of absconding debtor, when allowed.....	101	376
of party about to leave without performing an undue contract in writing.....	149	577
security for the performance of contract being given, discharges party.....	150	578
proceeding of <i>ne exeat</i> may be had in favor of surety, or one jointly bound.....	<i>ib.</i>	580
defendant may seek remedy of <i>habeas corpus</i>	<i>ib.</i>	581
justices of the peace may issue <i>ne exeat</i> process within jurisdiction.....	<i>ib.</i>	582
proceedings may be had in district where defendants found writ of <i>habeas corpus</i> may be applied for to admit to bail	158	619
obedience to writs of mandate and prohibition may be enforced by.....	161	637
not allowed against executors or administrators representing testator or intestate.....	167	666
but may be against executors or administrators for their own acts.....		<i>ibid</i>
in proceeding for contempt of court, procedure,.....	169	
warrant for, in contempt cases, court to endorse whetherailable or not.....	169	673
deposit of amount of bail allowed in all cases, to discharge persons from.....	173	692
 <i>In criminal actions—</i>		
of fugitives from justice, may be demanded of executive of other States and Territories.....	233	
of persons charged with offenses committed in other States or Territories.....	234	
on finding indictment, when warrant shall issue.....	244	201
all warrants shall be served by sheriff or duly appointed suitable person.....	244	202
amount of bail to be endorsed on warrant.....	244	203
defendant entitled to see warrant of arrest.....	245	205
officer may use all necessary means to effect.....	245	206

ARREST— <i>(Continued.)</i>	<i>Page.</i>	<i>Sec.</i>
person escaping may be pursued and taken anywhere in Territory.....	245	207
officer may justify bail.....	245	209
in place of bail, defendant may make deposit.....	245	211
of defendant by bench warrant, when his attendance is necessary.....	256	
bail shall when required justify.....	265	316
officer may break into enclosure, if refused admittance..	266	317
 ARREST OF JUDGMENT—<i>In Criminal Actions.</i>		
may be arrested on defendant's motion, for what causes..	255	262
the court may, without motion.....	255	263
when in case of, defendant may be committed &c.....	256	264
 ARSON—		
where death ensues, prosecution at any time after commission.....	200	40
killing in attempt to commit, murder in the first degree.	200	12
the crime defined, and punishment prescribed.....	206	42
burning of lumber, cordwood, grass, hay and vegetables penalty*.....	206	43
setting fire to one's property and thereby destroying another's, punishment.....	207	44
when such offense shall be murder in second degree.....		<i>ibid.</i>
married women may commit offense, though property be husband's.....	207	45
setting on fire timber lands, woods, prairie, grass or pasture, penalty.....	213	68
 ARTICLES OF INCORPORATION—		
to transact trade or business, to be in writing, subscribed in triplicate.....	330	2
to be acknowledged before officer authorized to take acknowledgments.....		<i>ibid</i>
to be filed with secretary of Territory, county auditor and one retained.....	331	2
what shall contain.....		<i>ibid</i>
copy certified by certain officers to be received as evidence... ..	331	3
shall not be invalid, because place of business may be omitted.....	339	26
of colleges, seminaries, churches, and societies for charita-		

INDEX.

595

ARTICLES OF INCORPORATION—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
ble purposes.....	341	1
requisites of.....	341	1
ASSAULT—		
limitation of civil actions for damages, two years.....	9	29
offense defined, and punishment prescribed.....	203	27
with intent to commit murder, etc., punishment.....	203	28
with deadly weapon with intent to inflict bodily injury, punishment.....	203	29
with a cowhide or whip by person armed, punishment.....	203	31
when party injured acknowledges satisfaction of damages, defendant discharged on payment of costs.....	266	215
such discharge a bar to further prosecution.....	<i>ibid</i>	
ASSAULT AND BATTERY—		
limitation of civil action for damages, two years.....	9	29
offense defined and punishment affixed.....	203	30
where party injured acknowledges satisfaction of damages proceedings in prosecution stayed.....	246	215
defendant to pay the costs before being discharged.....	<i>ibid</i>	
discharge of defendant bar to further action.....	<i>ibid</i>	
ASSEMBLAGE—		
unlawful, riotous or tumultuous, may be dispersed.....	214	70
peace officers may summon aid and make arrests.....	<i>ibid</i>	
officers dispersing may use all necessary force.....	<i>ibid</i>	
penalty of, refusing or obstructing peace officers.....	214	71
for worship or other lawful purpose, penalty for disturbing penalty for bringing or selling spirituous liquor within one mile of.....	214	72
<i>ibid</i>		
ASSESSMENT—SEE ASSESSMENT ROLL, ASSESSOR, REVENUE.		
property and polls subject to.....	176	
taxes shall be assessed on polls and property in equal and rateable proportion.....	176	1
of lands to be in county where they lie.....	177	6
of person, in county where he resides.....	<i>ibid</i>	
owned by one person and occupied by another, in name of either.....	178	6
of land unoccupied and owner unknown, without name..	<i>ibid</i>	
real estate of corporation, in county where it lies.....	<i>ib.</i>	7
estate of decedent, in name of heirs, or devisees, or oc- cupant.....	<i>ib.</i>	8

ASSESSMENT—(Continued.)

	Page.	Sec.
liability of heirs or devisees on undivided estate.....	178	6
person to be in county of residence and what to include.	178	9
of estate held by two or more persons jointly.....		<i>ibid</i>
goods, etc., for sale, stock used in mechanic arts, capital, etc., in manufactures, taxable in county where found and assessed against person in charge.....	178	10
of partners and partnership property.....	178	11
of personal property of private corporations.....	179	12
where capital of corporation has been taxed, shareholders exempt.....		<i>ib.</i> 13
of mortgaged property, the person in possession to be liable.....		<i>ib.</i> 14
county commissioners to examine and correct at May term of cattle, sheep, hogs and stock driven through Territory, in any county where found, by whom made.....	183	24
duty of sheriff as to such property, but it shall be liable in only one county.....	193	66
duty of sheriff as to such property, but it shall be liable in only one county.....	194	67
examination of by board of county commissioners at May term.....	306	17
on shares of stock, validity of.....	340	28
at time of making, assessor shall take census, etc.....	403	3
compensation of assessor.....		<i>ib.</i> 5
<i>Manner of making—</i>		
when assessor shall return taxable property and make roll	180	15
person to furnish list of property and swear to same....		<i>ib.</i> 16
penalty for refusal to swear to such return of property...		<i>ibid</i>
roll, what it shall contain.....	180	17
town lots to be specified in roll.....	181	18
where property held by trustee, etc., representative char- acter to be designated.....		<i>ib.</i> 19
of land, less than legal-subdivisions, how described.....		<i>ib.</i> 20
initials, abbreviations and figures sufficient for public sur- veys.....		<i>ib.</i> 21
numbers for lots and blocks in towns sufficient.....		<i>ibid</i>
unoccupied lands liable, owner unknown.....	181	22
roll may be corrected by county commissioners, when....	183	24
ASSESSMENT ROLL—		
shall be made by assessor, containing list of property and appraisal thereof.....	180	15
list of property sworn to, to be furnished by taxable....		<i>ib.</i> 16
to be prepared by assessor, what shall contain.....		<i>ib.</i> 17

INDEX.

597

ASSESSMENT ROLL—(Continued.)	Page.	Sec.
town, block and lot, how specified in	180	18
representative character to be designated, where property is held by trustee, &c.	181	19
when land is in other than legal subdivisions	<i>ib.</i>	20
sufficiency of description of lands	<i>ib.</i>	21
unoccupied lands where owner is unknown	<i>ib.</i>	22
manner of making and form	182	23
to be submitted to county commissioners at May term for correction	183	24
to be certified by county auditor and transmitted to Ter- ritorial auditor, when	184	28
duty of Territorial auditor, on reception of	<i>ib.</i>	29
transcript of, with warrant by county auditor to be tax roll for sheriff	<i>ib.</i>	30
county treasurer to deliver to sheriff, and take receipts . .	194	68
penalty of sheriff to make settlement according to	195	72
shall be <i>prima facie</i> in judicial proceedings	196	79
Territorial auditor to cause to be printed necessary blanks examination and approval of by county commissioners at May term	306	17
census of inhabitants shall be included in, what shall con- tain	403	3
compensation to assessor for making	<i>ib.</i>	5
ASSESSMENT OF DAMAGES—SEE DAMAGES.		
against party wrongfully obtaining injunction	41	
by jury in actions for recovery of personal property	59	245
error in, when ground of new trial	67	278
when equal to injury sustained, shall not be ground for new trial	68	279
in judgments upon failure to answer	71	292
in judgments in the supreme court on writs of error	120	442
in actions affecting real estate	129	493
in actions of trespass and waste	143	
in actions of mandate and prohibition	161	635
in proceedings by way of information	163	
by the location and opening of roads	270	
by the location of private roads	272	
by road supervisors on cutting or carrying away timber. stone, &c., in building or repairing roads	277	
by animals breaking into inclosure under fence law	324	
mode of compensation for, in corporations appropriating		

ASSESSMENT OF DAMAGES—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
lands for corporate purposes.....	348	
for the trespassing of hogs.....	362	
for health officer refusing to restore property after purification in quarantine.....	395	
of entry by coast survey parties, for erection of signals..	414	
 ASSESSOR—<i>County.</i>		
property and polls subject to assessment and taxation...	176	
property, where and to whom assessed,.....	177	
to make assessment between first Monday of February and last Monday of April.....	180	15
roll to be made and appraisement of property by.....		<i>ibid</i>
shall require person to furnish sworn list of property....	180	16
penalty of party refusing, and procedure to enforce.....		<i>ibid</i>
how assessment roll shall be prepared, and what to contain.....	180	17
as to lots in city, town or village.....	181	18
to designate representative character of party assessed...	<i>ib.</i>	19
in case of land other than town lots or legal subdivisions.	<i>ib.</i>	20
sufficiency of description of lands.....	<i>ib.</i>	21
unoccupied lands, names of owners unknown.....	<i>ib.</i>	22
how to make assessment roll and form.....	182	23
assessment roll to be returned to county commissioners and corrected May term.....	183	24
to receive blanks from Territorial auditor, and obey his instructions.....	196	80
county commissioners to approve and file assessment roll at May term.....	306	17
such assessment rolls a guide for.....		<i>ibid</i>
act relating to.....	402	
election, qualification and term of office.....	<i>ib.</i>	1
bond and oath of office.....	<i>ib.</i>	2
to take census also when making assessment, what shall be enumerated.....	403	3
power to appoint deputies, when.....	<i>ib.</i>	5
compensation of.....	<i>ib.</i>	5
vacancy in office to be filled by county commissioners....	404	6
 *ASSETS—		
damages for death of person to be treated as.....	165	658
judgment against executor or administrator for forfeiture to answer not deemed as evidence of, unless.....	166	661
executors or administrators, when liable to extent of....	<i>ib.</i>	662

INDEX.

599

ASSIGNEE—

	<i>Page.</i>	<i>Sec.</i>
right to maintain actions, if real party in interest.....	4	4
in action brought by, same defense may be made as against original party, except.....		<i>ibid</i>
of promissory note in good faith before due.....		<i>ibid</i>
of judgment, execution may issue in name of.....	84	330
rights of, in matters of set-off.....	121	449
of cause of action after suit commenced, liability for costs	125	473

ASSIGNMENT—SEE ASSIGNEE.

with intent to defraud creditor, ground for attachment..	42	173
of judgment, requisities and recording of.....	84	330
of errors, to be in precipe for writ of error.....	117	434
supreme court will only hear such errors as are contained in precipe.....	119	439
of cause of action, after commencement of suit, liability for costs.....	125	473

ASSIGNOR—SEE ASSIGNEE, ASSIGNMENT.

ASYLUM, INSANE—SEE INSANE ASYLUM.

act authorizing purchase of government buildings at fort Steilacoom.....	356
---	-----

ATTACHMENT—*Of Person.*

SEE ARREST, BAIL, WARRANT.

of person for disobedience of injunction.....	40
enforcement of order to satisfy claim admitted.....	49 203
referees may compel attendance of witnesses.....	257 62
arbitrators have same power as justices of peace for con- tempts, and to compel attendance of witnesses.....	66
of judgment debtor about absconding.....	101 376
of witness refusing to appear.....	106
of party refusing to answer interrogatories.....	107 403
of witness refusing to attend and make deposition.....	110 412
to compel production of books, &c.....	115 424
proceedings of <i>ne exeat</i>	149
to compel officer of corporation to satisfy judgment.....	155 605
to enforce making return to writ of <i>habeas corpus</i>	151 613
to enforce obedience to writs of mandate and prohibition	161 637
to enforce obedience to orders in information.....	163 649
executor or administrator for acts of testator or intestate, not allowed.....	167 666
but for the acts of executor or administrator, allowed as	

ATTACHMENT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
in other cases.....	167	666
contempts of court specifically defined.....	167	
when returnable after term, bail to be endorsed.....	245	204
punishment for contempt, by county commissioners.....	308	26
<i>Of property in civil actions—</i>		
property held by, cannot be subject of statutory action...		
of claim to recover personal property.....	35	142
in what cases may issue.....	41	172
writ of, by whom and when to be issued.....	42	173
causes for which may be issued.....		<i>ibid</i>
bond of plaintiff to be filed.....	42	174
writ to be directed to sheriff.....	43	175
what it shall require.....	<i>ib.</i>	<i>ib.</i>
several may be issued, to different counties.....	<i>ib.</i>	<i>ib.</i>
property subject to.....	43	176
duty of sheriff on receipt of writ.....	<i>ib.</i>	<i>ib.</i>
inventory of property to be returned.....	<i>ib.</i>	<i>ib.</i>
to be executed without delay.....	43	177
of real property, how made.....	<i>ib.</i>	<i>ib.</i>
of personal property capable of delivery.....	<i>ib.</i>	<i>ib.</i>
of stock or shares in a corporation.....	<i>ib.</i>	<i>ib.</i>
of debts, credits or property incapable of manual delivery	<i>ib.</i>	<i>ib.</i>
debts and credits or property under control of a third		
person, how attached.....	44	178
persons holding such debts or credits liable to plaintiff		
until discharge of, or satisfaction of judgment.....	44	179
examination of debtors of defendant.....	44	180
return of the sheriff, inventory and schedule of debts, etc.	44	181
perishable property may be sold.....	45	182
debts and credits may be collected.....	45	182
claim by third person of property, trial.....	45	183
judgment to be satisfied out of attached property.....	45	184
for balance remaining due, proceedings.....	46	185
execution for remainder due upon judgment.....	46	186
proceedings, if defendant recovers judgment.....	46	187
when defendant may move to discharge, upon giving bond	46	188
bond of defendant, sureties and justification.....	46	189
motion of defendant to discharge, because writ improper-		
ly issued.....	47	190
if defendant introduce affidavits, counter affidavits allowed	47	191
if improperly issued, shall be discharged.....	<i>ib.</i>	192

INDEX.

601

ATTACHMENT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
when sheriff shall make return.....	47	193
when court may order sale.....	<i>ib.</i>	194
but sale can only be made after notice to adverse party..	<i>ibid</i>	
judge conferred with full powers to make orders in va- cation.....	47	195
of real estate, lien of judgment attached at service of writ	45	310
property exempt from.....	85	
claim of third person to property, mode of procedure...	88	

ATTEMPT—

to commence an action, equivalent to commencement, when, to perpetrate certain felonies, homicide in, murder in the first degree.....	10	36
to murder by drowning or strangling, punishment.....	200	12
to kill by other means, not constituting assault.....	<i>ibid</i>	33
to procure the commission of perjury.....	216	77
to bribe an officer.....	217	80
to assist in escape of prisoner.....	<i>ib.</i>	81
to extort money under color of office.....	219	92
to cause an indictment to be found, without probable cause	220	94
to influence action of elector.....	<i>ib.</i>	97
of elector to vote more than one ticket at election.....	221	98
of elector to vote more than once same day.....	<i>ibid</i>	
of officer of election, to influence voter.....	221	100
of election officer, to find out how elector voted.....	<i>ib.</i>	101
by threats or corrupt means to hinder elector from voting	<i>ib.</i>	102
of unauthorized person to join parties in marriage.....	224	117
to commit private injury, erroneous allegation as to person immaterial.....	241	188

ATTENDANCE—

of witnesses before referees, may be compelled.....	62	257
of arbitrators, penalty of failure.....	65	269
of witnesses before arbitrators, power to compel.....	66	272
of witnesses, in proceedings supplementary to execution.	102	
of witnesses, manner of compelling.....	104	
shall not be compelled, unless witness resides in district.	104	388
of witnesses residing out of district, but within 20 miles of place of holding court... ..	105	<i>ib.</i>
witness first entitled to what fees... ..	<i>ib.</i>	
subpœna for, requisites.....	<i>ibid</i>	
person present may be compelled to testify, as though		

ATTENDANCE— (<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
subpoenaed	106	392
failure of, a contempt, punishment	<i>ib.</i>	
of a prisoner, how procured	<i>ib.</i>	396
of witnesses, in criminal prosecutions, how compelled	248	
of a defendant in criminal case, when presence needed, how compelled	258	268
of county commissioners court, fees of	304	8
* of county auditor, on county commissioners' court	313	17
of sheriff on court of record, fee for	366	
of justices of peace at opening of polls, fee for	368	
of county auditor, per diem	369	
of constables on court of record, fee	371	
of jurors, fees	<i>ib.</i>	
of witnesses, fees	<i>ib.</i>	
 ATTORNEYS—SEE AGENT, COUNSEL, PROSECUTING ATTORNEY.		
may sign notice, in commencement of civil actions	15	59
may be served with amended complaint	20	78
may subscribe a pleading	23	89
when may make verification to pleading		<i>ibid</i>
may verify account or copy of instrument	24	91
notice to, sufficient in applications for amendment	27	107
may make affidavit to secure arrest	29	115
shall not be bail in arrest in civil actions	33	130
in an action, disqualified as receiver	48	197
disqualified as juror, when	52	216
argument of, regulated	55	225
may consent to trial by court	60	249
settlement of bills of exception	63	262
assent of plaintiff's, judgment by confession	72	293
shall not be sureties, in stay of execution	85	334
what property of, exempt from execution	88	343
affidavit by, as to absconding debtor	101	376
shall not testify as to communications of client	104	387
of duties of, in commissions to take depositions	111	415
service upon of writ of error	118	435
compensation of to be fixed by parties	123	457
fee, as costs to prevailing party fixed	124	464
prosecuting, to file information for usurpation of office	162	645
prosecuting, in suits for forfeiture	164	
misbehavior of, a contempt, punishment	167	
prosecuting, to appear for Territory in cases of contempt	169	

ATTORNEYS—(Continued.)	Page.	Sec.
prosecuting, in demands for fugitives from justice	233	
prosecuting, power of to enter <i>nolle prosequi</i>	246	216
prosecuting, consent of with defendant in criminal cases to try with a jury less than twelve.	250	231
argument of, in criminal trials regulated.	252	243
service of writs of error in criminal cases.	261	292
county auditor shall not practice as, before county com- missioners.	312	12
 AUCTION—SEE SALES.		
sales of property on execution, must be by.	93	256
sales of property for taxes, must be made by.	188	40
 AUDITOR, COUNTY—		
in suits against counties, service upon.	16	62
where real estate is attached, duty of.	43	177
in suits against county, may confess judgment.	72	294
to file certified transcripts of judgments.	76	311
to keep a record of transcripts of judgments.	77	314
when judgment is satisfied, his duty.		<i>ibid</i>
from filing of judgment by, lien commences when.	78	317
filing by, of revived judgments.	79	318
liens of judgment suspended till filing of transcript by.	81	321
not to record any sheriff's deed till endorsed, how.	100	375
certified copy of deeds, etc., to be received in evidence.	115	427
to record conveyance made by commissioner to convey real estate.	127	486
duty of, in actions by and against county.	154	
to record certain judgment of justice's of peace, when.	174	695
shall transmit to Territorial auditor certified copy of as- sessment roll, when.	184	28
shall deliver tax warrant to sheriff and county treasurer, when, and what shall be contained therein.	<i>ib.</i>	30
requisites of warrant for collection of taxes.	185	32
duty of, in regard to collection and return of taxes.	<i>ib.</i>	
duty of, in regard to delinquent taxes.	190	51
to file receipt of surplus over taxes for real estate sold for taxes.	192	61
certified copies of entries, rolls, etc., by, <i>prima facie</i> evi- dence.	196	79
to receive and obey instructions of Territorial auditor.	<i>ib.</i>	80
accepting or agreeing to receive a bribe, penalty.	216	78

AUDITOR, COUNTY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
knowingly issuing warrant unauthorized by law, penalty	219	89
purchase of claim against county at less than demand, penalty.....	223	110
to furnish to road supervisor a list of petitioners for roads	274	20
to affix to road lists amount of taxable property assessed to residents of road districts.....	<i>ib.</i>	21
to issue license for ferry.....	280	41
to approve bond of person establishing ferry.....	281	44
to publish notice of application to lease public roads....	285	55
to file contract of lease of public roads.....	<i>ib.</i>	57
<i>ex officio</i> clerk of the board of county commissioners....	304	6
duty of, as to extra sessions board of county commissioners proceedings of county commissioners attested by, admitted as evidence.....	<i>ib.</i>	7
records of county commissioners to be kept by, what shall contain.....	305	13
offices for, etc., to be provided by county commissioners.	306	15
accounts of, to be examined by county commissioners, when.....	<i>ib.</i>	16
to file assessment roll.....	<i>ib.</i>	17
duty of, in cases of appeal from decision of board of county commissioners.....	308	29
act in relation to.....	310	
election, qualification and term of office.....	<i>ib.</i>	1
to be clerk of county commissioner's court.....	<i>ib.</i>	2
recorder of deeds for respective county.....	<i>ibid</i>	
form and manner of conducting election.....	310	3
associates of, in opening polls to certify election of.....	<i>ibid</i>	
oath of officer, requisites of.....	<i>ib.</i>	4
oath to be endorsed on certificate of election and filed with clerk of district court.....	<i>ibid</i>	
bond of, to be approved by county commissioners, when filed.....	310	4
to audit claims against county.....	311	5
to issue order on treasurer, manner prescribed.....	<i>ibid</i>	
to keep register of orders.....	<i>ibid</i>	
orders may be broken on payment of fees.....	<i>ibid</i>	
claim of, for services to be audited by board, and warrant drawn by chairman board of commissioners.....	<i>ibid</i>	
shall keep an account current with county treasurer....	311	6
file treasurer's receipt and charge that officer.....	<i>ibid</i>	

INDEX.

605

AUDITOR, COUNTY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
to make exhibit of county finances, and publish same...	311	7
what exhibit shall contain.....	311	8
fee for making exhibit.....	312	9
may appoint deputies.....	312	10
qualification of deputies.....	312	10
responsible for acts of deputies.....	312	10
and deputies authorized to administer oaths and take ac- knowledgments.....	312	11
shall not practice as attorney before commissioners.....	312	12
shall make register of warrants after every term, and de- liver copy to treasurer.....	312	13
shall number county orders, how.....	312	14
in absence of, county board may appoint <i>pro tem.</i>	313	15
shall attend meetings of county commissioners.....	313	16
shall perform all duties imposed by law.....		<i>ibid</i>
shall copy reports of treasurer.....		<i>ibid</i>
to send duplicate tax roll to county treasurer.....		<i>ibid</i>
shall publish proceedings of county board, when and how duty as recorder of deeds prescribed.....	313	17
deeds to be recorded in regular succession as presented..	313	18
mortgages, time of day when presented to be noted.....		<i>ibid</i>
date of presentation of deed to be endorsed... ..		<i>ibid</i>
receipt for, may be demanded, what shall contain.....	314	19
time and book in which recorded, to be endorsed.....	314	19
penalty for failure to record within twenty days.....	314	20
not subject to penalty, without tender of fees.....	314	20
to keep seal of office.....	314	21
shall certify any record when demanded.....		<i>ibid</i>
what shall be delivered to successor in office.....	314	22
certificate of search against liens and incumbrances.....	314	23
penalty for making incorrect certificate.....	314	23
to keep indices direct and inverted.....	314	24
columns of index prescribed.....	314	24
grantor's names to be in alphabetical order, and unversely manner of entering satisfaction of lien or other incum- brance.....	315	25
to keep record and index of town plats.....	315	26
copies of records certified by, <i>prima facie</i> evidence.....	315	27
as recorder of deeds, not required to perform official act without payment or tender of fees.....	316	28
to keep a record of transcripts of judgments.....	316	29

AUDITOR, COUNTY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
duty when judgment liens are satisfied.	316	29
to make index of judgment liens.	316	29
laws of Territory to be sent to him for distribution among county officers.	317	1
six copies of laws to be sent to him for sale.	317	1
to file inventory of separate estate of married woman.	319	
of the recording of marriage contracts.	321	
articles of incorporation for trade and business to be filed by.	331	
such articles certified by, <i>prima facie</i> evidence.	331	3
when incorporation increases or diminishes capital stock, such proceedings to be filed by.	337	22
proceedings when corporation changes its place of busi- ness.	339	26
filing of articles of incorporation of church, lyceum, char- itable and other societies.	342	4
filing of surrender of corporate powers by such societies.	342	4
filing of annual account of incorporation to build clay, plank, macadamized road, or bridge.	347	
to be sealer of weights and measures for his county.	353	1
shall procure complete standard weights and measures, consisting of.	353	2
said weights and measures to be kept at office of.	353	3
certificate to be transmitted to secretary of Territory.	353	3
to certify weight, measures and beams as correct.	353	4
at least once, penalty of party violating this law.	353	4
fees of, as county sealer.	353	5
fees prescribed.	369	3
required to keep a fee book, what shall contain.	372	9
fees of, for services performed for county to be sworn to.	374	23
to file certificate of limited partnership.	380	3
recording of quartz mining claims.	387	
he shall keep a record called "book of quartz claims".	387	
certificate of labor done on such claims.	387	
sales or transfer of claims must be recorded by.	387	7
to receive census from assessor and report same to Territo- rial auditor.	403	3
duties of, in qualification of deputy assessors.	403	4
duty of in proceedings to vacate town plats, &c.	410	1
duties of in restoring lost registry of county orders.	411	
duty of, when parties fail to present such orders for regis-		

INDEX.

607

AUDITOR, COUNTY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
try within time prescribed in notice.....	412	4
to transmit cost bills in convictions for felony to Territorial treasurer.....	419	4
to notify county treasurer of amount such bills.....	419	4
AUDITOR, TERRITORIAL—		
copies of records of office certified by, evidence.....	115	428
to file assessment rolls of various counties.....	184	
to estimate and state account of Territorial tax.....	184	29
to certify copy of such statement to Territorial treasurer.....	184	29
to have blank forms of assessment rolls and other tax proceedings printed for counties.....	196	80
shall give instructions to county auditors as to statistics.....	196	80
instructions of, to be obeyed by county assessors.....	197	80
accepting bribe or present, corruptly, penalty.....	216	78
penalty for knowingly issuing warrant unauthorized by law.....	219	89
purchase by, of order or demand against Territory at less than amount, penalty.....	223	110
entitled to copy of the laws of Territory.....	317	1
to audit claim of secretary of Territory for distributing laws.....	317	3
joint convention to elect, time and proceeding.....	327	
duties regarding purchase of government buildings at fort Steilacoom for insane asylum.....	356	
to draw warrant for expenses of commissioners locating site for penitentiary.....	359	7
to embody in report to assembly the census taken by county assessor.....	403	3
Territorial treasurer not to pay out funds except upon warrant drawn by.....	408	1
authorized to draw warrant for compensation of quartermaster general.....	422	
AUTHORITY—		
of printed statutes of other States or Territories, how far and when.....	116	431
of party restraining one of liberty, to be stated in return to <i>habeas corpus</i>	157	614
officer construed as meaning person having.....	175	697
forcible entry is the violent taking possession of premises without.....	212	63

AUTHORITY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
usurpation of, defined, penalty	219	90
to join parties in marriage, unlawful exercise, penalty . . .	224	114
penalty for party joining parties in marriage without . . .	224	116
disinterring remains without, penalty	226	125
to issue search warrant	232	
of other States or Territories, demand for fugitives	233	
of grand jury to inquire, limited	237	166
of court, must appear in indictment	242	192
warrant of, to be shown if defendant demands it	245	205
of Governor to pardon, commute and reprieve	264	312
of officer in making criminal arrests	266	317
of road supervisor to enter lands, carry away material . . .	277	28
of county commissioners to hold extra terms	304	7
of county commissioners, generally	304	11
of county boards to administer oaths, compel attendance of witnesses and punish contempts	308	26
of marshals at agricultural and mechanical fairs	328	
of corporations to appropriate lands for corporate uses . . .	344	
of public corporations to appropriate private property . . .	350	13
lessee of school lands shall not cut or destroy timber	402	2
AWARD—SEE ARBITRATION, ASSESSMENT OF DAMAGES, REFEREE.		
of damages, on dissolution of injunction to stay judgment . .	41	
of costs in proceedings of mandate and prohibition	161	640
corruptly obtained, party guilty of attempting, penalty . . .	216	78
report of referees in trial by, how made	62	
arbitration and award	64	
of persons mutually selected to arbitrate controversy, suit or quarrel	64	266
bond of submission, that parties shall abide	65	267
to be made according to terms of submission	65	268
to be filed with clerk of district court, what shall contain .		<i>ibid</i>
copy of, to be delivered to party in whose favor rendered .		<i>ibid</i>
if not excepted to, or matter settled, judgment to be en- tered, when		<i>ibid.</i>
losing party may except in writing	65	270
matters of exception prescribed	66	270
when court will recommit, with directions to amend	66	271
failure of arbitrators to comply, the court becomes pos- sessed of the case		<i>ibid</i>
fees &c., to be endorsed upon, how collected	66	275

INDEX.

609

AWARD—(<i>Continued.</i>)	Page.	Sec.
when affirmed by court, the same as a judgment.....	66	276
of damages to defendant in error, on affirmance of judgment.....	119	442
of restitution to plaintiff in error, for property sold on execution.....	120	445
of costs to certain defendants, when plaintiff fails to recover against all.....	124	463
of costs in certain cases brought up for review.....	126	475
of referees in suits of partition of real property.....	134	
of referees, of proceeds of sale of real property among lien holders.....	136	
to tenants for life or years, for undivided interest in real estate sold under proceedings in partition.....	139	

B.

BAIL—*In Civil Actions.*

of arrest and.....	28	
person shall not be held to, except by order of court or judge of supreme court.....	28	113
court in ordering arrest shall fix amount of.....	30	116
amount of, shall not exceed what.....		<i>ibid</i>
defendant may give, requisites of and mode.....	31	122
may surrender defendant and be exonerated.....	32	124
exoneration of, how effected.....		<i>ibid</i>
may arrest or empower arrest of defendant.....	32	125
can be proceeded against by action only.....		<i>ib.</i> 126
death or imprisonment exonerates.....		<i>ib.</i> 127
discharge of defendant from liability exonerates.....		<i>ibid</i>
surrender of defendant exonerates.....		<i>ibid</i>
sheriff exonerated from liability, when.....	33	128
justification of, where plaintiff excepts to sufficiency....		<i>ib.</i> 129
qualifications defined.....		<i>ib.</i> 130
attorneys, sheriffs, clerks of court and officers shall not be each shall be worth amount of bond.....		<i>ibid</i>
but more than two sureties may jointly justify in several sums together, equivalent to two sufficient.....		<i>ibid</i>
examination of, in justifying.....	33	131
endorsement of allowance.....	33	132

BAIL—(Continued.)	Page.	Sec.
deposit may be made in lieu of.....	34	133
when deposit made, proceedings of sheriff.....	<i>ib.</i>	134
deposit refunded on entering.....	<i>ib.</i>	135
on escape of defendant after arrest, sheriff liable as.....	<i>ib.</i>	137
proceedings against sheriff when liable as.....	<i>ib.</i>	138
unless they justify, be liable to sheriff by action for what	35	139
in proceedings of <i>ne exeat</i> , similar to other cases of arrest	149	577
defendant arrested on <i>ne exeat</i> to enter special.....	<i>ib.</i>	578
instead of giving, may secure performance of contract...	150	579
defendant entitled to <i>habeas corpus</i>	<i>ib.</i>	581
justices of peace have power in cases within their juris-		
diction.....	<i>ib.</i>	582
in replevin or special, remedies against co-defendants or		
co-sureties.....	151	
power of court in proceedings on <i>habeas corpus</i>	158	
admission to, of parties charged with contempt....	169	
person required to give, may make deposit with clerk....	173	692
<i>In criminal actions—</i>		
persons held on indictment when to be tried or bailed on		
his own recognizance.....	199	7
all offences except murder in first degree, bailable.....	199	8
shall justify and have same rights as in civil cases.....		<i>ibid</i>
when persons whether indicted or not, shall be admitted to.		<i>ibid</i>
of persons charged with commission of crime in other		
States or Territories.....	235	
court at each term to fix amount of, for parties indicted..	244	203
on writs of attachment returnable after term, to be fixed		
by court.....	245	204
may be taken in open court by recognizance.....	245	208
officer serving warrant may justify and approve.....	245	209
when taken by peace officer, to be certified forthwith to		
clerk.....	245	210
in place of giving, deposit may be made.....	245	211
neglect to appear, default noted and forfeiture of.....	245	212
if defendant has been admitted to, docket must state....	247	217
defendant discharged on, failing to appear when needed		
may be arrested on bench warrant.....	257	270
for the payment of fine and costs, how taken and effect of.	257	296
execution against property of, for said judgment.....		<i>ibid</i>
actions against, on forfeited recognizance.....	260	
shall not be allowed to a party convicted for felony, on		

INDEX.

611

	<i>Page.</i>	<i>Sec.</i>
BAIL— <i>(Continued.)</i>		
swearing out writ of error.....	262	
on recognizance taken by justice of peace.....	265	313
no claim against, shall be barred or defeated, by reason of defect of form or omission to note default.....	265	314
shall when required justify as in civil cases.....	265	316
fixed at not less than \$5000, for introducing Texas cattle into Territory.....	405	5
BAILEE—		
shall be deemed owner for taxation purposes.....	179	14
embezzlement by, when larceny.....	210	58
altering receipt and converting property to own use, punishment.....	210	59
without hire, equally liable.....		<i>ibid</i>
BAILIFF—SEE JURY.		
in charge of jury, duties prescribed.....	57	233
BALANCE—SEE ACCOUNT.		
action to recover, statute of limitation.....	10	33
where set-off pleaded, judgment for.....	122	456
BALLAD—		
obscene, penalty for publication of.....	226	124
BALLAST—		
discharge of, in certain waters prohibited, penalty.....	223	108
may be discharged above half-tide.....		<i>ibid</i>
not to be discharged on flats within town limits.....		<i>ibid</i>
BALLOT—		
marking by officer to learn how elector voted, penalty..	221	101
all elections by corporations of officers, shall be by.....	332	5
BALLOT-BOX—		
officer marking elector's ticket before deposit in, penalty.	221	101
BANK—		
of stream, ferryman to cut and make safe landings.....	281	45
BANKING GAMES—		
prohibited, penalty for keeping.....	222	104
BANKING HOUSE—		
setting fire to, punishment.....	206	42

	<i>Page.</i>	<i>Ser.</i>
BAR, PLEA IN—		
judgment for penalty, by collusion shall not defeat another action by different party	153	599
acquittal on former trial, when and how far	198	4
discharge of defendant when injured party acknowledges satisfaction in damages, to another civil action	246	215
for violation of law regulating travel, action against driver, is to action against employer, and <i>vice versa</i>	289	70
BARN—		
setting fire to, punishment	206	42
BARRATOR, COMMON—		
who shall be deemed, punishment	220	96
BARRELS—		
forgery of brand upon, penalty	211	60
used for packing salmon for sale, to be branded	352	1
what shall be branded upon head of	<i>ibid</i>	
penalty for failure to brand	352	2
penalty for using another person's brand	352	3
BARS OF GOLD—SEE GOLD BULLION.		
counterfeiting of, punishment	231	67
written contract to pay, enforcement in gold coin	416	3
BEAM—		
by which article is weighed, to be sealed by county sealer of weights and measures	353	4
penalty for using, without being sealed	<i>ibid</i>	
fee of county sealer for sealing	354	5
BEER—		
sale of, to Indians prohibited, penalty	228	133
in prosecutions for sale to Indians, Indian testimony com- petent	<i>ibid</i>	
BENCH WARRANT—SEE ARREST, ATTACHMENT FOR PERSON, WARRANT.		
to compel personal appearance of defendant out on bail	257	270
BENEVOLENT SOCIETY—		
property of, exempt from taxation	177	4
incorporation of	341	

INDEX.

613

BEQUEST—	Page.	Sec.
separate property of wife obtained by.....	318	1
if by terms of, the wife entitled to rents and profits, husband shall not control.....	320	9
BIDS—		
to be received by county commissioners for contracts of lease of public roads.....	285	
duty of county commissioners regarding.....	288	67
for repairing or building bridges.....	289	
BILLS—SEE INDICTMENT.		
considered personal goods of which larceny may be committed.....	208	49
taken under color of office for illegal fees, punishment....	219	92
of indictment ignored by grand jury, what shall be returned.....	237	166
original of Legislative Assembly, what shall be deemed..	317	4
no corporation shall issue.....	335	15
of fees due officer, shall be made out when demanded....	374	24
of fees subject to correction by court.....	<i>ibid</i>	
of indictment, duty of grand jury on failure to find....	418	2
of costs in convictions of felony, to be certified by clerk,.	419	4
such bill to be received by Territorial treasurer on account of Territorial tax, duty of said treasurer.....	<i>ibid</i>	
duty of county treasurer regarding.....	<i>ibid</i>	
of sheriff for keeping Territorial convict.....	419	6
BILLS OF EXCEPTION—SEE EXCEPTIONS.		
how may be taken, what to contain and how settled.....	63	
shall be contained in transcript of record, in suits of error shall be recorded by clerk in making up final record of all criminal prosecutions.....	118	437
in suits of error in criminal cases, shall be certified in transcripts of record.....	259	286
in suits of error in criminal cases, shall be certified in transcripts of record.....	261	294
BILLS OF EXCHANGE—		
action by assignee of, rights of assignee.....	4	4
parties severally liable upon, may all or any be sued....	6	16
limitation commences from last payment of interest....	12	46
how far set-off can be allowed.....	121	449
as to costs in several actions on the same.....	123	461
considered personal goods, of which larceny may be committed.....	208	49

	<i>Page.</i>	<i>Sec.</i>
BILLS OF EXCHANGE—(Continued.)		
forgery of, how committed, punishment.....	211	60
protest of, by notaries public, fee.....	375	2
BILLS OF INDICTMENT—SEE INDICTMENT.		
ignored by grand jury, what shall be returned.....	237	166
duty of grand jury on failure to find.....	418	2
BILLS OF PARTICULARS—		
court may order either party to furnish.....	24	91
BILLS OF SALE—		
lien on personal property created by, suit for foreclosure.	147	572
BLANKS—		
Territorial auditor shall furnish to county auditors, what shall contain.....	196	80
BOARDS—SEE COUNTY COMMISSIONERS.		
setting fire to piles of, arson.....	206	43
shuffle, keeping for gaming purposes, penalty.....	222	104
guide, defacing or injuring, penalty.....	224	118
guide or finger, to be erected where and what to contain	278	30
fence, legal how to be constructed.....	324	4
sign, rates of tolls for crossing bridge.....	346	13
of commissioners, to purchase buildings for insane asylum	356	
of commissioners, to locate site of penitentiary.....	358	
of health, under quarantine laws.....	394	
BOARD OF COUNTY COMMISSIONERS—SEE COUNTY COMMISSIONERS.		
BOARD OF HEALTH—SEE HEALTH OFFICER, QUARANTINE.		
of Puget Sound collection district under quarantine laws	394	1
name of appointees.....	<i>ibid</i>	
to preserve quarantine regulations.....	<i>ibid</i>	
to appoint a health officer.....	<i>ibid</i>	
to designate place where quarantine shall be performed..	395	2
may seize goods from infected vessel landed without permission of health officer.....	395	3
penalty for parties disobeying regulations of.....	396	4
to designate place for reception of infected persons.....	397	8
to procure pest house at expense of Territory.....	398	12
to make publication of quarantine regulations.....	398	14

INDEX.

615

BOATS AND VESSELS—SEE VESSELS.	Page.	Sec.
construed as personal property under tax laws.....	176	3
loss of life through careless navigation, manslaughter....	201	18
setting fire to, arson, punishment.....	206	42
selling liquor upon, within a mile of lawful assemblage. penalty.....	215	72
obstructions of navigation defined, penalty.....	223	109
to be kept or furnished at ferries.....	281	45
BOND—In Civil Actions. SEE BAIL.		
parties severally liable, may all or any be sued.....	6	16
limitations of actions upon.....	8	25
limitation to run from date of last partial payment.....	12	46
copy of, need not be set out in pleading.....	24	91
but if demanded, copy must be served on adverse party, when.....		<i>ibid</i>
required of plaintiff, to arrest defendant.....	30	116
to be filed with clerk upon issue of warrant of arrest....	<i>ib.</i>	117
of defendant to be cancelled if he be discharged.....	<i>ib.</i>	118
of defendant, as bail, conditions and requisites.....	31	122
before defendant has failed to comply, his sureties may be exonerated.....	32	124
endorsement of authority to arrest defendant by sureties.	<i>ib.</i>	125
of bail of defendant to be returned by sheriff.....	<i>ib.</i>	128
of exception by plaintiff to sufficiency of defendants....	33	<i>ib.</i>
of justification by defendant's sureties, and new.....	<i>ib.</i>	129
qualifications of sureties.....	33	130
examination of bail and approval to be endorsed by officer	<i>ib.</i>	132
deposit may be made in lieu of bail.....	34	133
suit against sheriff on official, for escape.....	<i>ib.</i>	138
liability of defendant's sureties to sheriff.....	35	139
in claims to recover personal property.....	<i>ib.</i>	142
defendant to be served with copy of.....	36	142
defendant may except to sufficiency of.....	<i>ib.</i>	143
may be given by defendant and he retain possession of property.....	36	144
of defendant, conditions and requisites of.....		<i>ibid</i>
of justification of defendant's sureties.....	36	145
qualifications of sureties.....	37	146
third party claiming property, plaintiff to give to sheriff an indemnifying.....	37	149
of party asking for injunction or restraining order.....	39	157
when temporary restraining order granted, plaintiff need		

BOND—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
not give second, except.....	<i>ib.</i>	158
the liability of first, shall continue.....	<i>ibid</i>	
injunction takes effect from filing of.....	40	162
of person arrested for disobedience to injunction.....	<i>ib.</i>	166
of plaintiff for issue of attachment.....	42	174
when defendant may have attachment discharged by giving qualifications of sureties, and conditions of.....	46	188
of receiver.....	<i>ib.</i>	189
of parties submitting matter to arbitration.....	65	267
of submission to arbitrate to be filed with clerk of district court.....	<i>ib.</i>	268
required of plaintiff to make restitution in judgments upon failure to answer, against defendant served by publication.....	71	291
for stay of execution, conditions and requisites of.....	85	332
judgment when may be entered against sureties on stay..	<i>ib.</i>	333
sureties on stays, qualification of.....	<i>ib.</i>	334
if execution issues before time for which judgment might be stayed, defendant may give for balance of time....	85	335
stay, shall be filed with clerk of court.....	<i>ib.</i>	336
by party claiming property as exempt.....	89	346
of party claiming property levied upon or attached.....	<i>ib.</i>	347
of party in replevin, suit to be returned to clerk.....	90	348
if claimant sustains claim, cancellation of.....	<i>ib.</i>	350
judgment against plaintiff and sureties, if claim not made out.....	<i>ibid</i>	
of judgment debtor, for retention of property levied upon by execution.....	93	354
of judgment debtor, to obey order of court in proceedings supplementary to execution.....	101	376
of plaintiff in error, in suing out writ, for <i>supersedeas</i>	119	440
where several actions brought on same, of costs.....	123	457
of non-resident plaintiff, security for costs may be required	126	479
of guardian receiving proceeds of sale in partition.....	142	350
of guardian of lunatic for share of proceeds, sale on partition.....	142	551
of defendant, conditioned to abate nuisance.....	145	562
of plaintiff in issue of writ of <i>ne exeat</i>	149	577
defendant shall enter into special bail, liability of sureties	149	578
surety on any, may be proceeded against by <i>ne exeat</i>	150	580
may be filed in any county where defendant is found....	<i>ib.</i>	583

INDEX.

617

BOND—(<i>Continued.</i>)	Page.	Sec.
any surety may require obligee to commence action upon	150	584
if obligee fails to bring action, when surety released	<i>ib.</i>	585
surety may have securityship tried, when	151	586
surety on, compelled to pay judgment, entitled to use of judgment	<i>ib.</i>	588
remedy of surety against co-defendant or co-sureties	<i>ib.</i>	589
surety shall not confess judgment, when	<i>ib.</i>	590
suits on official, (see official bonds)	152	
of defendant arrested for contempt of court	169	673
suit upon, given by parties arrested for contempt	170	679
of special officer to serve process	172	687
officer taking may justify sureties	173	690
shall not be void for want of form, substance, recital or condition	<i>ib.</i>	691
actions on defective, plaintiff may state legal effects as though perfect		<i>ibid</i>
deposit may be made in lieu of	<i>ib.</i>	693
action on sheriff's, for failure to pay over taxes, &c., col- lected	195	72
to party injured on sheriff's, for false return or fraudulent act of sheriff in collection of taxes	195	73
in settling estates without administration, suits upon by claimants against intestate	300	
for appeals from decision of county commissioners	309	29
actions against sureties of county auditor for incorrect statement of liens upon real estate	314	23
<i>In criminal actions. See arrest, bail.</i>		
for good behavior of defendant acquitted on plea of in- sanity	254	256
for good behavior, when court may order given	257	273
for stay of execution of judgment for fine and costs	257	276
principal liable to execution against person		<i>ibid</i>
sureties only liable on property		<i>ibid</i>
for stay of execution on judgment on forfeited recogni- zance	260	288
in actions upon, defects of, disregarded	265	304
<i>Miscellaneous provisions regarding—</i>		
considered personal goods of which larceny may be com- mitted	208	49
forgery of, penalty prescribed	211	60
taken under color of office, for unlawful fees, penalty	219	92

BOND --(Continued.)	Page.	Sec.
entry by auditor of satisfaction or release of, how.....	315	25
may be exacted by corporations of their officers.....	331	4
<i>Official—</i>		
of sheriff, action upon for deficiency due, in certain cases	35	138
suits upon, procedure.....	152	
shall be deemed a security to party to whom given for official delinquencies.....	<i>ib.</i>	592
who may maintain action upon.....	<i>ib.</i>	593
before commencing action court must grant leave.....	<i>ib.</i>	594
showing to be made to court, of what shall consist.....	<i>ibid</i>	
judgment in favor of one party aggrieved shall not preclude others from an action.....	153	595
judgment shall not be entered against a surety for larger amount than penalty of.....	153	595
of sheriff, as collector of taxes.....	186	33
of sheriff, suit upon for withholding payment of taxes..	195	72
of sheriff, suit upon for false return or fraudulent act of sheriff in collection of taxes.....	<i>ib.</i>	73
of road supervisor.....	274	19
of county auditor.....	310	4
of county auditor, action upon for false statement as to liens upon real estate.....	314	23
of surveyor general of logs and his duties.....	390	
of health officer, quarantine laws.....	395	
of county assessor.....	403	2
<i>In other cases, for miscellaneous duties—</i>		
of petitioners for expenses of alteration of road.....	271	12
of applicant for license for ferry.....	281	44
accompanying bid for contract of lease of public road..	285	56
of parties settling estate without administration.....	299	
of trustee to manage wife's separate estate.....	320	8
of marshal of agricultural and mechanical fairs.....	328	2
may be exacted by corporations of their officers.....	331	4
 <i>BOOKS—</i>		
confessed judgment to be entered by clerk in.....	73	299
to be kept by clerk, called execution docket.....	75	309
to be kept by anditor of county to record transcript of judgments.....	77	314
of levies, to be kept by clerk of court.....	<i>ib.</i>	315
private libraries exempt from execution.....	87	343

BOOKS—(Continued.)	Page.	Sec.
libraries of professional men, how much exempt.	88	243
sheriff's deed to be entered in book of levies by clerk. . .	100	375
to be used in evidence, general provisions regarding. . . .	114	
printed statutes of other States and Territories, evidence	116	431
public libraries exempt from taxation.	177	4
obscene, publication of, penalty.	226	124
recognizances may be entered in order.	245	
received by jury not allowed by court, ground for new trial.	255	260
register of county orders by auditor.	312	13
reports of treasurer, receipts and disbursements of county	313	16
records of deeds, mortgages, &c.	<i>ib.</i>	18
to be delivered to successor in office.	314	22
record of town plots, what shall contain.	315	26
of auditor, copies from <i>prima facie</i> evidence.	<i>ib.</i>	27
for transcripts of judgments.	316	29
kept by trustees of corporation, what shall contain.	336	18
penalty for a false entry in.	<i>ib.</i>	19
certain officers to keep, fee.	372	9
of quartz claims, to be kept by county auditor.	381	4
record to be kept by surveyor general of logs, what shall contain	392	6
for use of court to be furnished by county commissioners.	421	10
 BOOK OF LEVIES—		
to be kept by clerks of court, what shall contain.	77	315
sheriff's deeds shall be entered in, before recorded by auditor	100	375
 BOOK OF QUARTZ CLAIMS—		
to be kept by county auditor.	387	
 BOOM—		
shall not be considered an obstruction to navigation, when.	223	109
to be measured and surveyed by surveyor general of logs	391	2
Bangor scale, the rule of measurement of.	<i>ib.</i>	5
what shall be measured, and what rejected.	392	6
statement to be given of contents.	<i>ibid</i>	
compensation of surveyor general for measuring.	392	8
penalty for false statement as to contents of.	393	12

BOUNDARY—SEE COUNTIES.	<i>Page.</i>	<i>Sec.</i>
malicious removal of monument marking, penalty.....	212	65
offenses committed on, of two counties, jurisdiction in either	230	140
fugitive from another State, to be transported to.....	234	153
building bridges on streams forming, of counties.....	289	73
lines of counties, act defining.....	291	
of land, fence upon to be a partition fence.....	324	4
law regulating erection and cost of partition fences.....	325	
BRAND—		
using or altering another's cattle, to prevent identification, punishment	208	51
forgery of, punishment.....	211	60
of salmon intended for sale, of what shall consist.....	252	1
penalty for selling salmon without.....	352	2
penalty for using another man's.....	352	3
BREACH OF PROMISE—SEE SEDUCTION.		
limitation of civil action for.....	9	28
seduction defined as a crime, punishment.....	225	119
BREWERS—		
penalty for selling certain liquors to Indians.....	228	133
in such prosecutions, Indian testimony competent.....		<i>ibid</i>
BRIBERY—		
of judge, justice, juror, commissioner, auditor, referee or arbitrator, or person summoned as juror accepting bribe, punishment.....	216	78
of executive, judicial or ministerial officer, or member of Legislative Assembly accepting bribe to do certain acts, punishment	216	79
party offering or giving bribe, punishment.....	217	80
officer of election influencing elector by persuasion, men- ace or reward.....	221	99
person attempting, to influence an elector, punishment..	221	102
BRIDGE—		
trespass for purpose of repairing, what damages allowed	144	557
setting fire to, arson, punishment.....	206	42
malicious injury to, punishment.....	212	66
obstruction of or injury to material, penalty.....	222	107
neglect of supervisor to keep in repair, penalty.....	223	111
malicious defacing, penalty.....	224	118

INDEX.

621

BRIDGE—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
act in relation to roads, ferries and.....	266	
road supervisor to repair, power of that officer.....	278	31
county commissioners may build or repair, on county roads.....	289	71
superintendent may be appointed to build or repair.....	<i>ib.</i>	72
how to let contract for building or repairing.....		<i>ibid</i>
money to be paid on certificate of superintendent.....		<i>ibid</i>
repairs may be authorized without notice.....		<i>ibid</i>
across stream, boundary between two counties.....	290	73
viewers to be appointed from each county.....		<i>ibid</i>
payment for, by the two counties, mode of proceeding...		<i>ibid</i>
<i>Built by corporations and toll bridges—</i>		
corporation may enter upon land to locate.....	343	1
corporation may appropriate land for.....		2
corporation may erect, upon streams on line of road.....	345	8
certain, declared a common highway.....	346	12
toll may be charged and collected for crossing.....		13
statement of cost and expense to be kept by corporation.	347	15
when county entitled to purchase and make free.....		16
by agreement of parties, county may purchase at any time	348	17
 BRIDGE SUPERINTENDENT—SEE BRIDGE.		
may be appointed by county commissioners to build or repair bridge.....	289	72
to post notices, what shall contain.....		<i>ibid</i>
to give contractor a certificate and report to county commissioners.....		<i>ibid</i>
certificate of, a voucher for payment of bid.....		<i>ibid</i>
may authorize repairs without notice.....		<i>ibid</i>
of bridge on stream between two counties, to be appointed by county applying for bridge.....	290	73
 BUILDING—		
included in term "land" for purposes of taxation.....	176	2
houses of worship, except what, exempt from taxation...	177	4
setting fire to, arson.....	206	42
malicious burning of ones own, and thereby destroying anothers.....	207	44
entry of at night time with intent to commit felony, burglary.....	207	46
forcible entry or detainer, defined, punishment.....	212	63
temporary erection of and sale of liquor within mile of		

BUILDING—(Continued.)	Page.	Sec.
lawful assemblage, penalty.....	215	72
used for setting up gambling devices, penalty.....	222	105
willful defacing or injury to, penalty.....	226	18
officer making criminal arrest, may break open.....	266	317
may be searched, when search warrant may be issued.....	232	
county, to be erected and kept in repair by county commissioners.....	305	11
question of erection of county, to be submitted to a vote of people.....	307	22
estimate to be made, and notice given, what shall contain assessment and collection of special tax to build county.		<i>ibid</i>
if surplus in county treasury, may be erected without submission.....	307	23
till county provided with, county commissioners to provide places for holding courts.....	308	27
incorporation for purposes of.....	330	1
appropriations of land by private corporations, for... .	343	2
fort Steilacoom purchased for insane asylum.....	356	
erection of, by U. S. coast survey parties on private lands	413	1
BULLION—SEE BARS OF GOLD.		
counterfeiting of, punishment.....	213	67
in enforcement of contracts, treated as gold coin.....	416	3
BURGLARY—		
killing in commission of or attempt to commit, murder in first degree.....	200	11
crime defined and punishment.....	207	46
property obtained by, to be restored to owner.....	209	54
no sale of property, to divest owner of his rights.....		<i>ibid</i>
officer making arrest to recover stolen property.....		<i>ibid</i>
officer answerable for property, and to annex schedule to warrant.....		
upon a conviction, recompense may be ordered by court to prosecutor.....	209	55
reward to officer for securing stolen property, to be paid by county treasurer.....		<i>ibid</i>
BURNING—SEE ARSON.		
of what, constitutes arson, punishment.....	206	42
death ensuing therefrom, murder in first degree.....		<i>ibid</i>
of boards, timber, piles of lumber, cord wood, grain, hay or vegetable products, maliciously.....	206	43

BURNING— (Continued.)	<i>Page.</i>	<i>Sec.</i>
of one's building, thereby destroying another, penalty . . .	207	44
loss of life occasioned thereby, murder in second degree.		<i>ibid</i>
married woman may be guilty, though it be property of husband	207	45
malicious of, timber lands, woods, prairie, grass or pasturage, punishment	213	68
BURIAL—		
tombs and all rights of, exempt from taxation	177	4
penalty for unlawful disinterment of body or remains . . .	226	125
BURYING GROUND—		
exempt from taxation	177	4
willful disfiguring, injury or removal of tombstones, &c, penalty	227	126
using cemetery for other purpose than, penalty		<i>ibid</i>
BUSHEL—SEE HALF-BUSHEL.		
standard half bushel and usual subdivisions to be procured by county sealer of weights and measures	353	3
persons using, to have sealed and certified, when	353	4
fee for sealing	354	5
BY-LAWS—		
power of corporations to make	332	4
failing to elect officers on day prescribed in, does not work a forfeiture	333	6
to prescribe mode of transferring stock	333	9
may prescribe manner of subscribing and paying for stock of corporations for mining purposes, as to value of stockholders interest	340	28
power to make, by incorporated colleges, churches, libraries and benevolent societies	342	2

C.

CANAL—		
malicious injury to, punishment	313	66
corporations constructing may enter land to locate	343	1
corporations constructing may appropriate land sixty feet wide	<i>ib.</i>	2

	<i>Page.</i>	<i>Sec.</i>
CANAL—(Continued.)		
compensation for such appropriation.....	343	2
right of way secured to corporation to construct and re- pair.....		<i>ibid</i>
location of grade of, may be changed.....	343	3
CAPITAL—SEE CORPORATIONS.		
invested in boats and vessels, is taxable as personal prop- erty.....	176	3
of corporations not invested in real estate, taxable as per- sonal property.....	176	3
amount of stock to be stated in articles of incorporation.....	331	1
of corporation, shall only be reduced, how.....	334	13
of division and distribution of surplus at dissolution of corporation.....	335	13
debts of corporation never to exceed.....	<i>ib.</i>	14
liability of stockholder proportionate to his subscription to of the increase and diminution of, by corporation.....	337	16
of the distribution of, upon dissolution, mode of pro- ceeding.....	338	23
of corporations for mining purposes, when need not be subscribed.....	340	28
interest in mine may be considered, when and how much contributed to formation of limited partnership.....	340	28
amount of each partner's contribution to be stated in cer- tificate of partnership.....	380	2
of limited partnership not to be withdrawn.....	<i>ib.</i>	3
no dividends shall be made reducing, below amount stated in certificate.....	381	7
special partners liable for all sums received or withdrawn from.....		<i>ibid</i>
CAPITAL PUNISHMENT—		
warrant for, to be signed by judge, etc., requisites of war- rant.....	259	282
return of sheriff of proceedings.....		<i>ibid</i>
mode of inflicting.....	259	283
return of sheriff and duties of clerk regarding.....	259	284
if day fixed passes, appointment of another time.....	259	285
CAPTAIN—SEE MASTER OF VESSEL.		
sinking or oversetting of boat or vessel from over-loading, if death or drowning caused, manslaughter.....	201	18
of steamboat, guilty of manslaughter, if death ensues from		

INDEX.

625

CAPTAIN—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
bursting of boiler of steam boat, racing or other neglect to anchor a vessel on quarantine ground designated by health officer	201	19
penalty of, for refusing to obey quarantine orders	395	2
performing quarantine, to hoist flag, when and where	396	4
bringing such vessel near wharf, penalty	397	8
penalty for making false statement as to health	397	9
duty of, having infectious disease on board vessel	398	<i>ibid</i> 11
CATTLE—SEE ANIMALS, TEXAS CATTLE.		
what, are exempt from attachment and execution	87	342
driven through the Territory, subject to taxation	194	66
branding or altering brand to prevent identification, punishment	208	51
cruel treatment of, a misdemeanor	227	127
rates of toll allowed	287	64
breaking into inclosure, damages for	324	3
an act to prevent the spread of infectious diseases among, penalty for keeping dangerous or vicious	377	400
may be killed in defense of person without liability for damage	400	1
duty of person searching for stray among other bands	408	2
penalty for violating law for protection of stock raisers	409	1
Texas, or such as are infected with Spanish fever, shall not be brought into Territory, penalty—(see Texas cattle)	404	2
CAUSE—SEE CAUSE OF ACTION, CHALLENGE.		
for granting change of venue	13	
challenge for, allowed	51	213
general, defined; particular, defined		<i>ibid</i>
what are general	52	214
particular, for implied or actual bias	52	215
implied bias, when it arises	52	216
actual bias	53	217
exemption not, but privilege	53	218
order in which challenge for may be taken	53	220
trial of challenge for	53, 54	
for allowing a new trial	67	
to be shown to set aside default	72	292
to be shown, in a proceeding to perpetuate testimony	113	44
of restraint, may be inquired into by <i>habeas corpus</i>	156	606

CAUSE—(Continued.)	Page.	Ser.
penalty for attempt to procure indictment without	220	94
to be shown, before search warrant can issue	232	149
how ascertained, in demands for fugitives from justice	234	158
challenge for, to grand jury	236	
challenge for, to petit jury	251	
for new trial and arrest of judgment in criminal cases	255	
before judgment in criminal cases, defendant shall be asked why judgment shall not be pronounced	256	269
 CAUSE OF ACTION—SEE ACTION.		
all persons interested, joined as plaintiffs	5	14
surviving, action shall not abate by death, marriage or disability, nor by transfer of interest	6	17
statute of limitation runs from time accrued	7	25
in actions for relief not specially provided for, limitation begins from accruing of	9	32
when deemed to accrue in actions upon accounts	10	33
accruing against absent or concealed party, limitation	10	37
surviving, when action may be brought by representatives of disabilities existing at time, accrues, when limitation attaches	11	44
when it arose in other States and Territories, and barred by lapse of time, cannot be maintained here	12	47
when it makes the action local or transitory, and fixes the place of trial	12	
how it shall be stated in complaint	20	74
improper joinder of, cause for demurrer	<i>ib.</i>	75
when facts stated do not constitute, cause for demurrer	<i>ibid</i>	
objection that facts stated do not constitute, may be taken at any stage of proceedings	21	80
what constitutes a counter claim	21	81
to be answered separately, and each referred to	<i>ibid</i>	
one or more may be demurred to, others answered	21	82
plaintiff may unite several, when and in what cases	25	100
they must affect all parties, not require separate trials, and must be separately stated	26	100
when not proven, when a variance, when a failure of proof if pleading contains more than one, not separately stated, may be stricken out	27	109
for what, defendant may be arrested	28	113
affidavit of, for writ of attachment	42	173

INDEX.

627

CAUSE OF ACTION—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
juror having tried the same, between parties may be challenged for bias.....	52	216
to be stated by plaintiff, after swearing of jury.....	54	226
of set-off, how and when can be pleaded.....	121	
assignment of, after suit commenced, costs.....	125	473
what is regarded as nuisance.....	144	
surety, when right has accrued, may require creditor or obligee to bring action.....	150	584
upon which, suits may be maintained by and against public corporations and officers.....	154	601
when information may be filed.....	162	*
for death of person, representatives may bring action within two years.....	165	658
all other, survive to personal representatives.....	165	659
survivor, and actions may be brought by representatives against party or his representatives.....		<i>ibid</i>
CEMETERY—		
exempt from taxation.....	177	4
injury or removing fence, trees or shrubbery in, penalty..		
using for other purpose than burying ground, penalty...	227	126
CENSUS—		
to be taken annually by county assessor, what shall contain.....	403	3
females to be listed, how.....		<i>ibid</i>
taxable Indians, Kanakas and Chinamen to be noted....		<i>ibid</i>
to be reported before first Monday in May.....		<i>ibid</i>
auditor to transmit to Territorial auditor for reporting to Legislative Assembly.....		<i>ibid</i>
CERTIFICATE—		
by officer serving complaint and notice.....	15	59
of proof of service of process, how made.....	19	68
where defendant arrested has made deposit in lieu of bail	34	
of copy of order of injunction.....	39	159
of proceedings of sheriff in attachment.....	47	193
of credibility of bystanders whose affidavits may be used in settling bills of exception.....	64	262
of award of arbitrators.....	65	
of transcript of judgments to file with county auditor..	76	
of transcript of revived judgments.....	79	

CERTIFICATE—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
of sale of real property on execution to be delivered to purchaser by sheriff.....	97	366
of redemption, to be delivered by sheriff to redemptioner.....	99	391
of deposition of witness residing in Territory.....	108	406
of deposition of witness out of Territory.....	112	
to copies of books, records and other documents to entitle them to be regarded as evidence.....	115	
of residence and cultivation upon public lands.....	116	429
seal to be used, what is valid.....	<i>ib.</i>	430
of clerk to transcript of records in suits of error.....	118	
• in claims of settlement to real property under donation law, party holding the elder preferred, except.....	132	504
of liens upon real property in suits of partition.....	136	520
in suits of foreclosure the execution shall be order of sale, certified by clerk.....	146	567
of judgment, in action against public corporation or officer, an order on treasury of such corporation, etc.....	155	604
of sale of real property for taxes, (see sale taxes), 191, 192,	193	
concerning money, considered as personal goods of which larceny may be committed.....	208	49
forgery of, penalty prescribed.....	211	60
making of false, shall be deemed perjury.....	215	75
of marriage, failure to return, penalty.....	224	115
by peace officer, of recognizance taken by him.....	245	210
of order of supreme court, shall be authority.....	263	304
by road supervisor of labor on public roads.....	278	
of labor performed by viewer, surveyor, chainmen or markers.....	279	36
of proceedings of county commissioners, evidence.....	304	10
to correctness of assessment roll.....	306	17
of election of county auditor, by whom given.....	310	3
by auditor of statement of liens and incumbrance upon real estate.....	314	23
penalty for making false.....		<i>ibid</i>
by auditor, of copies of records, deeds, &c., <i>prima facie</i> evidence.....	315	27
of the statutes of the Territory by the secretary.....	317	4
to powers of attorney under act regulating rights of husband and wife.....	322	
of election, of officers elected by joint conventions of Legislative Assembly.....	327	4

INDEX.

629

CERTIFICATE—(Continued.)	Page.	Sec.
of articles of incorporation for general purposes.....	331	
of shares of stock in such incorporations.....	331	
of incorporation of colleges, churches, libraries and charitable societies.....	341	
of weights and measures, adopted for uniform standard..	353	
of purchase by commissioners to purchase buildings for insane asylum.....	357	
of certain documents to be forwarded to secretary of Interior by commissioners to locate penitentiary.....	359	
of notary public, sufficiency of.....	376	5
of limited partnership (see limited partnership).....	380	
of labor performed on quartz mining claim.....	387	
of amount of lumber, &c., by surveyor general of logs, or deputies.....	392	
penalty for surveyor general giving false.....	393	12
of sale of real property on execution to enforce judgment in specie, shall state specie received.....	417	5
of cost bills, in conviction for felony.....	419	4
of fees, due to jurors and officers, by clerk of court.....	420	
CERTIORARI—		
writ of allowed, to order or decision of county commissioners.....	309	29
CHAINMAN AND MARKER—SEE ROADS.		
duties of.....	268	5
compensation of, and certificate of labor performed.....	279	36
CHALLENGES—In Civil Actions.		
shall be to individual jurors.....	51	211
when several parties on side, must join in.....		<i>ibid</i>
each party entitled to three peremptory.....		<i>ibid</i>
peremptory, defined.....	51	212
for cause, defined, and is general or particular.....	51	213
what are general causes.....	52	214
what are particular causes.....	52	215
implied bias defined.....		<i>ibid</i>
actual bias defined.....		<i>ibid</i>
when may be taken for implied bias.....	52	216
when may be taken for actual bias.....	53	217
exemption from service a privilege not cause for.....		<i>ib.</i> 218
mode of conducting peremptory.....		<i>ib.</i> 219

CHALLENGES—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
to be taken separately and in order prescribed.....	53	220
exception to, for insufficiency and trial.....	<i>ib.</i>	221
on trial of, rules of evidence govern.....	54	222
if found competent, to be allowed.....	<i>ibid</i>	
if the exception and denial may be made orally.....	54	223
court shall note, together with substance of testimony...	<i>ibid</i>	
to referees for trial of cause.....	61	256
peremptory, not allowed to referees.....	<i>ibid</i>	
<i>In criminal actions—</i>		
to the panel of grand jurors, when and to whom allowed	236	158
to panel of grand jury shall be in writing and verified by affidavit.....	236	158
to individual grand jurors, for what causes allowed.....	<i>ib.</i>	159
to the panel, if allowed, grand jury must be discharged.	<i>ib.</i>	160
to individual, if allowed, he is discharged.....	<i>ib.</i>	161
law regulating in civil cases applicable.....	251	233
number of peremptory, to which defendants entitled...	<i>ib.</i>	234
number of peremptory, allowed to prosecuting attorney.	<i>ib.</i>	235
to the panel of petit jurors, when allowed and how made	<i>ib.</i>	236
for cause, when allowed and how determined.....	<i>ib.</i>	237
minutes of, to be embodied in transcript of record in suits of error and appeal.....	261	293
<i>To fight a duel—</i>		
penalty for sending or delivering.....	202	22
penalty for accepting or carrying.....	<i>ib.</i>	23
CHANGE OF VENUE— <i>In Civil Actions.</i> SEE VENUE.		
for what causes allowed.....	13	52
till case at issue, will not be allowed.....	14	53
where new county is created.....	<i>ib.</i>	54
duties of clerk, where ordered.....	<i>ib.</i>	55
costs of.....	15	56
when order of, may be vacated.....	<i>ib.</i>	57
if vacated, no other allowed.....	<i>ibid</i>	
when shall be deemed complete, jurisdiction of court...	15	58
<i>In criminal actions—</i>		
for what causes allowed and how obtained.....	249	229
if application be for prejudice of judge, how may be grant- ed.....	<i>ib.</i>	230
where founded on prejudice of inhabitants.....	<i>ibid</i>	
proceedings where affidavit of prejudice applies to partic-		

CHANGE OF VENUE—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
ular counties.....	250	231
if ordered, party may be admitted to bail if offense be bailable.....	<i>ib.</i>	232
 CHANNEL—		
penalty for discharging ballast into.....	223	108
obstruction of navigation, penalty.....	<i>ib.</i>	109
 CHARACTER—		
for injury to, of husband or wife, husband and wife may join in action.....	4	7
several causes of action for injuries to, may be united, when.....	25	100
 CHARGE—		
certain false, made against female, actionable.....	173	689
of incest or crime against nature, actionable.....		<i>ibid</i>
of any crime the commission of which would subject of- fender to death or degrading penalty, actionable.....		<i>ibid</i>
of an offense, rights of parties accused.....	198	
 CHARGE OF COURT—		
either party may request to have made in writing.....	55	225
when written, no other instruction or charge given.....		<i>ibid</i>
court refusing to give, exception allowed.....		<i>ibid</i>
all interlocutory rulings may be requested in writing....		<i>ibid</i>
refusal of court to make in writing, error, proviso.....		<i>ibid</i>
to be made to jury after argument of counsel.....		<i>ibid</i>
when may be oral.....		<i>ibid</i>
either party may except to all or any part.....		<i>ibid</i>
bill of exceptions to, must contain specific parts excepted to, or be disregarded by supreme court.....		<i>ibid</i>
what it shall contain.....		<i>ibid</i>
if evidence alluded to, jury must be advised that they are judges of fact.....	56	225
either party may submit conclusions of law or fact to be adjudged by court.....		<i>ib.</i> 256
such conclusions may be oral or written.....		<i>ibid</i>
jury, when they may ask additional... ..	58	236
exception to, defined, how taken.....	63	261
if the same be filed or recorded, exception on matter of law need not be taken.....	64	264

CHARGE OF COURT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
error in, ground for new trial.....	68	278
law applicable to, in civil cases to govern in criminal....	252	243
 CHARITABLE SOCIETY—		
personal property of, and real estate actually occupied for purposes of society, exempt from taxation.....	177	4
malicious defacing of building or property of, penalty....	225	4
articles of incorporation of.....	341	1
 CHATTELS—		
mortgage, suit for foreclosure.....	147	572
included in "personal estate" for purposes of taxation... .	176	3
warrant to sell, for taxes.....	185	30
sale of by sheriff, for taxes.....	187	39
 CHECK—		
considered personal goods, of which larceny may be com- mitted.....	208	49
forgery of.....	211	60
 CHILD OR CHILDREN—SEE INFANT.		
of man killed in duel, action against the slayer.....	4	8
action for death of.....	4	9
action for injury or death survives to.....	6	18
under ten years of age, incapable of testifying.....	103	386
carnal knowledge of a female under twelve years of age, rape.....	204	35
infanticide described, punishment.....	205	39
of offender, by harboring offender, shall not be deemed ac- cessary after fact.....	229	135
an act to secure to certain, a common school education..	406	
must be sent to school at least three months every year..	406	1
if person having custody unable to pay, to be admitted free.....	406	1
if no school is taught, time to be made up ensuing year..	406	2
penalty on failure to send, where opportunity is afforded..	406	3
clerks of school districts to report to probate judge the attendance of orphans.....	407	5
 CHINAMEN, CHINESE—		
all police taxes discriminating against, abolished.....	351	
to be enumerated annually, in census made by county as- sessor.....	403	3

INDEX.

633

CHURCH—	Page.	Sec.
property exempt from taxation.....	177	4
arson of.....	206	42
willful or malicious defacing of ground, trees or property of, punishment.....	225	118
incorporation of.....	341	
CIDER—		
sale of, to Indians prohibited, penalty.....	228	133
in such prosecutions Indian testimony competent.....		<i>ibid</i>
CIRCULATION—		
of obscene publications and prints, penalty.....	226	124
of libel, punishment.....	384	2
CITIES—		
mayor of, may take depositions.....	108	405
trespass to trees, shrubbery, &c., civil action for damages	143	556
official bond to, deemed security for what purpose.....	152	592
property* of, used for corporate purposes exempt from taxation.....	177	4
peace officers of, may disperse riotous assemblage.....	214	
supplying with water, corporations for.....	340	
must first confer privilege to supply water before corpora- tion can be formed.....	341	31
costs payable by, in cases of misdemeanor, on acquittal of defendant.....	418	1
CIVIL ACTION—SEE ACTION.		
CIVIL PRACTICE—SEE CODE OF CIVIL PROCEDURE.		
CLAIM—SEE COUNTER-CLAIM.		
defendant may substitute another party making same as plaintiff, by deposit of amount in court.....	7	22
of intervention by a third person making.....	7	23
counter-claim of defendant, how pleaded.....	21	
several may be united in same action by plaintiff.....	26	100
to recover personal property.....	35	
of plaintiff admitted by defendant, may be enforced by attachment or execution.....	49	203
by parties in trial, that certain conclusions have been es- tablished, how and when made.....	56	226
verdict where defendant's set-off, exceed plaintiff's.....	60	248
when counter-claim set up by defendant, defeats judgment for non-suit.....	69	288

CLAIM—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
in judgment on failure to answer, for excess of plaintiff's over counter-claim of defendant.....	71	288
by defendant that property is exempt from execution and attachment.....	89	346
sheriff may summon jury to try such.....	89	346
qualification of juror to try such.....	89	346
may appraise property and apportion what is exempt....	89	346
decision of sheriff's jury to be in writing.....	89	346
if maintained, property to be returned to defendant. ...	89	346
rights of property may be tried in district court as in oth- er cases of claim to property levied upon or attached..	89	346
to property levied upon or attached by other than judg- ment debtor.....	89	
of adverse, interest in property of judgment debtor by garnishee, action upon.....	102	381
what may be subject of set-off, (see set-off and counter- claim,).....	121	
against decedent to be presented before action can be commenced against executor or administrator.....	167	665
purchasing by certain officers of, against Territory or county at less than amount of, penalty.....	333	110
of creditors against estate of intestate settled without ad- ministration.	300	
of survivors to participate in settlement of such estate, when barred.....	302	9
against counties to be allowed by county commissioners.	305	11
against county may be enforced by civil action, after pre- sentation and disallowance.....	309	29
against trustees, actions upon must be commenced within three months after disallowance.....		<i>ibid</i>
against counties, to be audited by auditor.....	311	5
when allowed by law or commissioner's, auditor to draw warrant for.....		<i>ibid</i>
but orders may be broken on payment of fees by claimant		<i>ibid</i>
of witnesses of their fees, payable at service of subpoena, if demanded.....	374	22
quartz mining, action in relation to, (see quartz mining claims).....	386	
<i>To property levied upon or attached—</i>		
when made by third party, trial of rights.....	45	183
by defendant as exempt from execution or attachment....	89	346

CLAIM—(Continued.)	Page.	Sec.
mode of proceeding, (see claim).....	89	346
by other person than judgment debtor.....	89	347
party may demand, how.....		<i>ibid</i>
affidavit of claimant and bond.....		<i>ibid</i>
justification of sureties may be required.....	90	347
date of acceptance of bond to be endorsed by sheriff.....		<i>ibid</i>
sheriff to return proceedings, what shall contain.....	90	348
clerk to docket case, when.....		<i>ibid</i>
term at which trial is to be had.....		<i>ibid</i>
claimant to be plaintiff, sheriff and execution-plaintiff, defendants.....	90	349
if plaintiff succeeds bond to be cancelled.....		<i>ib.</i> 350
judgment if plaintiff fails to sustain.....		<i>ibid</i>
if sheriff gains judgment, costs to be paid by plaintiff... ..		<i>ibid</i>
when execution-plaintiff liable for all the costs.....		<i>ibid</i>
court may order sheriff to pay portion, where he has failed to use proper caution.....		<i>ibid</i>
<i>To recover personal property—</i>		
immediate delivery of, to plaintiff.....	35	140
affidavit of plaintiff, what shall contain.....		<i>ib.</i> 141
plaintiff must give bond, requisites of and condition....		<i>ib.</i> 142
on receipt of bond, sheriff to take possession.....	36	<i>ib.</i>
sheriff to serve copy of affidavit and bond on defendant.....		<i>ibid</i>
manner of service on defendant.....		<i>ibid</i>
defendant may within three days except to sufficiency of plaintiff's bond.....	36	143
if he except to plaintiff's bond, defendant cannot give bond for retention of property.....		<i>ibid</i>
before delivery of property to plaintiff, defendant can give bond and retain.....	36	144
of the justification of defendant's sureties.....		<i>ib.</i> 145
sheriff responsible for defendant's sureties until justifica- tion of.....	39	<i>ib.</i>
qualification and manner of justification prescribed.....	37	146
power of sheriff to take property, if concealed.....		<i>ib.</i> 147
if not delivered, sheriff may break open building.....		<i>ibid</i>
duty of sheriff in custody of, and compensation.....	37	148
when claimed by other person than defendant.....	37	149
such third party may retain possession, how.....		<i>ibid</i>
in such cases plaintiff may be required to give bond of in- demnity.....		<i>ibid</i>

CLAIM—(Continued.)	Page.	Sec.
return of sheriff, what and when to be filed.....	38	150
judgment for plaintiff may include damages for detention	75	306
judgment for return of property to defendant, with dam- ages.....		<i>ibid</i>
CLAIMANT—		
asserting rights by petition of intervention.....	7	23
in actions to recover personal property.....	35	
when other than the defendant or his agent.....	37	149
when a third person, to property levied upon or attached	45	183
delivery of property attached, when.....	45	184
to property levied upon or attached, rights of and mode of asserting claim.....	89	
shall be plaintiff in claims, who defendants.....	90	349
when bond shall be canceled.....	90	350
when liable for costs.....		<i>ibid</i>
when garnishee of judgment debtor, in property attached, proceedings.....	102	381
against intestates estates, settled without administration, actions by, against bondsmen.....	300	7
CLAPBOARDS AND SHAKES—		
act fixing standard measurement, repealed.....	385	
CLERGY—		
plea of benefit of, abolished.....	206	318
CLERGYMEN—		
libraries and property to what extent, exempt from at- tachment and execution.....	88	343
in civil actions, shall not be examined as witness without consent of party making confession, if professionally re- ceived.....	104	387
in criminal prosecutions, shall not be protected from tes- tifying as to confessions or information received from defendant.....	249	226
CLERK—		
of publisher, affidavit by of publication of notice to non- resident defendant.....	19	68
embezzlement by, defined, punishment.....	210	58
altering receipt or evidence of delivery of property, pen- alty.....	210	59

INDEX.

637

CLERK—(Continued.)	Page.	Sec.
conversion of property entrusted to, with or without hire, punishment.....	210	59
grand jury may appoint one of their own number.....	237	163
of corporations to keep certain books of records.....	336	18
penalty for making false entries in said records.....	336	19
of corporation to give notice of intention to disincorporate	338	24
of school districts, power to collect school money under act providing orphans with an education.....	407	5
<i>Of county commissioners court. See county auditor.</i>		
<i>Of district court.</i>		
duty of, changes of venue where new county formed.....	14	54
duty of, where venue is changed.....	<i>ib.</i>	55
may require payment of costs before transmission of papers where venue changed.....	15	56
failure by, to transmit transcript, in changes of venue....	15	57
of court to which case is transferred, duties of.....	15	58
to file all complaints served on day received.....	15	60
appointment by of person to serve complaint.....	16	61
notice and return to be filed by.....		<i>ibid</i>
from time of filing by, court obtains possession of case...	19	69
duties of, in arrest of defendants in civil actions.....	30	
warrant of arrest and return to be delivered to, when....	32	122
shall not be bail in any action.....	33	130
to file justification of bail in arrests.....	33	134
to issue certificates of deposit, where defendant makes in lieu of bail.....	34	134
to refund deposit to defendant if bail be entered.....	<i>ib.</i>	135
to apply funds deposited to satisfaction of judgment, and refund surplus.....	34	136
if defendant recovers judgment, deposit to be refunded by		<i>ibid</i>
duty of clerk in claims to recover personal property.....	38	150
to approve bond in application for injunctions.....	39	151
to issue certified copy of order of injunction, instead of writ.....	39	159
money collected on judgment afterwards enjoined, payable to.....	40	163
attachment issued by, for disobedience to injunction....	40	164
when writ of attachment against defendant's property shall be issued by.....	42	173
affidavit and bond to be filed with.....	42	174

CLERK—(Continued.)	<i>Page.</i>	<i>Ser.</i>
duty of clerk in empanneling trial jury	51	210
jury to be asked whether they have agreed upon verdict	58	241
duties of clerk in regard to verdict of jury	59	243
trial by court upon filing consent with	60	249
when case tried by court, decision to be in writing, filed with	60	250
report of referees to be filed with	62	259
bystanders whose affidavits are used in settling bills of exceptions, credibility to be certified by	64	262
bills of exception to be filed by	64	264
to enter default of defendant to answer	70	
duties of, in entering judgment by confession	73	
all judgments shall be entered by, how and what to contain	75	307
all papers connected with case to be attached together and kept		<i>ib.</i> 308
shall keep an execution docket		<i>ib.</i> 309
within twenty days shall enter all judgments into execution docket	75	310
shall furnish a transcript of judgment for county auditor, when		<i>ibid</i>
fees of transcript, to be paid by judgment creditor and taxed as costs		<i>ibid</i>
what transcript shall contain	76	310
shall enter in execution docket transcripts of judgments of supreme court, other district courts or justice of the peace	76	311
shall furnish transcripts of such judgments, when		<i>ibid</i>
shall leave space to note other proceedings, what	76	312
forms for recording levies on property		<i>ibid</i>
what other memoranda shall be made		<i>ibid</i>
how satisfaction shall be entered by	77	312
to prefix to execution docket an alphabetical index, direct and inverse	77	313
shall keep a book of levies, what shall contain		<i>ib.</i> 315
shall prefix to book of levies an alphabetical index	77	315
transcript of judgment certified by clerk and filed with county auditor, a lien on real estate	78	317
duties of, in revivals of judgment	79	318
duty of in issuing executions	81	324
duty of, in issuing execution against real estate out of dis-		

INDEX.

639

CLERK—(Continued.)	<i>Page.</i>	<i>Sec.</i>
trict.....	83	325
return of execution by sheriff to.....	83	326
on the payment of moneys to, by sheriff.....	83	326
shall notify party to whom money is due.....	83	326
penalty for failure to notify and pay over money received to record assignments of judgment, and issue execution in name of assignee.....	83	326
to approve bonds for stay of execution.....	84	330
stay bonds to be filed with.....	85	332
duty of, in claims to property levied upon or attached....	85	336
duty of, on receiving return of real estate sold on execution	90	348
payment by, of proceeds of sale of real estate.....	95	363
where judgment is against several and one pays more than proportion.....	96	363
sheriff's deed to be entered in book of levies.....	97	365
shall endorse date of presentation and entry of said deed	100	375
to issue subpœna for witnesses, manner of.....	100	375
filing of interrogatories in examination of adverse party.	105	390
may take deposition of witness in Territory.....	107	
deposition to be directed to.....	108	405
duties of, in issuing commission to take deposition of wit- nesses out of Territory.....	109	407
duties of, in proceeding to perpetuate testimony.....	111	415
records of court attested by, evidence.....	114	423
duties of, in suing out writ of error.....	115	426
notice of writ of error to be returned to.....	117	434
to make a transcript of record on payment of fees, and transmit to clerk of supreme court.....	118	435
what transcript of record shall contain.....	118	436
cost bills and disbursements to be verified and filed with, when.....	118	437
deposit with, of amount admitted to be due, as to costs.	124	465
taxation of costs by, may be appealed from.....	125	469
of bond required of non-resident plaintiffs for costs.....	126	478
duty of, in investments of proceeds of sale of real estate in partition proceedings.....	126	479
in judgments of foreclosure, order of sale certified by, be- comes the execution.....	141	
duty of clerk in proceedings of <i>ne exeat</i>	146	567
in judgments against public corporations, the clerk shall certify transcript of, instead of execution.....	149	
	155	604

CLERK—(Continued.)	Page.	Sec.
all writs of <i>habeas corpus</i> must be issued by.....	159	67
writs of mandate and prohibition.....	160	
misbehavior in office, or violation of duty, a contempt....	167	667
fraud of, by practicing on jury box, or changing juror, penalty.....	224	112
failure of, to draw requisite number of grand jurors, chal- lenge to panel allowed.....	236	158
duty of, on presentation of indictment.....	239	175
duty of, in regard to ignored bills of indictment.....	239	177
duty of, in issuing warrants for arrest of parties indicted to indorse amount of bail upon warrants.....	244	201
to record in order book, recognizances taken by peace offi- cer.....	245	210
deposit with, by defendant in lieu of bail.....	245	211
what docket shall contain in criminal cases.....	247	217
arraignment of defendant.....	247	
duties of, in change of venue in criminal cases.....	250	
selection of trial jurors in criminal cases.....	251	
to issue warrant for bringing in defendant when his per- sonal attendance necessary.....	256	268
when to issue bench warrant.....	257	270
to approve sureties on stays of execution for judgments of fine and costs.....	257	272
when shall issue warrant for imprisonment of defendant adjudged to pay fine and costs.....	258	277
duty of, in sentences of confinement in penitentiary.....	258	278
duty of, where judgment of death is rendered.....	259	
to make final record of all proceedings in criminal prose- cution, what shall contain.....	259	208
duty of in actions on forfeited recognizances.....	260	
in stay on judgments of forfeiture, bond to be approved by.....	260	288
in writs of error and appeals in criminal cases.....	261	
of writs of <i>supersedeas</i> , in criminal proceedings on writs of error and appeals.....	262	
duties of, in recognizances entered by justices of peace and committing magistrates.....	265	313
to file oath of office and bond of county auditor.....	310	4
taxation of costs and disbursements in actions for appro- priation of lands by corporations.....	349	10
fees of.....	364	1
to keep a fee book.....	372	9

INDEX.

641

CLERK—(Continued.)	Page.	Sec.
authorized to administer oaths and affirmations, and form of prescribed.....	378	
duty of, for special term at Vancouver, December, 1869..	390	1
duty of, under law to enforce judgments in specie of contract	416	
jury fee payable to, and how applied.....	419	3
in convictions of felony to certify cost bills.....	419	4
further duties regarding said cost bills.....		<i>ibid</i>
at close of each term to ascertain mileage and per diem of jurors.....	420	8
to certify amounts due sheriffs for custody and maintenance of prisoners.....		<i>ibid</i>
to certify amount due witnesses in criminal cases.....		<i>ibid</i>
<i>Of supreme court—</i>		
authorized to take deposition of witnesses in Territory..	108	405
filing of writs of error and duties of generally.....	117, 118	
suits of error in criminal cases, duties generally.....	261	
fees of.....	364	1
<i>Of elections—</i>		
attempting to induce elector to vote by persuasion, menace, reward or promise, penalty.....	221	99
marking or folding ticket to find out how elector voted, penalty.....	221	101
CO-DEFENDANT—SEE DEFENDANT.		
to be joined as, where interest adverse to plaintiff.....	5	14
when a plaintiff refuses to be, shall be made a defendant introduced by intervention.....	7	<i>ibid</i>
service upon one, commences action against all within meaning of statutes of limitations.....	10	35
action may proceed against one served, and continued for process against others.....	18	67
to join in challenges before made.....	51	211
judgment may be rendered against one or more where several judgment is proper.....	69	287
judgment of non-suit in favor of same, which plaintiff fails to prosecute.....	70	289
of entry of judgment for failure to answer against one or more.....	71	291
power of, to confess judgments and limitation of execution to confessing party.....	72	295
apportionment of costs in claims to property levied upon		

CO-DEFENDANT—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
or attached.....	90	350
where several actions brought on one bond, costs to plaintiff allowed in but one action.....	123	461
when making separate answers, costs.....	124	463
in actions to recover and affecting real estate.....	128	
in partition of real property.....	133	
in foreclosure of mortgage.....	145	
<i>ne exeat</i> may issue against one who could be made.....	150	580
rights of, in actions of sureties against principals.....	151	
judgment paid by a surety shall remain in force against principal, to use of said co-defendant.....	151	588
one of several, may have same remedy against other.....	<i>ib.</i>	589
when shall not confess judgment or suffer judgment by default.....	<i>ib.</i>	590
against several executors and administrators all regarded as one.....	165	660
conspiracy to procure indictment without cause.....	220	94
distinction between accessory before fact and principal abolished.....	329	134
degrees of, principal, abolished.....	<i>ibid</i>	
who shall be regarded as principals.....	<i>ibid</i>	
accessary after fact, may be tried whether principal shall have been or not.....	229	136
construction of term implying one, to mean two or more if necessary.....	231	144
several on trial in criminal cases to join in challenge.....	251	234
one may be discharged to be made witness.....	252	247
when one may be discharged to give testimony in favor of another.....	253	247
discharged to make witness, bar to another prosecution..	<i>ibid</i>	
verdict may be against one or more.....	253	254
 CODE OF CIVIL PROCEDURE—		
form of actions and parties thereto.....	4	
limitation of actions.....	8	
venue of actions, and herein of change of venue.....	12	
manner of commencement of actions.....	15	
of pleadings.....	19	
verification of pleadings.....	23	
general rules of pleading.....	24	
mistakes in pleadings, variance, amendments.....	26	

CODE OF CIVIL PROCEDURE—(Continued.)	<i>Page.</i>	<i>Sec.</i>
of arrest and bail	28	
claim to recover personal property	35	
injunctions and restraining orders	38	
attachment	41	
receivers and deposits in court	48	
of issues in civil actions	49	
of trials of civil actions	50	
of the verdict	59	
trial by the court	60	
trial by referees	61	
exceptions	63	
arbitration and award	64	
new trial	67	
judgment, in general	69	
judgment of non-suit	69	
judgment on failure to answer	70	
judgment by confession	72	
submitted cases	73	
of the mode of taking and entering judgment	74	
lien of judgments	78	
of executions, and herein of revival of judgments	79	
of stay of execution	84	
exemption	85	
claim to property levied upon or attached	89	
sales of property under execution, and herein of redemption	91	
proceedings supplementary to execution	101	
of witnesses and evidence	103	
manner of compelling attendance of witnesses	104	
examination of parties	106	
depositions of witnesses residing in Territory	108	
depositions of witnesses out of Territory	111	
proceedings to perpetuate testimony	113	
records, documents, books, &c.,	114	
writs of error and appeals	116	
set-off	121	
costs in civil actions	123	
commissioners to convey real estate	127	
actions to recover and affecting real estate	128	
partition of real property	133	
waste and trespass	143	

CODE OF CIVIL PROCEDURE — (<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
nuisance	144	
foreclosure of mortgage	145	
<i>ne exeat</i>	149	
actions of sureties against principals	150	
suits on official bonds, fines and forfeitures	152	
actions by and against corporations and officers	154	
<i>habeas corpus</i>	156	
mandate and prohibition	160	
information	162	
actions by and against executors	165	
contempts and their punishment	167	
suits on foreign judgments	171	
miscellaneous provisions	172	
construction	175	
 CODE OF CRIMINAL PROCEDURE—		
of the rights of parties accused	198	
of offenses against the lives and persons of individuals	200	
of offenses against property	206	
of offenses against public peace	214	
of offenses against public justice and by and against public officers	215	
of offenses against public policy	220	
of offenses against morality and decency	225	
of offenses against public health	227	
of principals and accessories	229	
of fines	230	
general provisions relative to crimes and their punishment	230	
of search warrants and proceedings thereon	232	
demanding fugitives from justice	233	
of the grand jury	236	
finding and presentation of indictments	238	
the indictment	240	
of proceedings before trial	244	
of the docket	247	
of the arraignment of defendant	247	
of witnesses and evidence	248	
of venue	249	
of trials	251	
of new trials and arrest of judgment	255	
of judgments and executions	256	
actions on forfeited recognizances	260	

INDEX.

645

CODE OF CRIMINAL PROCEDURE—(Continued.)	<i>Page.</i>	<i>Sec.</i>
of writs of error and appeals.....	260	
miscellaneous provisions.....	263	
CODICIL—		
forgery of, punishment.....	211	60
COIN—SEE GOLD.		
counterfeiting defined, punishment.....	211	61
counterfeiting gold dust, bullion, bars, nuggets, &c., punishment.....	213	67
act to enforce judgments upon contracts in specie.....	416	
if contract be for, judgment or decree shall be for.....	416	1
if for gold dust, judgment shall be for equivalent in.....	416	2
if for bars or dust, judgment shall be for equivalent in.....	416	3
sheriff to satisfy judgments in specie of contract.....	416	4
certificate of sale to state the kind of money received....	417	5
purchaser entitled to receive same specie from redemptioner.....	417	6
shall be received for nominal values, &c.....		<i>ibid</i>
COLLECTOR—SEE SHERIFF, TAX COLLECTOR.		
COLLEGE—		
personal property of, exempt from taxation.....	177	4
real estate in actual occupancy for such purpose, exempt from taxation.....	177	4
arson of building or appurtenance, punishment.....	206	42
willful defacing or injury to property of, punishment....	225	118
incorporation of.....	341	
COLLEGE EDIFICE—SEE COLLEGE.		
arson of.....	206	42
COLLUSION—		
defendant making affidavit of another party making same claim as sheriff, without substitution of such party as defendant.....	7	22
recovery of penalty or forfeiture by, between plaintiff and defendant, shall not bar a recovery of same by another	153	599
COMMENCEMENT OF ACTIONS—		
notice to new parties, same as in.....	7	22
periods of time within which shall be.....	8, 9	
what shall be regarded as.....	10	35
an attempt to commence, equivalent to, when.....	10	36

COMMENCEMENT OF ACTIONS—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
against person out of Territory or concealed.....	10	37
disability existing, not included in time for.....	11	38
by representative, where party entitled to bring, dies....	11	39
continuance of war not included in period of limitation, against alien enemy.....	11	40
when stayed by injunction or statutory prohibition.....	11	41
by representatives, on reversal of judgment.....	11	42
on contracts where partial payments have been made....	12	46
venue of fixed.....	12	
when to be in county or district where subject of action is situated.....	12	48
when in county or district where cause of action arose...	12	49
against corporation, venue of.....	13	50
in all other cases where defendant is found.....	13	51
against non-resident, plaintiff may select venue.....		<i>ibid</i>
if not in proper county, venue may be changed.....	13	52
proceedings in change of venue to proper county of....	14	53
manner of.....	15	
defendant to be served with copy of complaint and notice service of notice in.....	15	59
when against non-resident, service by publication.....	17	
after filing of complaint, defendant may be arrested....	31	
to recover personal property.....	35	
an injunction may be granted at time of.....	39	153
writ of attachment may issue at any time after.....	41	172
by arbitration.....	65	267
manner of submission of question of difference to judg- ment of court without action.....	301	74
for recovery of property levied upon or attached.....	89	347
of suits of error in civil cases.....	116	
of costs in cases of assignment of cause of action after...	125	473
to recover and affecting real estate.....	128	
partition of real property.....	133	
of waste and trespass.....	143	
for nuisance.....	144	
of foreclosure of mortgage.....	146	
on agreement in writing before time for performance ex- pires.....	149	376
surety may require creditor or obligee.....	150	584
on official bonds, fines and forfeitures.....	152	594
by and against public corporations and officers.....	154	

INDEX.

647

COMMENCEMENT OF ACTIONS—(Continued.)	Page.	Sec.
for writ of <i>habeas corpus</i>	156	607
for writ of mandate and prohibition.....	160	632
by information:.....	162	
for death or injury, must be within two years after death of proceedings to punish contempts.....	165	659
for recovery of land sold for taxes, must be within three years after recording tax deed.....	169	670
by party aggrieved by act of road supervisor, to be within six months after cause exists.....	195	71
by creditors against bondsmen settling estates without administration, limitation.....	277	29
of appeals from the decision or order of county commissioners.....	301	7
against county on disallowed claim, to be within three months of disallowance by county commissioners.....	309	29
for trespass of cattle under fence law, seizure of animals as security for damage.....	<i>ibid</i>	
to appropriate land by private corporations for corporate uses.....	324	3
by or against limited partnerships, how limited.....	348	3
for damages, by the entry of private lands by U. S. coast survey parties.....	382	5
414	2	
<i>Of criminal prosecutions—</i>		
for murder and arson where death ensues.....	199	10
for offenses punishable in penitentiary.....	200	10
for all other offenses.....	<i>ibid</i>	
against person charged with offense in another State or Territory.....	234	154
limitation of inquiry of grand jury.....	237	166
of suits of error and appeals.....	261	
for keeping animal diseased with glanders.....	361	
for introduction of Texas cattle or cattle infected with Spanish fever.....	405	
 COMMISSION—		
to take the examination of adverse party.....	107	403
to take deposition of witness out of Territory.....	111	
failure of return, no ground for continuance, except.....	112	418
to take deposition in proceeding to perpetuate testimony of crime, knowledge of and concealing same.....	113	114
214	217	

COMMISSIONERS—SEE COUNTY COMMISSIONERS.	<i>Page.</i>	<i>Sec.</i>
may take depositions and compel attendance of witnesses	105	
to take deposition of witness out of Territory, duty and power of.....	112	417
accepting bribe, penalty.....	216	78
board of, to purchase buildings at Fort Steilacoom for insane asylum.....	356	
board to locate penitentiary.....	358	
<i>To convey real estate—</i>		
when may be appointed by district courts.....	127	480
deed of, to refer intelligibly to the judgment.....	127	481
conveyance by, passes the title of party ordered to convey	127	482
conveyance to be examined and approved by court.....	127	483
approval to be endorsed on deed and recorded.....		<i>ibid</i>
may sign deed without annexing party's name whose title is conveyed.....	127	485
names of parties must be recited in conveyance.....		<i>ibid</i>
conveyance by, to be recorded in county where lands are situated.....	128	486
may be appointed, or party compelled to make conveyance by attachment or sequestration.....	128	487
agent with powers of, may be appointed by county commissioners.....	305	12
 COMMISSION MERCHANT—		
fraudulent making or altering receipt for property, penalty	210	59
 COMMITMENT—		
of absconding debtor, in proceedings supplementary to execution.....	101	376
in what cases <i>habeas corpus</i> shall not be resorted to discharge from.....	158	617
for contempt, not included in excepted cases.....		<i>ibid</i>
no person shall be discharged from, of justice for want of bail.....	158	618
by court, allowed in proceedings in <i>habeas corpus</i> in aid of proceedings.....	159	627
power of courts to punish contempts.....	168	
of party charged with introducing Texas cattle.....	405	5
 COMMON BARRATOR—		
definition of the term, who shall be deemed, punishment.	220	96
 COMMON CARRIERS—		
corporations constructing rail roads, deemed.....	347	14

INDEX.

649

	<i>Page.</i>	<i>Sec.</i>
COMMON LAW—		
how far in force in Territory.....	3	1
forms of action abolished.....	3	2
offenses at, not controlled by statutes, indictable.....	199	9
COMMON SCHOOLS—SEE SCHOOL, SCHOOL FUND, SCHOOL LANDS, SCHOOL TAX.		
property of, exempt from taxation.....	177	4
taxes for, to be apportioned by county commissioners at May term.....	183	25
deficiency in fund not to be made up out of county fund.	197	83
criminal violations of laws regarding, to be reported by superintendents, directors, etc.....	264	311
one-half fines for violation of law relative to packing sal- mon to go to fund.....	352	2
damages under hog law to go to fund.....	363	7
fines for keeping dangerous or vicious cattle to go to fund	400	1
leasing of lands, by county commissioners.....	401	
one-third of fine for introducing Texas cattle to go to...	405	6
education secured to certain orphans.....	406	
fines for violation of act for protection of stock raisers to go to fund.....	409	2
three-fourths of fine for violation of law protecting U. S. coast survey parties.....	415	6
COMPENSATION—SEE COSTS.		
of arbitrators.....	65	269
fees due arbitrators taxed as costs against losing party...	66	275
of attorneys and counsellors, fixed by parties themselves	123	457
costs are awarded as indemnity for expenses.....		<i>ibid</i>
of referees may be agreed upon by parties—when not so agreed, <i>per diem</i> allowed.....	124	466
of referees in partition proceedings, payable by plaintiff as costs.....	135	516
of sheriff as collector of taxes.....	35	186
of sheriff for making return of delinquent taxes.....	180	46
of sheriff for collection of delinquent taxes, the same as for collecting money on execution.....	193	65
of sheriff and treasurer for collecting taxes, how settled..	197	83
to prosecutor and officer, for securing stolen property...	209	55
officer attempting to secure illegal, penalty.....	219	92
for concealment of crime, penalty for receiving.....	224	117
of agents to demand fugitives from justice.....	234	152

COMPENSATION—(Continued.)

	<i>Page.</i>	<i>Sec.</i>
for injury sustained, a bar to further prosecution of criminal action for assault and battery, etc.....	246	215
for damages of laying out road.....	270	
for damages of laying out private road.....		
for damages by acts of road supervisor entering land, carrying off material, building drains, etc.....	277	
of road supervisor.....	279	36
of county commissioners.....	304	8
for erection of partition fence.....	325	
of marshals of agricultural and mechanical fairs.....	328	2
of officers of corporations, may be fixed by corporations.	331	4
to be made by corporation before land can be appropriated	343	2
agreement as to, by corporation and authorities for appropriation by corporation of road, street or alley.....	344	4
to corporation building road or bridge, payable to county for such road or bridge.....	347	16
when parties cannot agree upon, actions by corporations to appropriate lands and pay damages in lieu of.....	348	
to county auditor for sealing weights and measures.....	354	5
of officers, witnesses, etc., act regulating fees and costs...	364	
construction of word "folio" in measure of.....	373	15
of notaries public.....	376	2
of auditor for recording notices of quartz claims.....	387	4
of surveyor general of logs and deputies.....	392	8
for extra services in keeping books, deputy surveyors of logs shall pay to surveyor general certain per centage..	393	9
of health officer under quarantine laws.....	398	14
of county assessors.....	403	5
for damages by entry of U. S. coast survey parties upon private lands.....	413	2
of sheriff for maintaining and transporting prisoner.....	419	
of jurors, county liable for.....	420	
to quartermaster general, act providing.....	421	

COMPLAINANT—THE PLAINTIFF.

failing to consent to be plaintiff, may be made defendant.	5	14
specific performance of contract with, may be ordered by court.....	6	19
affidavit of, for issue of search warrant.....	232	148
in application for delivery of person charged with commission of crime in another State or Territory.....	235	

COMPLAINANT—(Continued.)		Page.	Sec.
liable for costs and support of prisoner.....	235	157	
instituting complaint before grand jury, when liable for costs.....	237	166	
name of, to be endorsed on bill of indictment as private prosecutor, when.....	239	174	
of assessment of damages for locating roads.....	270	9	
of acts of road supervisor.....	277	29	
of violation of law relative to inspecting and packing salmon, entitled to half penalty.....	352	2	
of violation of game laws, entitled to half penalty.....	399	1	
of violation of Texas cattle law, entitled to one-third penalty.....	405	6	
one-fourth of penalty to go to, in willful destruction of coast survey signals, etc.....	416	6	
liability of, for costs in hearings by magistrates where the complaint is malicious or frivolous.....	418	1	
grand jury to pass upon liability of, for costs.....	418	2	
COMPLAINT— <i>In Civil Actions.</i>			
all persons interested must join in making.....	5	14	
a third person may join by petition of intervention.....	7	23	
in intervention by petition, and what shall be set forth..	7	24	
when served or attempted to be served, deemed commencement of action.....	10		
to be served upon defendant, by certified copy.....	15	59	
to be filed by clerk, when.....	15	60	
term of court at which may be heard.....	16	60	
service of, mode prescribed.....	16	62	
manner of service of, in service by publication.....	17	64	
alias service of, on joint defendant equivalent to original service.....	18	67	
from time of filing, court acquires control of proceedings	19	69	
first pleading on part of plaintiff.....	20	73	
what it shall contain.....	20	74	
defendant may demur to, when.....	20	75	
in demurrer, grounds of objection to, must be distinctly stated.....	20	76	
if causes of demurrer not patent, objection must be by answer.....	20	77	
if amended, copy must be served as amended.....	20	78	
when defendant shall be deemed as having waived objec-			

COMPLAINT—(Continued.)	Page.	Sec.
tions, except	21	79
answer to, requisites of.....	21	80
part may be demurred to, residue answered.....	21	82
verification of.....	23	89
in action for libel or slander, sufficient averments.....	25	97
several causes of action may be united, when.....	25	100
uncontroverted material allegation in, deemed admitted.	26	101
warrant of arrest cannot issue till filing of.....	30	119
what must be shown in, to secure restraining order.....	38	152
attachment to issue, conformable to demand stated in...	43	175
judgment on failure to answer.....	71	291
relief demanded by, in judgment by confession.....	72	293
examination of adverse party, interrogatories appended to	107	399
may be stricken out on failure to answer interrogatories.	107	403
in actions to recover and affecting real estate, what shall		
contain.....	128	490
in suits of partition, what shall contain.....	133	506
may show partition cannot be made without detriment,		
and have sale ordered.....	134	512
supplemental, may be filed in partition suits against lien		
creditors.....	136	520
in actions of foreclosure of mortgage, for default when		
proceedings stayed.....	147	569
application for <i>habeas corpus</i> shall be by.....	156	607
in actions by corporations for lands appropriated for cor-		
porate uses.....	348	4
<i>In criminal proceedings—</i>		
must be made before search warrant can issue for stolen		
property	232	148
for search warrant of counterfeiting or gaming tools, &c.	232	149
against parties charged with commission of offenses in an-		
other State or Territory.....	234	235
must be made before grand jury making inquiry.....	237	166
when person making, shall be considered private prosecu-		
tor.....	239	174
of violation of school law, to be made by superintendents,		
directors, &c.....	264	311
of violation of road laws, by road supervisors.....		<i>ibid</i>
of any violations of criminal law by sheriffs and constables		<i>ibid</i>
<i>In miscellaneous cases—</i>		
by appeal from assessment of damages for locating road.	270	9

INDEX.

653

COMPLAINT—(<i>Continued.</i>)	Page.	Sec.
by appeal from assessment of damages for locating private road.....	273	17
to county commissioners of damages by road supervisor entering lands, carrying off materials, &c.....	277	29
to county commissioners of violation of ferry license.....	284	52
against party maintaining ferry without license.....	284	53
for violation of rights of travelers on public highways...	288	69
appeals from orders and decisions of county commissioners.....	308	29
against auditor for incorrect statement of incumbrances on real estate.....	314	23
by wife of husband's mismanagement of her separate property.....	320	8
of trespass, violation of fence law.....	324	3
of clerk or officer of corporation making false entries....	336	19
of violation of law relative to packing and inspecting salmon.....	352	2
of violation of law to prevent introduction of glanders..	361	
by surveyor general of logs, &c., for using other than Bangor scale.....	393	
violation of game laws, half penalty to go to party making.....	399	1
for violation of law against introducing Texas cattle....	405	5
party making, willful destruction of coast survey signals..	415	6
COMPOUNDING—		
of crimes, punishment therefor.....	224	117
of debts due to county by county commissioners.....	307	20
COMPUTATION—		
mileage of officers, how made.....	374	19
portion of mile, to be deemed a mile.....		<i>ibid</i>
<i>Of time. See time.</i>		
the first day excluded, the last included.....	172	685
if last day be Sunday, it shall be excluded.....		<i>ibid</i>
CONCEAL, CONCEALED, CONCEALING, CONCEALMENT—		
person within Territory, time of, not included in time of limitation.....	10	37
of defendant, service may be made by publication.....	17	63
of property to defraud, defendant guilty of, may be arrested in civil action.....	29	114

CONCEAL, CONCEALED, CONCEALING, CONCEAL- MENT—(<i>Continued.</i>)		<i>Page.</i>	<i>Sec.</i>
of property subject of action, sheriff may break into build- ing to secure.....	37	147	
of person or property, cause for attachment of property.....	42	173	
of person to whom writ of <i>habeas corpus</i> is directed, writ how served.....	157	612	
of horse, mare, gelding, mule or ass, foal or filly, a felony, punishment.....	208	50	
of stolen property, punishment.....	208	52	
of stolen money and property, conviction of party stealing need not be averred or proved.....	209	53	
of property to convert to own use, by certain parties, em- bezzlement.....	210	58	
of commission of crime, penalty.....	224	117	
of offenders, when shall be deemed accessory after fact....	229	135	
of stolen property in any place, search warrant may issue	233	148	
of counterfeit coin, instruments or machines for making, search warrant may issue.....	232	149	
of gaming apparatus, search warrant for.....		<i>ibid</i>	
power of officer in searching for.....	232	150	
 CONCLUSION—			
when evidence is closed, party may submit to court.....	56	226	
of fact claimed to be established, or of law to be so ad- judged by court.....		<i>ibid</i>	
may be oral or written.....		<i>ibid</i>	
in trial by court, of fact and.....	60	250	
report of trial by referees to state law and facts separately	62	258	
of referees, deemed as verdict of jury, on motion to set aside.....	63	260	
 CONDITION PRECEDENT—			
performance of, how pleaded.....	25	95	
performance of, to be established if controverted.....		<i>ibid</i>	
 CONFESSION—			
clergyman or priest to whom made, shall not testify in civil actions without consent of party making.....	104	387	
no person indicted shall be convicted except upon proof, or.....	198	3	
surgeons, priests and clergymen shall not be protected from testifying as to.....	249	226	

INDEX.

655

CONFESSION—(Continued.)	<i>Page.</i>	<i>Ser.</i>
under inducement, with all the circumstances, may be given	249	227
under inducement, incompetent if not corroborated	<i>ibid</i>	
<i>Of judgment. See judgment by confession.</i>		
admitting part of plaintiffs claim, and failure to answer to rest	71	291
with assent of plaintiff may be given, for what	72	293
by corporation or minor, who can make	<i>ib.</i>	
by one of several defendants jointly liable	73	295
shall be in writing, acknowledged, except	73	296
may be oral if both plaintiff and defendant appear	<i>ibid</i>	
if made in writing to be filed	<i>ibid</i>	
may be entered without action, when	73	297
what affidavit shall be made by defendant in such cases	73	298
no surety shall make, when	151	590
CONSANGUINITY—		
with adverse party judge of, cause of change of venue	13	52
ground for challenge for implied bias	52	216
marriage within the degrees prohibited, incestuous	225	121
intermarriage within degrees prohibited, incest, punishment	<i>ibid</i>	
to offender harbored, will not make party harboring accessory	229	135
CONSERVATOR OF PEACE—		
penalty for party refusing to assist	218	84
CONSIDERATION—		
rights of assignee of negotiable note before due, upon good	4	4
of contract to be paid in specie	416	
CONSPIRACY—		
to cause indictment or other prosecution without cause, penalty	220	94
CONSTABLE—SEE OFFICER, SHERIFF.		
limitation of action against, for malfeasance, misfeasance nonfeasance, except escape	9	28
limitation of action against, for escape	9	29
may command the peace and disperse riotous assemblages	214	70
powers of, if riotous assemblage refuses to disperse	<i>ibid</i>	

CONSTABLE—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
if rioters killed, shall be held guiltless.....	214	70
obstruction of execution of legal process by, penalty....	218	84
to make complaint of all criminal violations of law.....	264	311
duty of, in violation of law for prevention of glanders....	301	
duty of, in violation of hog law....	362	
fees of.....	371	3
mileage of, for service of process regulated....	373	16
to arrest all parties introducing Texas cattle.....	405	4
CONSTRUCTION— <i>Civil Practice.</i>		
Territory, county or corporation same as private parties under statutes of limitation.....	10	34
when civil action deemed to have been commenced with- in meaning of statute of limitation.....	10	
of sufficiency of pleadings regulated by civil practice act.	19	71
of a pleading to be liberal with view to substantial jus- tice.....	24	92
of variance and failure of proof.....	26, 27	
of chapter on examination of parties, not to compel the an- swer of any question likely to criminate.....		
who may confess judgment in actions against Territory or corporation.....	72	294
law regulating examination of parties not to compel an- swers which would criminate self.....	107	403
of provision excluding books, records, &c.....	115	424
printed copies of statutes of other States presumptive evi- dence.....	116	431
Territory or county in suits by or against, entitled to costs as a private party.....	126	474
of claim of settler under donation laws, as to his estate..	132	504
chapter regulating actions of sureties against principals to apply to heirs, executors and administrators, except....	152	591
of foreign judgment obtained on other than personal ser- vice.....	171	681
of pleadings sworn to, as to allegations of fact.....	172	683
of time within which an act is to be done.....	172	685
of bonds, to be according to their legal intendment.....	173	691
district when necessary shall be held as county.....	175	696
district and county convertible terms, if necessary.....		<i>ibid</i>
jurisdiction of county officers limited to counties.....		<i>ibid</i>
officer includes person authorized by law to perform act.	175	697

INDEX.

657

CONSTRUCTION—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
of words implying number and gender.....	175	698
provisions of civil practice to be liberally construed and not limited by rule of strict.....	175	700
<i>For purposes of taxation—</i>		
of real property and land.....	176	2
of personal estate and personal property.....	176	3
incorporated companies, same as individuals.....	178	7
of personal property mortgaged or pledged, who is owner	179	14
<i>Criminal practice.</i>		
sections of law defining grades of arson to apply to married woman setting fire to husband's property.....	207	54
what shall be deemed personal goods of which larceny may be committed.....	208	49
intent to defraud United States, State, Territory, county or other corporation or public officer, without being named, will sustain indictment charging <i>crimen falsi</i> ..	211	62
any kind of uncoined gold, may be subject of indictment for counterfeiting.....	214	
of word riot and riotous assemblage.....	<i>ib.</i>	
of principals and accessories.....	229	
allegation of ownership in indictment for offense relating to property, what the term includes.....	231	142
of the term "person".....	231	143
of terms implying number or sex.....	231	144
district and county convertible terms.....	232	147
of words used in indictment.....	241	190
of words and phrases defined by law, to be according to legal meaning.....		<i>ibid</i>
bonds or recognizance to be according to intent appearing from tenor thereof.....	265	314
<i>Under act defining rights of husband and wife—</i>		
separate property defined.....	318	1
common property defined.....	319	2
when wife shall be deemed to have waived exemption of seizure for husband's liabilities.....	319	5
of alienation of wife's separate property.....	319	6
of sale made by wife for benefit of husband.....	320	7
of devise of property to wife.....	320	9
of marriage contracts heretofore made.....	321	
<i>Miscellaneous—</i>		
of the word "folio" in bill regulating fees and costs....	373	15

CONSTRUCTION—(<i>Continued.</i>)		<i>Page.</i>	<i>Sec.</i>
mileage of officers, what shall be a mile.....	374		19
when special partners shall be deemed general.....	381		8
of contract for delivery of gold dust.....	416		2
of contract for delivery of gold dust or bars.....	416		3
 CONTAGIOUS DISEASES—SEE QUARANTINE.			
<i>Among animals.</i>			
glanders, an act to prevent the introduction and spread of.....	360		
among domestic animals, act to prevent spread of.....	377		
bringing infected animals into Territory prohibited.....	377		1
penalty for so doing, and how collected.....		<i>ibid</i>	
persons owning animals infected, to keep them from oth- ers, penalty for not.....	377		2
<i>Texas cattle disease or Spanish fever—</i>			
an act to prevent introduction of Texas cattle or cattle in- fected with Texas cattle disease or Spanish fever.....	404		
introduction of Texas cattle prohibited.....	404		1
persons introducing such, guilty of misdemeanor, penalty	404		2
party introducing, liable for all damages to any person..	405		3
sheriffs and constables to arrest parties introducing.....	405		4
duties of justices of peace hearing complaints of violation of the above law.....	405		5
disposition of fines collected.....	405		6
<i>Quarantine laws and regulations—</i>			
board of health of Puget Sound collection district ap- pointed, and duties of.....	394		1
health officer to be appointed, and duties of.....		<i>ibid</i>	
health officer to reside at port of entry.....	395		2
to require all vessels with disease on board to perform quarantine.....		<i>ibid</i>	
to seize goods landed and cause them to be purified.....	395		3
penalty of officer of vessel refusing to obey health regula- tions.....	396		4
sick person may be sent on shore, where and how main- tained.....	396		5
penalty for person coming ashore from vessel performing quarantine without leave of health officer.....	396		6
penalty for person going aboard such vessel without leave	396		7
a red flag to be hoisted from vessel.....	397		8
penalty of vessel leaving quarantine ground.....	397		9

INDEX.

659

CONTAGIOUS DISEASES—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
penalty of officer of vessel making false statement as to port from whence came, or of the condition of health . . .	397	9
penalty of vessel failing to go to quarantine ground designated by health officer	379	10
penalty when vessel fails to give notice of having contagious disease on board	380	11
pest house to be procured by board of health	380	12
board of health authorized to give notice, and provision of expenses of board	380	13
CONTEMPT—		
willful disobedience of injunction, procedure	40	164
parties disobeying injunction, punishable and liable to plaintiff in damages	40	165
of party arrested in vacation, to give bail for appearance at next term	40	166
on default of bail, party shall be committed to county jail		<i>ibid</i>
disobedience of order of court to deposit money or deliver money or property	49	200
failure of defendant to enforce order of court to satisfy claim, admitted	49	203
power of referees to punish	62	257
power of arbitrators to punish, and law governing	66	
by judgment debtor, of an order of court in proceedings supplementary to execution	101	376
of order of referee, in proceedings supplementary to execution	102	382
by witness failing to attend or refusing to testify	106	
by adverse party refusing to make answer to interrogatories	107	403
by witness refusing to make deposition	111	412
by party refusing to allow inspection of books or other document	115	424
by party refusing to execute conveyance of real estate	128	487
by officer of public corporation refusing to satisfy a judgment against said corporation	135	605
commitment for, not to be enquired into on <i>habeas corpus</i> , except	158	617
by witnesses and parties, in proceedings on <i>habeas corpus</i>	158,	159
disobedience to writs of mandate and prohibition	161	
disobedience of officer to turn over books &c., to successor		

CONTEMPT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
in office.....	163	649
acts or omissions in respect to a court or judicial proceedings constituting.....	167,	168
every court and judicial officer has power to fine and imprison for.....	168	668
limitation of fine and imprisonment.....		<i>ibid</i>
in certain cases, the act must have prejudiced the right of a party, to allow fine to exceed \$100.....		<i>ibid</i>
summary punishment, if committed in presence of court.....	168	669
order punishing must so recite.....	169	669
in other cases, affidavit must be filed.....	169	670
warrant of arrest or rule to show cause, may be ordered by court or officer.....		<i>ibid</i>
proceeding when party charged is already in custody....	169	671
in proceeding for, Territory is plaintiff.....	169	672
prosecuting attorney appears on behalf of Territory....		<i>ibid</i>
if proceeding be on relation of private party, such party to be co-plaintiff.....		<i>ibid</i>
if warrant be issued, court to fix bail, or whether defendant shall be kept without bail.....	169	673
duty of sheriff in arresting party for.....		<i>ibid</i>
return of warrant and proceedings.....	169	674
hearing of case, and sentence if guilty.....	170	675
when a party has been prejudiced, damages may be awarded against defendant....	170	676
when defendant may be imprisoned, commitment for....	170	677
parties guilty of, liable to indictment, when.....	170	678
on trial of indictment, court may take into consideration punishment before inflicted.....		<i>ibid</i>
proceeding, if party fail to appear on return day of warrant of arrest for.....	170	679
if bail be sued on, judgment to use of injured party....	171	679
appeal and writ of error allowed to supreme court.....	171	680
but such appeal shall not stay proceedings of suit wherein committed.....		<i>ibid</i>
of justices court punished as prescribed in justices act....		<i>ibid</i>
certain acts by grand jurors or officers of court, punishable as.....	239	176
county commissioners have power to punish.....	308	26

INDEX.

661

CONTINUANCE—SEE ADJOURNMENT.

Page. Sec.

In civil actions.

intervention by new party shall not operate as.....	7	24
of an injunction, terms may be imposed.....	39	156
of trial for absence of testimony, motion for.....	50	206
affidavit for, must show what.....		<i>ibid</i>
when court will not grant.....		<i>ibid</i>
terms may be imposed on granting.....	51	206
discharge of jury verdict operates as, except.....	58	237
power of referees to grant.....	62	257
power of arbitrators to grant.....	66	272
failure to make return to a commission for deposition shall not work a, except.....	112	418
when the supreme court are equally divided in opinion..	120	446
costs to adverse party, on the granting of.....	124	467
trial of securityship at instance of a surety shall not be cause of, of plaintiff's proceedings.....	151	584
of hearings on <i>habeas corpus</i>	151	615
of hearings for contempt.....	170	674

In criminal proceedings—

when at instance of Territory, right of defendant to be admitted to bail.....	199	8
upon hearings of charges for commission of crime in another State or Territory.....		235
shall not be granted to Territory without name of absent witness be endorsed on indictment.....	249	225

CONTRACTOR—SEE CONTRACTS.

service upon, as co-defendant, a commencement of action within meaning of statute of limitations.....	10	35
--	----	----

CONTRACTS—*Civil Practice.*

party in whose behalf made, need not be joined in action with trustee.....	4	5
in favor of husband and wife, in action upon, both may join.....	4	7
party making or bound to perform, when not plaintiff may be made party to action.....	6	19
in writing, limitation of action upon.....	8	27
parol, limitation of action upon.....	9	28
limitation of action for breach of marriage.....		<i>ibid</i>
to revive, and take out of statute of limitation new prom- ise must be in writing.....	12	45

CONTRACTS—(Continued.)	<i>Page.</i>	<i>Sec.</i>
limitation of action upon, commences from time of last partial payment.....	12	46
in actions against defendants on joint, plaintiff may proceed against defendants served.....	18	67
if defendants be severally liable, they may be treated as only defendants in case.....	19	67
defense by counter-claim arising out of.....	21	81
performance of conditions precedent, how pleaded.....	25	95
when plaintiff may unite several causes of action.....	25	100
fraud in, cause of arrest of defendant in civil action....	29	114
for recovery of money, action upon judgment on failure to answer.....	70	291
confession of judgment upon, by one of several defendants	72	295
judgment upon, to bear interest stipulated in.....	78	316
where surety on a, pays more than proportion, he may compel contribution.....	97	365
in actions upon, set-off may be pleaded, when.....	121	449
set-off where plaintiff is trustee and has no interest in...	121	450
if assigned before action commenced, set-off not allowed	122	456
when actions may be commenced before time of performance expires.....	149	576
defendants arrested on <i>ne exeat</i> , may give security for performance of.....	150	579
<i>ne exeat</i> may be prosecuted by any one interested in, against any party liable, when.....	150	580
surety may require obligee or creditor to commence action	150	584
when surety may be discharged from liability upon.....	150	585
when surety upon, may have securityship tried.....	151	586
actions upon, survivorship to personal representatives....	165	659
judgment upon, shall be rendered in specie of.....	416	1
to pay gold coin or bars, payable in coin.....	<i>ib.</i>	3
judgment shall be satisfied in specie of.....	<i>ib.</i>	4
<i>Under act defining rights of husband and wife—</i>		
for alienation or sale of wife's real estate, when valid....	319	6
of sales and assignments of wife's personalty, when valid	320	6
when such sales shall be deemed a gift.....	<i>ib.</i>	7
by terms of, wife becomes entitled to control of rents and profits.....	320	9
of debts before marriage, liability for, of separate estates of husband and wife.....	320	10
marriage, hereafter in this Territory governed by this act		

INDEX.

663

CONTRACTS—(Continued.)	Page.	Sec.
except where special	321	11
stipulations of marriage, heretofore made to govern	321	12
in absence of, this act applicable		<i>ibid</i>
marriage, shall be in writing, executed and acknowledged	321	13
marriage, to be recorded by county auditor, where lands		
lic.	321	14
marriage, when filed in auditor's office, notice.	321	15
marriage, invalid till filed for record, and if it includes		
lands in other counties, must be recorded there.	321	16
minor capable of marrying, may make valid marriage.	321	17
but such contract must be assented to by parent or guar-		
dian if consent to marriage be necessary.		<i>ibid</i>
marriage, may be altered before marriage, not afterward.	322	18
what parties to, shall not do	322	19
if it derogates from legal rights of husband, invalid.	322	20
wife may make all necessary powers of attorney, with		
same limitations and restrictions.	322	
<i>Miscellaneous—</i>		
debts due upon, personal property for tax purposes.	176	3
in writing, personal goods, of which larceny may be com-		
mitted.	208	49
forgery of, with intent to defraud, punishment.	211	60
to conceal commission of crime, punishment.	224	117
for leasing of portion of public road as a toll road.	285	
for building of bridges.	289	
of intestate, performance by of bond in the settlement of		
estates without administration.	299	3
bondsmen under said act may be compelled to perform as		
intestate if living.	300	6
no county commissioner shall be interested in, for work		
or materials furnished county.	308	25
penalty of county commissioner violating above.		<i>ibid</i>
as to partition fence.	325	
of corporation, stockholder's liability for.	335	
between corporation and authorities of a town for land to		
be appropriated for corporate uses.	344	
of limited partnership.	380	
amount of lumber in a raft or boom, statement of to be		
delivered to parties to.	392	6
county commissioners may lease school lands.	401	

CONTRIBUTION—

	<i>Page.</i>	<i>Ser.</i>
where one of several debtors pays more than proportion, he may compel, from others.....	97	365
when judgment is against several, and a security pays, re- payment may be compelled.....		<i>ibid</i>
the party paying entitled to the judgment to enforce from others their proportion.....		<i>ibid</i>
notice of claim of, to be filed with clerk.....		<i>ibid</i>
in proceedings in partition, for undivided interest in property.....	139	
judgment against principal and surety, when paid by lat- ter, shall be to use of to enforce.....	151	588
such judgment defendants as have paid over their propor- tion, entitled to use of judgment to enforce others to pay proportion.. ..	151	589
by heirs and devisees of undivided estate, of proportion of taxes collected from one person.....	178	8
mortgagee paying taxes on land mortgaged, amount paid is added to lien.....	194	69
of the payment of taxes, when real estate is sold.....	196	78

CONTROVERSY—

court may determine, between parties before it.....	6	20
absent parties when necessary to determination of, must be brought in.....		<i>ibid</i>
receiver may be appointed when subject of, is in danger of being lost or injured.....	48	196
between parties, may be settled by arbitration.....	64	266
parties may agree upon a submitted case, and settle with- out action.....	74	300
statement of facts to be presented signed by parties.....		<i>ibid</i>
affidavit to made that real, exists.....		<i>ibid</i>
judgment upon submitted.....	74	301
land in, entry upon by adverse party to make survey....	130	465

CONVENTION—SEE JOINT CONVENTIONS.

of Legislative Assembly to elect Territorial officers, act providing for.....	327	
<i>To frame State constitution—</i>		
act submitting call for, to voters of Territory.....	354	1
manner of voting prescribed.....	355	2
canvass of the votes.....	355	3
the Legislature to call, if majority favor.....	355	4

INDEX.

665

CONVENTION—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
Governor to make proclamation that voters are required to vote for or against.....	355	5
CONVERSION—		
by executor of his own wrong, liability for.....	166	663
receiving property by personating another, penalty.....	209	56
by officer, agent, servant or clerk, embezzlement.....	210	58
fraudulent, by officer, agent, servant or clerk, with or without hire.....	210	59
CONVEYANCE—		
copy of record, certified by proper officer, evidence.....	115	427
by commissioner appointed by court, when to be made..	127	480
judgment authorizing, how to be recited in.....	127	481
passes to grantee, title of parties ordered to convey....	127	482
passes to grantee titles of all parties to action.....	127	483
to be examined and approved by court and recorded....	127	484
sufficient if signed by commissioner, without parties names	127	485
but grantors names must appear in body of.....		<i>ibid</i>
to be recorded in office of auditor of county where land situate.....	128	486
order to make, how may be enforced.....	128	487
mortgage of real estate not deemed, except.....	130	498
by referees of real estate sold in partition proceedings...	140	543
is personal goods, of which larceny may be committed...	208	49
of land sold in the settlement of estates without administration.....	301	8
recording of, by county auditor.....	313	
of wife's separate estate, requisites of, to be valid.....	319	6
of wife's real estate, husband must join with wife in powers of attorney to make.....	322	
power of corporation to make.....	331	4
CONVICTION—SEE ACCUSED.		
of felony, a general cause of challenge to juror.....	52	214
for crime, affects credibility of witness.....	103	385
for perjury, renders witness incompetent, except.....		<i>ibid</i>
not warranted, on confession made under inducement....	249	228
when a bar to another indictment for offense including degrees	253	251
liability of party, to costs.....	418	3
for felony, clerk to make out cost bill, &c.....	419	4

	<i>Page.</i>	<i>Sec.</i>
CO-PARTNERS—SEE PARTNERS.		
CO-PARTNERSHIP—SEE LIMITED PARTNERSHIP AND PARTNERSHIP.		
COPY—SEE DEFENDANT, RECORD, SERVICE, TRANSCRIPT.		
of amended complaint, to be served.....	20	78
of instrument sued upon, need not be set out.....	24	91
of any document, may be demanded by adverse party....		<i>ibid</i>
of order of injunction, equivalent to writ.....	39	159
of public records, &c., allowed to jury on retiring.....	57	235
of award of arbitrators, to be delivered to prevailing party of interrogatories, to be annexed to commission for depo- sition.....	65	268
of books, records, &c., party may be ordered to give to adverse party.....	111	415
of records, authentication of, to be used as evidence.....	114	424
of records, authentication of, to be used as evidence.....	115	116
of statutes of other States and Territories, how treated..	116	431
of indictment, when and in what cases to be served on accused.....	246	
of all papers filed in auditor's office certified by him, evi- dence.....	315	26
of certificate of incorporation, when evidence.....	331	
of entries by clerk of corporation, may be demanded by any person to be used in evidence.....	336	18
of articles of incorporation of church or benevolent socie- ties, where to be filed.....	342	1
CORD WOOD--		
malicious setting fire to, punishment.....	206	43
CORONER--		
limitation of action against, for nonfeasance, misfeasance or malfeasance.....	9	28
CORPORATION—		
statute of limitations applies to, the same as private par- ties.....	10	34
actions against, when deemed commenced.....	10	36
actions against, place of trial of.....	13	50
how served with process.....	16	62
foreign, may be served with process by publication.....	17	63
verification of pleadings by.....	23	89
agent of, for fraud liable to arrest in civil actions.....	29	114
property of foreign, may be attached.....	42	173

INDEX.

667

CORPORATION—(Continued.)	Page.	Sec.
shares in, attachable, how.....	43	177
in dissolution of, appointment of receiver.....	48	196
interest in a public, no ground for challenge to jurors...	53	216
who may confess judgment for a.....	72	294
summoned as garnishee of judgment debtor, proceedings supplementary to execution.....	102	
foreign, when plaintiff may be required to give security for costs.....	126	479
bond of officer to public, deemed a security.....	152	512
public, must obtain leave to bring suit on official bond..	152	594
action by and against, when can be maintained.....	154	601
actions against Territory, county or other public.....	154	602
who may verify pleadings for.....	154	603
judgment against, how to be enforced.....	154	604
writs of mandate and prohibition to.....	160	631
information to inquire into acts of.....	162	642
dissolution of, by proceedings in information... ..	163,	164
stock in, taxable as personal property, except.....	176	3
property of public, and of benevolent and other societies exempt from taxation.....	177	4
personal property of private, where taxable.....	179	12
in offense of forgery, fraud committed upon, how averred	211	62
<i>Formation of private—</i>		
for what purpose may be formed.....	330	1
two or more may form, mode prescribed.....	330	2
certified copy of articles, evidence.....	331	3
powers of.....	331	4
board of trustees, stock, election of directors.....	332	5
failure to elect trustees on day fixed, effect of.....	333	6
quorum to transact business.....	333	7
first meeting of, notice, &c.....	333	8
stock is personal property and how transferable.....	333	9
manner of payments of subscriptions on stock.....	333	10
sales of shares in default of payment of assessments....	334	10
executor, administrator or trustee representing stock to vote as stockholder.....	334	11
pledge of stock does not divest right to vote.....	334	12
of dividends and reduction of capital.....	334	13
indebtedness shall never exceed paid up capital.....	335	14
shall not issue bills or evidence of debt for circulation...	335	15
individual liability of stockholder.....	335	16

CORPORATION—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
holder of stock in representative character, or as collateral not personally liable.	335	17
stock book to be kept, what to contain.	336	18
penalty for clerk making false entries.	<i>ib.</i>	19
capital may be increased or diminished, when, how.	337	
powers and duties of trustees on dissolution of.	338	23
disincorporation of, proceeding.	<i>ib.</i>	24
foreign, for transaction of insurance business treated as domestic, when.	<i>ib.</i>	25
removal of place of business of, how effected.	339	26
corporations heretofore formed declared incorporated.	<i>ib.</i>	27
special provisions as to stock of mining.	340	28
provisions of act extended to water companies.	<i>ib.</i>	29
water companies to have right to appropriate lands.	<i>ib.</i>	30
water companies hereafter incorporating, to secure fran- chise from town authorities first.	341	31
<i>Of colleges, seminaries, churches and other societies—</i>		
what societies may incorporate.	341	1
articles to be certified, what to contain.	<i>ibid</i>	
powers of such.	342	2
colleges and seminaries may confer degrees.	342	3
manner of dissolution.	<i>ib.</i>	4
<i>Appropriation of lands by private—</i>		
entry upon lands, for survey, &c.	343	1
how much and what land may be appropriated.	<i>ib.</i>	2
compensation must be made, what.	<i>ibid</i>	
change of grade or location of road by.	<i>ib.</i>	3
of public grounds, roads, streets or alleys by.	344	
toll gate on road of, in town.	<i>ib.</i>	6
clearing of timber for road, width of track, &c.	<i>ib.</i>	7
bridging and ferries on streams.	345	8
when road of, shall be common highway.	<i>ib.</i>	9
tolls on road, and exemption from.	<i>ib.</i>	10
penalty for not paying toll, or overcharging.	346	11
bridge of, when a common highway.	346	12
toll on bridges, penalty for not paying or overcharging.	<i>ib.</i>	13
constructing rail road, deemed common carriers.	347	14
power to receive tolls or freights.	<i>ibid</i>	
to keep account of outlay in construction of road or bridge.	<i>ib.</i>	15
county may purchase road or bridge, when.	<i>ib.</i>	16

INDEX.

669

CORPORATION—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
<i>Action by, to appropriate lands—</i>		
against owner to determine compensation	348	1
mode of procedure prescribed	<i>ib.</i>	2
who shall be made defendant	<i>ib.</i>	3
of the complaint and service thereof	<i>ib.</i>	4
answer of defendant, what may set forth	349	
view of the lands may be ordered	<i>ib.</i>	7
judgment to be entered after damages paid	<i>ib.</i>	8
appeal allowed, but not to stay appropriation or use of land	<i>ib.</i>	9
of costs and disbursements	<i>ib.</i>	10
if new trial and greater damages assessed, judgment ac- cordingly	350	11
acceptance of damages waives right of appeal	<i>ib.</i>	12
where public, enter upon private lands, same proceedings govern	<i>ib.</i>	13
compensation by public, is payable out of fund of	<i>ib.</i>	14
 CORROSIVE SUBLIMATE—		
sale of, without label, and word “poison,” prohibited, punishment	227	129
 CORRUPTION—		
award of arbitrators procured through, to be set aside	66	269
 COSTS—COSTS AND DISBURSEMENTS—FEES AND COSTS.		
<i>In civil actions.</i>		
in intervention by whom paid	7	24
of change of venue, to be paid by applicant	15	56
court may order an amendment without, when	27	104
of maintaining defendant arrested	31	121
of arbitration taxed against losing party	66	275
of judgments on failure to answer	71	
in judgment by confession, \$10 allowed	73	299
in submitted cases, without action	74	301
duty of clerk regarding, in entering up judgments	76	
statement of, in execution	82	
security for, in stay of executions	85	332
in claims to property levied upon or attached	90	350
commitment of witness for contempt till payment of and	106	394
compensation of attorneys left to the parties	123	457

COSTS- (<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
shall be allowed to prevailing party, except	123	458
when plaintiff shall not be allowed	123	459
when plaintiff shall recover no more than damages	123	460
where several actions are commenced on same bond, shall only be allowed in one	123	461
if plaintiff not allowed, defendant is entitled to	123	462
allowance to defendants making separate answers, when	124	463
costs taxed as attorney fee prescribed	124	464
disbursements which shall be included as	124	465
fees of referees prescribed	124	466
to adverse party on granting continuance	124	467
where defendant has made tender, plaintiff shall not re- cover	125	468
defendant may deposit in court amount admitted, and stop accruing	125	469
appellants from justices court must recover better judg- ment or be liable	125	420
guardian of infant plaintiff liable for, when	125	471
in actions prosecuted or defended by representatives	125	472
when cause of action is assigned, after commencement of suit	125	473
Territory and county liable as private parties	126	474
in appeals from courts of inferior jurisdiction, to be sub- ject to direction of court of review	126	475
of appeals to supreme court, in discretion of court	126	476
when allowance or apportionment of, in discretion of court	126	477
of re-taxation of	126	478
security for, may be demanded of non-resident plaintiff	126	479
lessee in actions affecting real estate on payment of, may continue in possession	131	500
of partition, chargeable to share and preferred to a lien	133	133
of referees in partition, allowed as	135	516
to be paid from proceeds of sale of encumbered property as preferred claim	137	526
in partition, apportionment of, among parties entitled to shares	142	553
in judgments of foreclosure of mortgage	146	564
in writs of mandate and prohibition	161	640
prosecuting attorney as relator in information, not liable for	164	655

INDEX.

671

COSTS—(Continued.)	Page.	Sec.
how payable, in judgments to enforce specie of contracts	416	1
<i>In criminal actions—</i>		
in charges of commission of offense in other State or Territory, complainant liable for.....	235	157
in offenses punishable by fine only, on security being given, defendant may be tried without being present.....	235	252
if grand jury ignore bill of indictment, to fix liability for of judgment against defendants of fine and.....	237	166
how judgment for, may be satisfied.....	258	281
acquittal of defendant discharges liability for, except fees for his witnesses.....	265	315
<i>Miscellaneous—</i>		
of locating private roads, to be paid by applicants.....	273	17
paid by road supervisor in suits instituted by him, to be allowed by county.....	277	28
of appeals from decision of county commissioners.....	309	29
animal doing damage under fence laws.....	323	3
in action by corporations for appropriation of private lands.....	349	10
in prosecutions for keeping animals diseased with glanders.....	361	
of disposition of, in violation of hog law.....	361	
act to regulate fees and.....	364	
of publication, may be demanded in advance.....	373	14
in prosecutions for violation of law to provide against dangerous cattle.....	400	1
prosecutor entitled to half, in suits for violation of law for protection of stockraisers.....	408	1
provision for payment in certain cases, act for.....		
in complaints for violation of law, when county is liable for.....	418	1
when complaint is malicious or frivolous, complainant liable.....	418	1
when grand jury shall say who is liable for.....	418	2
person convicted liable for.....	418	3
in convictions for felony, bill to be made out, Territory liable.....	419	4
of transporting prisoners.....	419	5
of maintaining Territorial convicts.....	419	6
of liability of county for, in criminal proceedings.....	420	
shall belong to county, where offense committed.....	421	

COUNSEL AND COUNSELLOR—SEE ATTORNEY.

Page. Sec.

COUNTER CLAIM—

new matter constituting, to be set out in answer of defendant.....	21	80
definition of.....	21	80
defendant may set forth more than one, but must be separately stated, &c.....		<i>ibid</i>
reply to, or demurrer by plaintiff.....	22	
judgment on, for failure of plaintiff to reply.....	22	86
where set up by defendant, defeats judgment for non-suit	69	288
judgment on failure to answer, for excess over plaintiff's demand.....	71	291

COUNTERFEITING—

of certain instruments of writing, forgery, punishment...	211	60
coining money, or having machinery for such purpose, punishment.....	211	61
tools and instruments intended for, to be destroyed.....		<i>ibid</i>
of bars, bullion, dust, or other uncoined gold, or having instrument therefor, punishment.....	213	67
tools and instruments for, search warrant to seize.....	232	150

COUNTIES—SEE COUNTY.

COUNTY—

statute of limitations applies to, as private parties.....	10	34
when venue of action depends upon property being situated in.....	12	48
when venue of action depends upon cause of action arising therein.....	13	49
generally as to being venue of actions.....	13	
change of venue because of prejudice of inhabitants of... 13,	14	
venue changed because of formation of new.....	14	
how served with process.....	16	62
citizenship of, no cause of challenge for implied bias.....	52	216
who may confess judgment for.....	72	294
witness not compelled to leave his, to attend as witness, except.....	105	388
liable for costs as private party.....	127	474
official bond of officer, deemed a security to, actions upon for delinquencies of officer.....	152	
fines and forfeitures payable to treasury of proper.....	153	600
actions by, for what can be maintained.....	154	601

INDEX.

673

COUNTY—(Continued.)	Page.	Sec.
actions against, for what maintainable.....	154	602
who shall verify pleadings of.....	154	603
judgment against, for money, how enforced.....	155	
may be rendered "district" when necessary under civil practice act, but jurisdiction of officers not extended beyond limits of.....	175	696
public property of, exempt from taxation.....	177	4
lands to be assessed in where they lie.....	177, 178	
person assessed where he resides.....		<i>ibid</i>
personal property of corporation, where principal office..	179	12
what, venue of criminal prosecutions.....	230, 231	
term "person" in criminal proceedings includes.....	231	143
district or, in criminal prosecutions, convertible terms...	232	147
grand jury to find whether, liable for costs on ignoring an indictment.....	237	166
if accused prosecuted in wrong, court may order a change over persons charged with commission of offenses in, as to control of, costs, &c.....	263, 264,	265
boundaries prescribed and lines defined.....	291	
act creating Quillehuyte repealed.....	297	2
territory constituting Quillehuyte, reverts to Clalm and Jefferson.....		<i>ibid</i>
quota of laws and journals to which entitled.....	317	
Walla Walla, Stevens Yakima and Clickitat, counties in which fence law operative.....	326	
Pierce, site of penitentiary.....	359	
hog law only applicable to Walla Walla, Island, Jefferson, Pacific, Whatcom, Mason and Clalm.....	363	
appropriation to Pierce, for repairing jail to be used as penitentiary.....	388	
registry, how supplied when county orders lost.....	411	
liability of, for costs for offenses committed in.....	418	
as to payment of costs by, for convicts, transportation of prisoners, &c.....	419	
liable for expenses of jurors, witnesses in criminal cases and fees of sheriff for maintaining prisoners.....	420	
in which court held, shall furnish court house, jail, &c..	421	

COUNTY BUILDINGS—

to be erected and kept in repair by county commissioners	305	11
question of erection, and special tax for, to be submitted		

COUNTY BUILDINGS— (<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
to a vote of people.....	307	22
county commissioners to make estimate, and give notice	307	22
assessment and collection of special tax to erect.....	307	22
of surplus in treasury, county commissioners may erect		
without submission to vote.....	307	23
till provided, county commissioners to provide places for		
holding court.....	308	27
 COUNTY COMMISSIONERS—		
<i>Duties of, in regard to assessment and taxation—</i>		
at May term, to examine and correct assessment.....	183	24
at May term, to estimate amount necessary to be raised		
for county purposes.....	183	25
at May term, to apportion county, Territorial and		
school tax, how.....	183	25
at May term, to levy tax for county purposes, not to ex-		
ceed eight mills.....	184	26
to allow credit to sheriff in settlement of county taxes,		
the county orders received by him.....	187	36
return of delinquent taxes to, form of.....	189	46
to place to credit of sheriff amount of delinquent taxes.	190	48
power to order collection of delinquent taxes.....	191	55
rate of assessment prescribed by, to apply to stock driven		
through Territory.....	194	69
<i>Duties of, in regard to roads—</i>		
county roads under supervision of, and alterations or va-		
cation of same, except.....	267	1
petitions for roads, and procedure of board.....	267	
may determine on width of road.....	271	10
proceedings to have roads correctly surveyed, and for the		
alteration and vacation of same.....	271, 272	
on the location of private roads.....	272, 273	
road districts to be defined.....	273	18
at February or May term, supervisors to be appointed....	273	19
complaints to, of acts of supervisors entering land, carry-		
ing off material.....	277	29
of settlement with supervisors, surveyors, viewers, &c....	279	36
<i>Ferries—</i>		
may license ferries for term not exceeding five years.....	280	40
to tax said ferry license, not exceeding one hundred dol-		
lars per annum.....	280	41

INDEX.

675

COUNTY COMMISSIONERS—(Continued.)	Page.	Sec.
restrictions of, in granting ferry licenses	281	42
term of court at which application shall be heard	281	43
shall establish rates of ferriage	282	
revocation of ferry license, procedure	284	52
<i>Toll roads—</i>		
may lease portion of county road for	285	55
mode of proceeding in contracting for lease	285	
power of, to fix locating of toll gates	286	60
lease may be cancelled or modified, and suit for forfeit- ure of	287	63
bids for lease of county roads may be rejected	288	67
<i>Bridges—</i>		
may apply road money to building or repairing	289	71
bridge superintendent may be appointed to let contracts in emergencies, repairs may be made without notice for bids	289	72
repair or building of, on boundary between two counties	290	
<i>Duties as prescribed by act creating office—</i>		
election, term of office, and quorum	303	1
no two to come from same precinct	303	2
vacancies, how filled	303	3
oath of office to be filed with clerk	303	4
terms of court prescribed	303	5
empowered to hold extra sessions, how called	304	7
per diem and mileage	304	8
if two present and divided, business postponed	304	9
seal of the board	304	10
powers and duties	305	11
may appoint agent to sell real estate	305	12
records must be kept, what to contain	305	13
to elect a chairman, power of, if absent both shall sign proceedings	306	14
to provide county offices, desks, &c.	306	15
at May term to examine accounts of auditor and treasurer	306	16
at May term to examine and correct assessment roll	306	17
to establish election precincts, how	306	18
entire superintendence of poor	307	19
may compound or release debts, except	307	20
power to levy special tax	307	21
procedure in levying tax for county buildings	307	22
may erect court house or jail with surplus funds without		

COUNTY COMMISSIONERS—(<i>Continued.</i>)	Page.	Sec.
submitting to vote of people.....	307	23
may order convicts to county jail to work on roads, except.....	307	24
shall not be interested in contracts, what.....	308	25
may administer oaths, compel witnesses and punish contempts.....	308	26
to provide suitable places for holding courts.....	308	27
to fill vacancies in county offices.....	308	28
<i>Miscellaneous provisions—</i>		
penalty for receiving bribe.....	216	78
penalty for purchasing county order or debt for less than face.....	223	110
convicts to county jail for fine and costs may work out same under order of.....	259	281
convicts to county jail may be ordered by, to work when no jails (see also page 307, section 204).....		<i>ibid</i>
to fix amount of bond of county auditor.....	310	4
allowance of claims against county and issue of county orders.....	311	5
agreement with private corporations as to appropriation of road, street or alley for corporate uses.....	344	4
placing of ferry boats on streams, to connect with roads of private corporations.....	345	8
may purchase toll road or bridge when.....	347	348
fees of.....	371	4
of Pierce county, duties of, in repairing jail for Territorial convicts.....	388	
empowered to lease school lands.....	401	
to approve bond of county assessor.....	402	
to fix compensation of assessor for assessment roll.....	403	5
may remit fines for violation of act to secure to orphans an education.....	407	3
hearing of petition by, for vacation of town plats, streets and alleys.....	410	
 COUNTY ORDER—SEE WARRANT.		
receivable in payment of county taxes; duty of collector	187	37
shall not be purchased by county officers for less than face	187	38
forgery or counterfeiting of, penalty.....	211	60
purchase by certain officers for less than demand, prohibited, penalty (see also page 187, section 38).....	223	110

INDEX.

677

COUNTY ORDERS—(Continued.)	Page.	Sec.
duty of auditor to issue and register, and of broken	311	5
exhibit of county auditor to show number and amount of	312	8
act enabling counties to obtain a registry of outstanding, when register has been lost	411, 412	
notice to parties holding, how given and what to con- tain	411, 412	
when shall be debarred from drawing interest	412	3
penalty for parties holding, failing to present for registry	412	4
COUNTY REVENUE—SEE TAXES.		
COUNTY SEALER OF WEIGHTS AND MEASURES—SEE AUDITOR.		
COUNTY SUPERINTENDENT—		
to make complaint of criminal violations of school laws	264	311
COUNTY TREASURER—		
duty of, in satisfaction of judgment for money against county	155	
to give duplicate receipts to sheriff for taxes collected	186	34
taxes to be paid to, in specie received	187	36
when to remit to Territorial treasurer, Territorial taxes	190	50
surplus of proceeds of sale of real estate for taxes, duty of to deliver over to sheriffs assessment rolls, and charge the sheriff with amount to be collected	192	62
sheriff failing to pay over, shall be charged damages and interest, what	194	68
penalty for failure of, to transmit funds to Territorial treasurer	195	72
entries and records of, <i>prima facie</i> evidence	196	77
specie in which Territorial revenue shall be paid	196	79
percentage of, to be deducted from gross amounts in kind	197	81
penalty for purchasing Territorial or county order at less than face	197	83
account of, to be examined by county commissioners at May term	223	110
of the issue of county orders, and account current with auditor, &c	306	16
to make register of county warrants and file original	311	
	312	

COURIER—	<i>Page.</i>	<i>Sec.</i>
privileged to preference in being ferried.....	283	50
COURT, COURT OR JUDGE, SUPREME COURT, DISTRICT COURT—		
act fixing terms of.....	329	
assignment of judges.....	383	340
term of, in Stevens county.....	386	4
<i>In civil actions, district court—</i>		
to appoint guardian for infant, when.....	5	
may allow an action to proceed against representative, when.....	6	17
in action for recovery of purchase money, power of.....	6	19
to determine controversy between parties before it, and when necessary bring in new parties.....	6	20
of substitution of new party for defendant.....	7	22
duties of, in hearing of intervention.....	7	
in district, statute of limitations pleaded only by answer.	8	
or judge may change venue of actions.....	13, 14, 15	
manner of commencement of civil actions in... 15, 16, 17, 18, 19		
obtains possession of case from filing complaint after com- pletion of service.....	19	69
want of jurisdiction, matter of continuance, when.....	20	75
objection to jurisdiction can be taken at any stage of pro- ceedings.....	21	79
sham, frivolous and irrelevant pleading may be stricken out on terms.....	21, 22	
may establish rules for filing of all pleadings subsequent to complaint.....	22	88
when may allow verification of pleading to be omitted... 23	23	90
or judge may order further account or bill of particulars	24	91
may order irrelevant or redundant matter stricken out... 24	24	93
may require pleadings to be made certain or dismiss.... 24	24	93
of the correction of mistakes in pleadings and amend- ments.....	26, 27, 28	
may relieve a party from judgment, when, how and terms	27	107
pleading not subscribed or verified may be stricken out.. 27	27	109
or judge of supreme court may order arrest of defendant, when.....	28, 29, 30	
if defendant make deposit in lieu of bail, disposition of under direction of....	34	
power of, to grant restraining orders and injunctions.... 38, 39	38, 39	

COURT, COURT OR JUDGE, SUPREME COURT, DISTRICT COURT—(Continued.)

may require plaintiff in stay of proceedings after judgment to release errors	39	160
money collected on judgments enjoined subject to order of contempt of, for disobedience to injunction	40	163
of dissolution of injunction, powers and duties of	40,	41
injunctions may be reinstated by, proceedings	41	
power in vacation as in term conferred in injunction proceedings	41	171
may order attached property to be discharged on defendant giving bond, when	46	
may order attachment discharged, improvidently issued	47	
may order attached property sold, when	47	194
power in vacation in attachment proceedings, same as at term	47	195
appointment of receiver by, when	48	
may order deposit or delivery of property	49	
contempt of, for failure to deposit or deliver	49	200
may direct whether issue of fact or law shall first be tried issue of law to be tried by, may try issue of fact on consent of parties	50	207
may grant continuances, when and terms of	50	209
in selection of trial jurors	51, 52, 53,	54
of the charge and instructions, and exceptions thereto	55	
ruling of on conclusions of fact or law, submitted by party	56	226
province of, in the trial of cause	56	
to admonish the jury as to their duty on retirement	56	230
may order jury to be kept separate, drink and food may be allowed by	57	
juror may be discharged by, effect of	58	
adjournment of, while jury out, &c.	58	
correction of verdict by advice of	58	242
judgment of, upon special verdict	59	244
may direct special verdict or findings of fact by jury	89	246
power of, over verdicts generally	60	
trial by the, in incidents and findings	60	
may direct the submission of cases to referees, when	61	
exceptions, and settlement of bills of exception	63	64
power of, over awards of arbitrators	66	
new trial may be granted by, procedure	67	68
may render judgment against one of several defendants	69	287

COURT, COURT OR JUDGE, SUPREME COURT, DISTRICT

COURT—(<i>Continued.</i>)	<i>Page,</i>	<i>Sec.</i>
dismissal of action by, or judgment of non-suit.....	69, 70	
judgment of, on failure to answer.....	70, 71	
may set aside a default, when and terms.....	72	292
judgment by confession.....	72, 73	
judgment by, without action on submitted cases.....	73, 74	
may reserve case for argument or stay proceedings.....	74	
lien of judgments, revival and continuance of, and execu- tions issued on leave after expiration of lien....	78, 79, 80, 81	
of execution to enforce judgments of.....	80	
stay of execution upon judgments of.....	84, 85	
trial of right to exemption or possession of property at- tached or levied upon.....	89, 90	
proceedings of on sales of real estate on execution.....	95, 96	
or judge, power of to compel judgment debtor to satisfy judgment or against an absconding judgment debtor..	101	376
order compelling garnishee to apply property to satisfy judgment.....	102	380
may order judgment creditor to institute action against garnishee.....	102	381
contempt of, garnishee refusing to obey orders as to prop- erty of judgment debtor.....	102	382
attendance of witnesses how compelled by.....	104, 105, 106	
contempt of, by adverse party refusing to answer interro- gatories.....	107	403
may order commission to take deposition of non-resident witness, mode of proceeding.....	111, 112	
may allow proceedings to perpetuate testimony.....	113	
may order party to allow inspection or furnish copy of doc- ument, &c., to adverse party.....	114	115
records and proceedings of, how authenticated to be used in evidence.....	115	
final judgment of, may be reviewed in supreme.....	116	
may award costs to defendants who recover judgment... ..	124	463
condition and costs imposed by for continuances.....	124	467
in reviewing action of inferior, costs in discretion of....	126	475
when costs may be allowed or apportioned by....	126	477
may order retaxation of costs.....	126	478
may order non-resident plaintiff to give security for costs	126	479
may appoint commissioner to convey real estate.....	127	
may compel party to execute conveyance, how.....	128	487

COURT, COURT OR JUDGE, SUPREME COURT, DISTRICT

COURT—(*Continued.*)

Page. Sec.

or judge, in actions affecting real estate, may allow entry upon for survey.....	130	
appointment by, of referees to admeasure dower.....	132	
may order sale of real property subject of an action in partition.....	134	
referees appointed by, to make sale of real property in proceedings in partition.....	134	
distribution of proceeds of sale by decree in partition proceedings.....	137	
or judge, may stay warrant for abatement of nuisance...	145	
foreclosure of mortgages in.....	145	
may grant writs of <i>ne exeat</i>	149	
may cause question of securityship to be tried, and relieve surety, when and how.....	151	
leave of, must be obtained by a private party before bringing action on official bond.....	152	594
may compel officer of public corporation to satisfy judgment.....	155	
power of, and what may grant writs of <i>habeas corpus</i> and powers of in such proceedings.....	156	
writs of mandate and prohibition may issue out of and proceedings therefor.....	160	161
may enforce order to deliver books and papers in proceedings on information.....	163	649
contempts of, and their punishment, proceedings.....	167	
all process of, to be directed to sheriff.....	172	686
appointment by, of person to serve process.....	172	687
may examine under oath any person going bail or giving security.....	173	690
may appoint trustee to manage wife's separate estate....	320	8
duties of, in proceedings for appropriation of land by corporations.....	349,	350
shall decree judgments on contracts to be enforced in specie.....	416	
<i>In criminal actions, district court—</i>		
person charged with offense to be convicted by, before punishment.....	199	6
term of, at which accused is entitled to trial.....	199	7
shall admit certain indicted parties to bail, when.....	199	8
to order recompense to party for recovery of stolen prop-		

COURT, COURT OR JUDGE, SUPREME COURT, DISTRICT

COURT—(*Continued.*)

	<i>Page.</i>	<i>Ser.</i>
erty.....	209	55
perjury committed in a judicial proceeding, punishment.....	216	76
clerk of, tampering with jury box, penalty.....	224	112
proceedings of, in challenges to grand jury.....	236	
charge of, to grand jury.....	237	
grand jury to be reminded of certain sections of law by.....	238	
may summon grand jury to reattend, after discharge....	238	172
duty of, receiving indictments from grand jury.....	239	
of the indictment, pleadings and duties of court regarding.....	240	
to make an order fixing bail for parties indicted or attached for contempt.....	244, 245	
to order defaults of recognizance to be entered.....	245	212
may stay proceedings on indictments for misdemeanor, where injured party has been satisfied.....	246	215
<i>nolle prosequi</i> may be entered by.....	246	216
on plea of guilty, witnesses may be examined, &c.....	247	218
on arraignment, to see accused has counsel, &c.....	248	
attendance of witnesses may be compelled by.....	248	
may change venue, when and how.....	249, 250	
allowance by, of challenges for cause.....	251	
when trial by, allowed.....	252	240
when trial of defendant not present may be allowed by..	252	242
to decide all questions of law which arise.....	252	243
may order jury to be supplied with refreshment.....	252	244
may order a view.....	252	245
may discharge one of several defendants to use as witness.....	252	247
when mistake is made in charge, may recognize party to answer proper indictment.....	253	248
where venue improperly laid, may correct indictment, &c.....	253	249
may direct jury to reconsider verdict, when.....	254	255
duty of where defendant acquitted because of insanity...	254	256
to render judgment on verdict.....	254	
may grant new trials or arrest judgment, when.....	255	256
if judgment be not arrested, sentence by.....	256	266
before sentence, defendant allowed to show cause why judgment should not be pronounced.....	256	269
when may order issue of bench warrant for defendant on bail.....	256	270
to commit party upon judgment for fine and costs.....	257	271

COURT, COURT OR JUDGE, SUPREME COURT, DISTRICT COURT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
in addition to punishment, may order party to give security for good behavior, &c.....	257	273
until penitentiary provided, county jail or place of confinement may be selected by.....	258	280
to sign death warrants	259	282
if time passes for execution of death penalty, another day may be appointed by.....	259	285
forfeiture of recognizance to be declared by.....	260	
writs of error and appeals to supreme.....	260	
miscellaneous provisions regarding persons charged with offenses, as to costs, &c.....	263	
trustee of estate settled without administration ordered to sell property for education of minors.....	301	
to approve cost bills in convictions, and for expenses of maintaining prisoners.....	419	
<i>Supreme court, in civil actions—</i>		
what may be re-examined on writs of error, and mode of suing out.....	116	
may order further record sent up when transcript deficient to hear the errors assigned in precipe.....	119	438
when <i>supersedeas</i> will be granted of proceedings of district court.....	119	440
of the judgment of, and mode of enforcement.....	119	441
when damages and what will be allowed defendant in error.....	119	442
parties and privies may prosecute writ.....	120	443
new parties may be brought in, and notice prescribed....	120	444
a reversal of judgment by, shall not affect title to real estate sold on execution, and when restitution may be awarded.....	120	445
when equally divided in opinion, cause continued.....	120	446
of hearings of appeals, and how they may be brought....	120	447
what shall be considered and adjudged upon, by.....	121	448
when costs shall be in discretion of.....	126	476
writs of mandate and prohibition limited to aid of its functions and powers.....	160	629
<i>Supreme court, in criminal actions—</i>		
for what writ of error lies, and who may sue out.....	260	290
appeals may be taken at term at which judgment rendered service of, and transcript.....	261	291

COURT, COURT OR JUDGE, SUPREME COURT, DISTRICT

COURT—(*Continued.*)

	<i>Page.</i>	<i>Ser.</i>
may reverse, affirm or modify judgment, and the cause re- manded, except execution in certain cases	262	296
what shall be considered on examination of writs of error when writ of error or appeal will operate as a stay of pro- ceedings	262	297
on convictions for felony, party shall not be admitted to bail	262	298
any one of several defendants may take writ of error or appeal	262	300
on reversal of judgment, party may be discharged or held to answer properly charged offense	262	301
appeal or writ of error shall not be dismissed for defects in form	263	302
opinions of, to be in writing and recorded		
certified transcript of judgment or order conclusive au- thority	263	304
what criminal prosecutions may be examined by	263	305
may make all necessary rules of practice	263	306

COURT-HOUSE—

malicious setting fire to, arson	206	42
erection and repair of, to be provided by county commis- sioners	305	11
provision of means for erecting by special tax or out of surplus funds	307	
county in which court is held, shall furnish and supply with necessary fuel, lights, &c., and pay incidental ex- penses	421	10

CREDIBILITY—SEE EVIDENCE.

of by-standers making affidavits to settle exceptions, to be certified	63, 64	
interest of witness shall not exclude him, but affect	103	384
conviction of crime, except perjury, shall not exclude, but affect	103	385
of witness, subject to deposition may be used	108	409

CREDITOR—

disposal of property with intent to defraud, ground for arrest of debtor	29	114
disposal of property with intent to defraud, ground for		

INDEX.

685

CREDITOR—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
attachment.....	42	173
may have a receiver appointed, in what cases.....	48	196
judgment, entitled to transcript of judgment to file in county auditor's office.....	75	
judgment, may revive judgment and continue lien, proceeding.....	80	
when may proceed against homestead exempt.....	82, 83	
lien, right to redeem property sold on execution.....	97, 98	
judgment may restrain waste on property sold on execution until expiration for redemption.....	100	37
judgment, may be compelled to institute action against garnishee claiming adverse interest in property of debtor.....	102	381
lien, may be made defendants in proceedings in partition	133	507
lien, in suits of partition notice to be directed to.....	133	508
service of process upon, answer of, and trial of lien in partition proceedings.....	134	
in partition proceedings, where all lien, are not included supplemental complaint filed, proceedings.....	136	
of the satisfaction of liens, in partition suits.....	137	
secured by mortgage, foreclosure of, and rights.....	145	
may be required by surety to institute action against principal.....	150	584
failing to institute action on contract, surety shall be released, when.....	150	585
lien, may redeem property sold for taxes.....	192	
of decedents when estates shall be settled without administration, claims of.....	300	
of corporation, entitled to inspect or have copy of entries	336	18

CREDITS—SEE DEBTS AND CREDITS.

CRIME AGAINST NATURE—

definition of, and charge falsely made, actionable.....	173	689
---	-----	-----

CRIMES—SEE ACTIONS CRIMINAL, FINES AND FORFEITURES, MISDEMEANOR, OFFENSES PRESCRIBED BY SPECIAL STATUTES, PENALTIES.

convictions of, except perjury, affects credibility of, but does not exclude witness.....	103	385
no person shall be held to answer unless upon indictment, except.....	198	1

CRIMES—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
no person shall be convicted except upon confession of guilt or verdict	198	3
of second indictment for same, when first trial shall be a bar	198, 199	
party must be legally convicted before punishment	199	6
right to trial, at what term	199	
right to be admitted to bail, when	199	
cognizable at common law, if not controlled by statute, in- dictable	199	9
time within which prosecutions must be commenced	200	10
punishable by imprisonment in penitentiary, felonies, all other misdemeanors	200	11
of principals and accessaries	229	
jurisdiction of court to try offenders	230	
demanding and giving up persons charged with commis- sion of	233	
of what the grand jury shall make inquiry	237	
twelve grand jurors must find bill of indictment	238	
indictment must charge but one, means may be in alter- native	241	186
time of commission need not be stated, except	241	187
commission of private injury, person injured immaterial .	241	188
statutory words defining, need not be followed	241	191
one or more of several defendants may be convicted or ac- quitted	243	200
warrant to be served by sheriff, bail endorsed	244	
no person charged with, punishable by imprisonment shall be tried without being personally present	252	241
when two or more are indicted, may claim separate trials	252	246
one or more defendants may be discharged to make wit- ness	252	247
if wrongly charged, court may order party into custody to answer proper indictment	252	253
of trial of, including degrees	253	
acquitted of, because insane	254	256
the court to fix the punishment for	254	258
party convicted in addition to punishment, may be held to bail for good behavior	257	273
punishment in penitentiary shall be at hard labor, solitary confinement may be added, restriction	258	279
punishment of death to be hanging by the neck	259	283

CRIMES—(Continued.)	Page.	Sec
power to pardon, commute, respite or relieve vested in Governor.....	264	312
person acquitted not liable for costs.....	265	315
in making arrests, officer may break open door, &c.....	266	317
benefit of clergy abolished.....	266	318
<i>Definition of, and punishment prescribed—</i>		
murder in the first degree.....	200	12
murder in the second degree.....	200	13
killing in duel, survivor guilty of murder in second degree	201	14
homicide from a duel agreed upon within Territory, but fought without, murder in second degree, jurisdiction in any county.....	201	15
manslaughter.....	201	16
assisting another in suicide, manslaughter.....	201	17
death from overloading boat or careless navigation of, manslaughter.....	201	18
death from explosion of boiler in racing of steamboats, manslaughter.....	201	19
being present as second in duels where death ensues, manslaughter.....	201	20
punishment for manslaughter.....	202	21
dueling or inciting thereto, punishment.....	202	22
accepting or delivering challenge to duel, punishment.....	202	23
administering poison with intent to kill, punishment.....	202	24
mixing poison with food or water, with intent to injure.....	202	25
malicious mayhem.....	202	26
assault, assault with intent, assault with deadly weapon and assault and battery.....	203	
assault with cowhide or whip, being armed.....	203	31
exhibiting dangerous weapon in threatening manner.....	203	32
attempt to commit murder by drowning or strangling.....	204	33
simple mayhem.....	204	34
rape.....	204	35
robbery.....	204	36
kidnapping defined.....	204	37
death from administering drug to pregnant woman to destroy child.....	205	39
administering medicine to procure miscarriage.....	205	40
malicious threats against person or property to extort money.....	206	41
arson defined; if death ensues, murder in first degree.....	206	42

CRIMES—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
malicious setting fire to lumber, cord wood, grain, &c.	206	43
willful setting fire to one's own house, and burning an- others	207	44
burglary.	207	46
grand and petit larceny.	207	
horse stealing a felony, what constitutes.	208	
branding stock with intent to steal or prevent identifica- tion.	208	51
receiving stolen property, knowingly.	208	52
receiving property by false personation or false pretenses embezzlement, who may commit.	210	
forgery and counterfeiting.	210, 211	
forcible entry or detainer and malicious or wanton tres- pass or injury to property.	212, 213	
riot, riotous and unlawful assemblages, and affray.	214, 215	
perjury and subornation of perjury.	215, 216	
bribery and attempt to bribe certain officers.	216, 217	
assisting and allowing escape of prisoners.	217, 218	
willful or corrupt misfeasance, nonfeasance or malfeasance in office.	218, 219	
offenses against public policy (<i>see misdemeanors</i>).	220	
seduction defined, when can be committed.	225	119
open and notorious adultery and fornication.	225	120
incest and incestuous marriages.	225	121
polygamy.	226	122
notorious lewdness and public indecency.	226	123
selling, publishing or circulating obscene prints, books, &c.	226	124
unlawful and willful disinterment of human body, or tres- passes in burying grounds, &c.	226, 227	
cruelty to animals.	227	127
offenses against health, sale of unwholesome provisions, poison without label, &c., (<i>see misdemeanors</i>).	227, 228	
<i>Criminal charge—</i>		
time of imprisonment on, not included in limitation.	11	38
CRIMINAL CONVERSATION—		
in action for, when plaintiff shall not be entitled to larger costs than damages recovered.	123	460
CRUELTY—		
to prisoners, punishment.	218	86
to animals, punishment.	227	127

INDEX.

689

CURRENT ACCOUNT—SEE ACCOUNT.	<i>Page.</i>	<i>Sec.</i>
 CURTESY—		
estate by, determined in proceedings in partition.....	139	537
secured in settlement of estates without administration..	301	8

D.

 DAM—		
willful injury to, or making aperture, punishment.....	213	66
what, shall not be construed an obstruction to navigation	223	109
 DAMAGES—		
husband and wife may join in action for. for injuries to..	4	7
for death of man killed in duel, who may maintain action	4	8
for injury or death of child, who may maintain action...	4	9
for seduction of minor, who may maintain action for....	4	10
when unmarried female may sue for, for her own seduction	5	11
awarded for detention and injury of personal property, venue of action.....	12	49
amount of claim, to be stated in complaint.....	20	74
assessment of, by jury, judgment for defendant for failure of plaintiff to reply.....	22	86
mitigation of, in suits for libel and slander.....	25	98
averment of possession of realty, good, in action to recover possession of animal doing.....	25	99
claims for, what may be joined in same action.....	26	100
in what actions for, arrests can be made.....		
before defendant can be arrested, bond to be given to secure him for all.....	30	117
security for, to be given in applications for injunction...	39	157
by party disobeying injunction, indemnity to plaintiff may be ordered.....	40	165
on dissolution of injunction to stay proceedings after judgment.....	41	168
in actions for liquidated, attachments may be issued....	41	172
if attachment wrongful and oppressive, plaintiff to pay defendant.....	42	174
verdict for, in actions for recovery of personal property.	59	245
excessive, or error in assessment of, cause for new trial ..	67	278
if award equal to actual pecuniary injury sustained, small-		

DAMAGES—(Continued.)	Page.	Sec.
ness of shall not warrant new trial.....	68	279
to be assessed by jury, in judgments upon failure to answer.....	71	291
entry of judgment for, in certain actions.....	75	306
executions upon judgment for.....	81, 82	
witness failing to attend liable to party aggrieved.....	106	393
awarded to defendant in error on affirmance of judgment by supreme court.....	119	442
recovered in certain actions for, to be the measure of costs allowed.....	123	460
maximum of, for withholding real property, subject of an action.....	129	493
in actions for real estate when judgment shall be restricted to.....	130	494
purchaser of real estate after action commenced, when liable for.....	130	497
measure of, in actions of waste and trespass.....	143, 144	
measure of, in action to abate nuisance.....	144, 145	
indemnity to defendant for, must be given before <i>ne erant</i>	149	
in actions by and against public corporations and officers allowed in proceedings for mandate and prohibition....	161	635
in proceedings on information.....	163	
in action for death by executors or administrators, not to exceed \$5,000, and be deemed assets.....	165	658
how far an executor of his own wrong is liable for.....	166	663
recoverable against a party guilty of contempt.....	170	676
measure of, due by sheriff failing to make settlement for taxes collected, for which action on sheriff's bond....	195	72
satisfaction of where action lies, a stay of proceedings in criminal prosecution for certain misdemeanors....	246	215
for laying out, altering or locating roads.....	269, 270	
for private road.....	272, 273	
for acts of road supervisor entering land, taking material.....	277	
for owner of ferry refusing to transport passengers.....	282	
for violation of rights of travel.....	288	
action against county auditor for, incorrect statement of incumbrances on real estate.....	314	28
for violation of fence laws in force in certain counties.....	324, 326	
clerk making false entries in stock book of corporation..	336	19
corporations entering upon land, to do no unnecessary...	343	1
in action by corporation to appropriate lands.....	349, 350	

INDEX.

691

DAMAGES—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
party keeping animal diseased with glanders liable for...	361	2
by hogs trespassing, in certain counties.....	362, 363	
suit for, against health officer to return goods after purification	395	3
person introducing Texas cattle liable for.....	403	
caused by entry of U. S. coast survey parties on private lands, how settled.....	414	
DEAD BODY—		
willful disinterment of, punishment.....	226	125
DEAD—		
vilification of the memory of, libel.....	383	1
DEATH—		
action for, of man killed in duel, who may maintain.....	4	8
of child, action for, who may maintain... ..	4	10
of party, does not abate action.....	6	
of party, after commencement of action, survivorship of action.....	11	39
of judgment debtor, revival of judgment against representatives	80	320
action for, by executors and administrators.....	165	658
after, actions by and against personal representatives....	165	659
arson when death ensues, prosecution can be commenced at any time.....	200	10
penalty for murder in first degree, and arson where death ensues.....	200	12
penalty of, may be commuted by Governor to imprisonment for life... ..		<i>ibid</i>
from duel, survivor guilty of murder in second degree... ..	201	15
from careless navigation, overloading boat, explosion of boiler in steamboat racing, manslaughter.....	201	
second or abettor in duel when death ensues, manslaughter of child or mother, when drug is administered to pregnant woman to destroy child, punishment.....	205	39
from arson, murder in first degree.....	206	42
occurring, by peace officer dispersing riotous assemblage, officer guiltless.....	214	70
judgment of, and its execution.....	259	
bond to be filed within forty days after, to entitle estates to be settled without administration.....	299	4

DEATH--(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
of notary public, all his official papers, records, &c., to be deposited with county auditor.....	376	4
DEATH WARRANT—		
requisites of, how executed and returned.....	259	
DEBT, DEBTS—SEE DEBTS AND CREDITS.		
substitution of new party claiming same, for defendant..	7	22
contracted by fraud, debtor may be arrested.....	29	114
fraud in contracting, a cause for attachment.....	42	173
party owing to defendant, garnishee of.....	44	178
wife's separate estate and personal earnings exempt from husband's.....	86	337
wife's separate estate liable for her, contracted before marriage.....		<i>ibid</i>
of deceased, when homestead liable for.....	86	339
property of garnishee may be levied upon to amount of..	92	
garnishee of, after return of execution.....	101, 102	
what may be subject of set-off.....	122, 123	
secured by mortgage, judgment of foreclosure.....	146	
solvent, included in personal property for taxation.....	176	3
due to and by deceased, in settlement of estates without administration.....	300, 301	
exemption of wife's separate property for husband's.....	319	5
separate estate of husband and wife, liable for what.....	320	10
of corporation, liability of stockholders.....	335	
of corporation to be paid, before dissolution.....	338	
of limited partnership, liability of partners.....	380	
outstanding of counties, when registry of orders lost....	412	
DEBTOR—SEE ARREST, DEBT, DEFENDANT, JUDGMENT DEBTOR.		
debt due to garnishee, may be ordered to be paid plaintiff	102	380
earnings of, exempt from garnishment.....		<i>ibid</i>
mortgage, proceedings against on judgments of foreclosure.....	148	
solvent debts of, personal property liable to taxation....	176	3
DEBTS AND CREDITS—		
subject to attachment, and proceedings.....	43, 44	
attached may be collected by sheriff and his receipt a full discharge.....	45	182
collected by sheriff to be paid to plaintiff in attachment		

INDEX.

693

DEBTS AND CREDITS—(Continued.)	Page.	Sec.
after recovery of judgment.....	45, 46	
proceeds collected to be paid to clerk on receipt of execution (see <i>debt and debts</i>).....	91	351
 DECREE—SEE JUDGMENT, ORDER.		
of any court, limitation of action upon.....	8	27
on proceedings in partition.....	135, 137,	142
in suits of foreclosure.....	146,	148
disobedience of, contempt.....	167	667
 DEED—SEE CONVEYANCE.		
by sheriff for real property sold on execution....	98	100
certified copy by recorder, received in evidence.....	115	427
of commissioner to convey real estate under order of court to be given for real estate sold for taxes at expiration of time for redemption.....	191	56
for real estate sold for taxes, void if taxes paid prior to sale.....	195	74
considered personal goods, of which larceny may be committed.....	208	49
counterfeiting or forgery of, punishment.....	211	60
for real estate of decedent settled without administration acknowledgments may be taken by county auditors and deputies.....	312	11
recording of by county auditor.....	313, 314,	315
for wife's separate estate, requisites to be valid.....	319 to	322
to corporation for interest in mining claim, equivalent to subscription to capital stock.....	340	28
for buildings purchased at Fort Steilacoom, to whom shall be made, &c.....	357	4
for lands selected as site of penitentiary.....	359	
notaries public may take acknowledgments.....	375	2
 DEFAMATION—		
of character, malicious, is libel.....	383	1
 DEFAULT—		
of defendant to answer, judgment when to be entered....	71	
may be set aside on motion, when.....	72	292
of absconding debtor to give security, committed to prison in performance of mortgage, action for foreclosure.....	101	376
in actions upon mortgage payable in installments, pay-	145	563

DEFAULT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
ment of instalment due will stay proceedings till a subsequent.....	147	569
of special bail, party arrested on <i>ne exeat</i> shall be committed.....	149	578
no surety shall suffer judgment to go by, when.....	151	590
of party served with information.....	163	646
of recognizance to be noted.....	245	212
entered of recognizance, forfeitures thereof.....	260	
failure to enter, does not vitiate recognizance.....	265	314
of bail, party introducing Texas cattle to be committed to jail.....	405	5
 DEFENDANT—		
<i>In civil actions—</i>		
who shall be known as.....	3	3
guardian of infant, how and when appointed.....	5	13
all necessary to complete determination of action, to be joined.....	5	14
when a party who should be plaintiff, may be made.....	5	14
when numerous, one may defend for all.....	5	15
persons severally liable may be joined or not.....	6	16
death, marriage, disability of, or transfer of interest by, does not abate action.....	6	17
may have new party substituted, when and how.....	7	22
third party interested may join as.....	7	23
what shall be a commencement of action against, within meaning of statute of limitations.....	10	35
in what cases personal service upon, fixes venue.....	13	51
service upon, of complaint and notice, and herein form of notice, service, return, &c.....	15	
when service may be made by publication, requirements	16	
concealment of, sufficient cause for service by publication	17	63
service by publication, rights of on appearance, in what cases judgment against may be opened.....	17	65
when those served may be proceeded against, and alias service.....	18	67
written admission of, equivalent to proof of service upon	19	68
voluntary appearance of, equivalent to personal service	19	70
pleadings by, (<i>see answer, demurrer, pleadings</i>).....	20	
when deemed to have waived objections to complaint, except.....	21	79

INDEX.

695

DEFENDANT—(Continued.)	Page.	Sec.
what may be alleged by, in actions for libel and slander.	25	98
answer of, in action for property distrained doing damage	25	99
when name of, unknown, how designated in complaint.	28	110
arrest of, procedure and remedies (<i>see arrest</i>).	28	
in claims to recover personal property.	35	
may retain possession of the property by giving bond.	36	
rights of, in applications for injunction.	38	
property of, may be attached (<i>see attachment</i>).	41	
challenge of jurors by, and incidents of trial.	57	
verdict against in certain actions (<i>see verdict</i>).	59	
judgment may be for or against one or more of several.	69	
when entitled to judgment of non-suit.	70	288
failure to answer by, entry of judgment.	70	291
judgment on confession by (<i>see judgment, confession</i>).	72	
judgment for, in actions for recovery of personal property	75	
may select property exempt from execution.	88	345
who are, in actions for claim of property levied upon or attached.	90	349
in error, notice to and right of.	116	
may set-off any demand of like nature against plaintiff (<i>see set-off</i>).	121	
set-off, how pleaded, and judgment upon.		<i>ibid</i>
entitled to costs, when plaintiff fails to recover (<i>see costs</i>).	123	462
making separate defenses, costs may be awarded.	124	463
tender and deposit in court by, when entitling, to costs.	124	468
deposit in court of amount admitted due. costs payable by plaintiff, when.	125	469
costs, when suit defended by executor, trustee, &c.	125	472
who are, in actions to recover and affecting real estate, procedure.	128	
who may be made, in actions for partition of real property.	133	
in actions for waste and trespass liable to treble or single damages.	143	
in actions for nuisance, recourse against for abatement.	144	
when may be arrested on <i>ne exeat</i> , procedure.	149	
rights of, in actions of sureties against principal.	157	
remedies of sureties against co-defendants.	151	
on suits on official bonds, for fines and forfeitures.	152	
in actions by and against public corporations and officers	154	
in proceedings on <i>habeas corpus</i> (<i>see habeas corpus</i>).	156	

DEFENDANT—(Continued.)	Page.	Sec.
in writs of mandate and prohibition	160	
against whom an information may be filed (<i>see information</i>)	162	
in actions by and against executors and administrators (<i>see executors and administrators</i>)	165	
in proceedings for contempt (<i>see contempt</i>)	167	
rights of, in certain suits on foreign judgments	171	
interest of, in real estate subject to lien of judgment	174	694
interest of, in personal property held jointly with another, how far subject to execution		<i>ibid</i>
interest of, alone subject to sale upon execution		<i>ibid</i>
in trials of actions under fence laws, assessment of damages may be impeached by	326	11
for appropriation of lands by corporations, who shall be, and rights of	348, 349,	350
<i>In criminal prosecutions—(see accused.)</i>		
grand jury not bound to hear evidence in behalf of	238	
name of party complaining of, to be endorsed on indictment as private prosecutor	239	174
when indicted under fictitious or erroneous name, true name may be subsequently inserted	241	185
what description or name of, will be sufficient in indictment	242	192
any defect of form which does not prejudice substantial rights of, to be disregarded	242	193
allegations to support indictment for forgery, if instrument be lost through act of	243	198
against several, one or more may be convicted or acquitted	243	200
bail of, to be endorsed by clerk on warrant of arrest	244	203
in attachments, bail of, to be fixed by court	245	204
to be informed by officer that he acts under warrant	245	205
officers may use all necessary means to arrest, if resisted	245	206
officer may pursue and retake any place within Territory	245	207
of recognizance of, to appear	245	210
instead of bail, may deposit money in court	245	210
recognizance of, may be forfeited	245	212
indicted for capital offense, to be served with copy of indictment and list of petit jurors	246	213
certain, entitled to copies of indictment without payment of fees	246	215

DEFENDANT--(Continued.)	Page.	Sec.
may be discharged from indictment in certain cases where satisfaction has been received by private prosecutor . . .	246	215
whether in custody or on bail, to be stated in docket . . .	247	217
arraignment of	247	
plea of guilty by, proceedings by the court	247	218
standing mute, plea not guilty to be entered	247	219
court to provide with counsel	248	220
proceedings of court, if not indicted in true name	248	221
when punishable by fine only, may be arraigned, appearing by counsel	248	223
right of, compelling attendance of witnesses	248	224
cases in which Indians are competent witnesses	249	226
confession of, how to be regarded	249	227
change of venue on motion of	249	
to be recognized to court to which change is ordered, if offense beailable	250	232
right of, challenge of trial jurors	251	234
may submit to trial by the court	252	240
must be personally present, if punishment be imprisonment	252	241
punished by fine only, when may be tried without personal presence	252	242
jointly indicted, may demand separate trial	252	246
how made a witness for Territory or co-defendant	252	247
where offense improperly charged may still be held to answer, when	253	248
when venue of indictment may be corrected and change ordered	253	249
charged with offenses consisting of degrees	253	
verdict may be found against any, where several are indicted	253	254
where acquittal is conditioned on account of insanity	254	256
court to fix punishment and form of verdict	254	258
if found guilty, liable for costs and judgment entered, except	254	259
motion of, for new trial and arrest of judgment	255	
at judgment, must be personally present in offenses punishable by imprisonment	256	267
punishable by fine only, judgment may be rendered in absence of	256	267
when required in court, warrant may be issued for arrest to be informed before judgment of the verdict, and allowed	256	268

DEFENDANT—(Continued.)	Page.	Sec.
to show cause why judgment should not be pronounced under recognizance, failing to appear for judgment, may be arrested.....	256	269
when adjudged to pay fine, to be committed till payment of, liable as in civil actions for fine and costs...	257	271
may be ordered to give security for good behavior, in addition to sentence.....	257	273
stay of execution for judgment of fine and costs.....	257	275
execution against body of, for unsatisfied judgment of fine	257	276
judgment of fine must be satisfied or execution stayed before close of term.....	258	277
imprisonment of, prescribed in lieu of payment of fine..	258	278
when and how, judgment of fine may be worked out if no jail.....	258	281
may sue out writ of error to supreme court.....	260	
supreme court will consider all amendments as made, and give judgment without regard to defects, not affecting substantial rights of.....	262	297
how far and when writ of error operates as stay of proceedings.....	262	
one or more, tried jointly, may sue out writ of error....	262	300
if judgment reversed, to be discharged, but if guilty of an offense wrongly charged, may be remanded.....	262	301
acquitted by verdict, not liable for costs.....	265	315
charged in libel, what may give in evidence.....	384	3
 DEFENSE—SEE ANSWER, COUNTER CLAIMS, DEFENDANT.		
 DEFINITION—SEE CRIMES, MISDEMEANORS.		
of plaintiff and defendant.....	3	3
of trustee of an express trust.....	4	5
of intervention.....	7	23
of mutual open and current account.....	10	33
of counter claim.....	21	81
of material allegation.....	27	
of variance contradistinguished from failure of proof....		
of issue, issue of law and of fact.....	49,	50
of challenge, peremptory and for cause.....	51,	52
of bias, implied and actual.....	52	
of verdict, general and special.....	59	
of exception.....	63	
of new trials.....	67	

DEFINITION—(Continued.)	Page.	Sec.
of judgment	69	
of submitted case.....	73	
of the word "representatives," who may defend against revival of judgment.....	80	320
of representatives in sales of real property on execution .	97	367
of set-off.....	121	
of word costs, as used in civil practice.....	123	457
of nuisance	144	559
of contempt.....	167,	168
of the infamous crime against nature.....	173	689
of "real property" and personal estate or personal prop- erty for taxing purposes.....	176	
of felony and misdemeanors (<i>see crimes</i>).....	200	11
of "personal goods" of which larceny may be committed	208	
of principal and accessory.....	229	
of person and of words implying number or sex.....	231	
of words district and county (<i>see also page 175, sec. 696</i>).	232	147
words are to be taken in usual signification, legal phrases as defined by law.....	241	190
words of statute need not be followed in indictment.....	241	191
of separate and common property of husband and wife .	318,	319
of gift to wife.....	320	7
of marriage contract.....	321,	322
of a lawful fence (in certain counties).....	323,	324
of "folio," used as a measure of compensation to officers.	373	15
of "oath" and "affirmation" as contradistinguished.	378,	379
of limited partnership, general and special partners.....	380	
of libel, and what is a publication thereof.....	383,	384
of game, the killing of which prohibited at certain season	399	
of Texas cattle	404	i

DEGREE OF AFFINITY AND CONSANGUINITY—

judge within third, ground for change of venue.....	13	52
juror within fourth, challenge for implied bias.....	52	72
of consanguinity, marriage within prohibited, incestuous and void.....	225	121

DEGREES, CRIMES INCLUDING—SEE CRIMES.

murder in first or second.....	200	201
arson where death ensues, murder in first.....	200,	206
manslaughter, voluntary and involuntary.....	201,	202
assault, assault and battery and assault with intent.....	203	

DEGREES, CRIMES INCLUDING—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
robbery, burglary, grand and petit larceny.....	207	208
perjury and subornation of perjury... ..	215, 216	
bribery and attempt to bribe.....	216, 217	
if defendant plead guilty to murder, jury to determine..	247	218
conviction or acquittal for offense consisting of.....	253	251
defendant may be convicted of any less degree or for at- tempt	253	253
in all other cases, defendant may be convicted of any offense included in the one charged.....	253	253
 DELINQUENT—SEE ROADS.		
party warned out by road supervisor, when liable as....	275	24
road tax may be collected by levy and sale	275	24
penal tax to be added to delinquent, when and what....	276	25
when to enforce collection by action.....	276	27
no property exempt from levy or sale for road tax.....	279	
 DELINQUENT TAXES—SEE REAL PROPERTY, SALES.		
party refusing or neglecting to pay, sheriff may distrain	187	39
return of, by sheriff, what to contain, &c.....	188, 189	
sheriff failing to return, indictable, penalty.....	190	49
roll to be made by county auditor, when, and warrant for collection attached.....	190, 191	
collection of, by levy and sale of real property....	191, 192, 193	
 DELIVERY—		
of personal property, claim to.....	35, 36, 37, 38	
of property levied upon or attached, claim to.....	45, 89, 90	
of money or other property may be ordered, contempt for disobedience.....	49	200
 DEMURRER—		
causes of, prescribed.....	20	75
shall specify grounds of objection or be disregarded....	20	76
it may be to whole complaint, or any cause of action....	20	76
when right of, deemed waived, except.....	21	79
may be to one or more of several causes of action	21	82
by plaintiff to answer.....	22	85
if plaintiff fail to, or reply to answer judgment for de- fendant.....	22	86
of defendant to reply.....	22	87
must be subscribed but not verified.....	23	89

DEMURRER—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
issue of law arises on, to be tried by court.....	50	
by judgment debtor in proceeding to revive judgment..	80	320
DEPOSIT—		
<i>In civil actions—</i>		
by defendant, on application to substitute party making same claim.....	7	22
to discharge defendant from arrest.....	34	133
certificate of, to be given to defendant.....	34	134
refunding and disposition of.....	34	
court may order to be made, not to be loaned, &c.....	49	
by defendant of amount admitted to be due, as to costs.	125	469
by non-resident plaintiff in lieu of security for costs.....	127	479
any person required to give bail may make.....	173	692
<i>In criminal actions—</i>		
may be made in lieu of bail.....	245	211
DEPOSITION—		
shall not be taken by the jury in retiring.....	57	235
evidence of a prisoner may be taken upon.....	106	396
shall not be used if reason for taking it ceases to exist...	110	409
used in the inferior court may be used in appeal.....	110	411
of party in proceeding to perpetuate testimony.....	113	114
when shall be embodied in transcript of record, in suits of error.....	118	437
<i>Of witness in the Territory—</i>		
when and before whom may be taken, and notice required	108	
how taken and certified, form of certificate.....	108	109
to whom and how to be transmitted.....	109	407
by whom can be used at trial, and to what subject.....	109	408
if adverse party present at taking, concluded by, except objecting at time.....	109	408
may be taken by narrative or question and answer.....	109	408
duty of officer taking and of amendments to answers...	110	408
shall not be used if reason for taking has ceased, except.	110	409
if action discontinued, when may be used in subsequent action.....	110	410
may be used in appellate proceedings, subject, however, to	110	411
witness may be required to travel twenty miles to make.	110	412
<i>Of witness out of the Territory—</i>		
if within 100 miles of court, same as resident of Territory	111	414
commission for taking, settlement of interrogatories, no-		

DEPOSITION- (<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
tice, &c.	111	415
manner of selecting commissioners and who qualified....	112	415
court or judge to settle interrogatories, or parties can agree to take without.	112	416
power of commissioner, certificate of and mode of trans- mission.	112	417
failure to return, commission shall not continue trial, ex- cept.	112	418
DEPOTS		
appropriation of land by road corporation, for.	343	
DEPUTY--SEE OFFICERS, SHERIFF.		
sheriff may serve complaint and notice.	16	61
sheriff may disperse riotous assemblage.	214	70
obstruction of execution by, of process.	218	84
acting before lawfully qualified, penalty.	219	91
county auditor may appoint, powers of.	314	
surveyor general of logs may appoint.	391	
county assessor may appoint.	403	4
DETAINER- SEE FORCICLE DETAINER.		
DEVISE--		
of property to wife, as also to husband, shall be separate property.	318	
terms of, regulate control of rents and profits.	320	9
DISABILITY--		
while under what, not included in time of limitations.	11	38
by alien subject of country at war with U. S.	11	40
not available, except existing when right of action accrued	11	43
all must be removed before statute of limitation runs.	11	44
DISBURSE--		
willful failure of officer to, penalty.	219	88
DISBURSEMENTS--SEE COSTS.		
DISCHARGE--		
of defendant in civil action, if plaintiff fails to pay sheriff's fees.	31	121
of defendant in civil action, on giving bail.	31	
of defendant in civil action, on deposit in lieu of bail.	34	

DISCHARGE—(Continued.)	Page.	Sec.
of attachment of property	46, 47	
of jury, by court after retiring and before verdict	58	
of party arrested on <i>no exeat</i> , giving special bail or security for performance of contract	149, 150	
of parties on <i>habeas corpus</i>	157	
<i>habeas corpus</i> will not obtain, from what	158	
officer not liable for, in obeying writ of <i>habeas corpus</i>	158	
of party held on indictment, if not tried, when	199	
of party held to answer for offenses committed in another state	235	
of party indicted, where prosecutor has received satisfaction	246	
of one of several defendants, to be made witness	252	247
defendant shall not be, on account of indictment making erroneous charge	252	248
person acquitted because of insanity, shall not receive	252	256
on reversal of judgment in supreme court, except	262	301
 DISEASE—SEE CONTAGIOUS DISEASE.		
 DISINTERMENT—		
willful, of human body, or aiding therein, penalty	226	125
 DISMISSAL OF ACTION—SEE JUDGMENT.		
 DISTILLERY—		
malicious setting fire to, arson	206	42
 DISTRAIN, DISTRESS—SEE LEVY, SALE.		
lawful possession of real estate on which made, a defense in actions for recovery of distrained property doing damage	25	99
by collector of taxes refusal or neglect to pay tax	187, 188	
by road supervisor, for road taxes	275	276
no property exempt for delinquent road tax	279	
 DISTRIBUTION AND DESCENTS—		
estate settled without administration, subject to law regulating	301	8
 DISTRICT—SEE COUNTY, COURT, ROADS, VENUE.		
when necessary, construed to mean county	175, 232	
road, to be established by county commissioners, and su-		

DISTRICT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
pervisor appointed for each	273	
election, two county commissioners cannot be elected from same	303	2
courts, terms of prescribed, and places of holding	329	
assignment of judges to	385	
of Puget Sound, (collection No. 103,) board of health ap- pointed and quarantine regulations provided for	394	
school, certain officers to see that orphans are sent to school	406, 407	
 DISTRICT COURT—SEE COURT.		
DIVIDENDS—		
power and liability of trustees of corporation to declare	334	
 DIVORCE—		
a bar to prosecution for polygamy	226	122
 DOCKET—		
execution, to be kept by clerk of district court, what shall contain	75, 76	
transcript of judgment of other courts to be entered in	76	
how kept by clerk, and of indices to	76, 77	
entry upon of revived judgments	79	
assignment of judgment, how entered	84	330
trial, how clerk shall enter claim to property levied upon or attached	90	348
entry of sale of land by sheriff on execution, for confir- mation	95	
entry of notice by one of several defendants for others to make contribution	97	365
of criminal cases, what shall contain	247	217
 DOCUMENTS—SEE BOOKS, EVIDENCE, RECORDS.		
what may be taken by jury on retiring to deliberate	57	235
subpœna to witness to produce and bring any, under his control	105	389
general provisions concerning, used as evidence	114, 115, 116	
adverse party entitled to inspection of, or copy	114	424
penalty for party refusing to allow to adverse party	<i>ibid</i>	
the right to writ of <i>subpoena duces tecum</i> further secured	<i>ibid</i>	
authentication of, to be used as evidence	115	
seal to, in authentication of, when sufficient	116	430

	<i>Page.</i>	<i>Sec.</i>
DOOR—		
if personal property subject of action be concealed, sheriff may break open.....	37	147
officer making arrest in criminal cases, may break open..	266	317
DOWER—		
tenant in, action for possessing real property.....	131,	132
admeasurement of by referees, when allowed.....	132	503
estate in, one third proceeds of sale in partition proceed- ings.....	139	537
trustee settling estate without administration, holds or sells subject to.....	301	8
DRAFTS—		
personal goods of which larceny may be committed....	208	49
counterfeiting and forgery of, punishment.....	211	60
DRAINS AND DITCHES—		
authority of supervisor to enter land and construct....	277	
appropriation of land by road corporation, for necessary.	343	
DRUGGIST—		
selling arsenic, corrosive sublimate, prussic acid, strychnine, without label, together with word "poison," pun- ishment.....	227	129
DUEL—		
action for damages for death in, who may maintain....	4	8
when party killed, survivor guilty of murder in second degree.....	201	14
challenge in, fight without death ensuing, venue of prose- cution.....	201	15
fighting a, challenging or delivering challenge, no homi- cide or death ensuing, punishment.....	203	22
acceptance of challenge, sending or delivering challenge, or presence at.....	203	23
DWELLING HOUSE—SEE HOMESTEAD.		
malicious setting fire to, arson.....	206	42
malicious setting fire to one's own and burning another's.	207	44
felonious entry by night time, or breaking into, in day time, burglary.....	207	46
door or window of, may be broken open by officer in mak- ing criminal arrest.....	256	317

E.

EDUCATION—SEE COMMON SCHOOLS.	<i>Page.</i>	<i>Sec.</i>
act to provide for certain orphans receiving.....	406	
ELECTED—		
party, acting before legal qualification, penalty.....	219	91
ELECTION—SEE ELECTOR.		
voting or attempting to vote more than once at same... ..	221	98
officers conducting, attempting to influence elector, penalty	221	99
voting at, without legal qualification, penalty.....	221	100
officer of, prying into vote of elector by marking ballot	221	101
person attempting to influence, by threats or corrupt means or give public treats, &c., &c.....	221	102
of county commissioners, no two from same district.....	303	
of county auditor, aud certificate of.....	310	
of Territorial officers, by joint convention of Legislative Assembly.....	327	
of officers and trustees of corporation.....	332,	333
of officers and trustees of colleges, churches and other so- cieties.....	341	
submission of proposition to admit Washington Territory as a State.....	354,	355
of county assessors.....	402	
ELECTOR—SEE ELECTION.		
person fraudulently causing to vote for person not intended	220	97
voting or attempting to vote more than once or at more than one precinct.....	221	98
officer influencing, by persuasion, menace, reward or promise.....	221	99
marking or prying into ticket of, by officer of election...	221	101
threats, menaces, force or corrupt means towards an.....	221	102
EMBEZZLE, EMBEZZLED, EMBEZZLEMENT—SEE LARCENY.		
by public officer, attorney, agent of corporation, broker or trustee, cause of arrest in civil action.....	29	114
officer, agent, clerk, servant or bailee committing, shall be deemed guilty of larceny.....	210	
committed by altering receipt or written evidence of prop-		

EMBEZZLE—(<i>Continued.</i>)		<i>Page.</i>	<i>Sec.</i>
erty, and who may be guilty.....	210	59	
with or without hire, bailee alike guilty.....	210	59	
property, search warrant for.....	232, 233		
ENGINEER—			
of steamboat racing, &c., guilty of manslaughter if death ensues from explosion of boiler.....	201	19	
EMPLOYMENT—			
for wages, challenge for implied bias.....	52	216	
ENTRY—SEE AUDITOR, CLERK OF DISTRICT COURT, RECORDS.			
on land for purposes of survey, allowed in suits for real property.....	130		
in county officers' books, of assessment, taxes, &c., <i>prima facie</i> evidence.....	196		
felonious by night, or forcible, by day of what, burglary..	207		
forcible, and detainer defined, punishment.....	212	63	
by road supervisor on lands to dig drains and get materi- als for road.....	277		
by clerk of corporation, of stock, &c., penalty for false..	336		
of private corporations on land for corporate uses.....	343		
of public corporations on private land for public uses....	350	13	
port of Puget Sound, health officer to reside thereat.....	395		
EQUITY—			
law and, distinction between abolished.....	3	2	
EQUITY OF REDEMPTION—			
foreclosure of, by civil action on mortgage.....	146		
sale of mortgaged premises on execution for mortgage debt forecloses.....	148	574	
ERROR, ERRORS AND DEFECTS, AND WRIT OF ERROR—			
SEE APPEAL, BILL OF EXCEPTIONS, EXCEPTIONS.			
<i>In civil actions—</i>			
in clerical, pleading may be amended without filing new pleading.....	27	108	
in pleading, not affecting substantial rights of adverse party, disregarded.....	28	111	
in stay of proceedings after judgment, plaintiff to endorse release of, if required by court.....	39	160	
refusal of judges to give instruction in writing, deemed,			

ERROR—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
proviso	55	225
lies to judgment of court on submitted cases, appeal secured as in other cases	74	302
<i>in criminal actions—(see indictment.)</i>		
in name of party indicted, may be corrected	241	185
in allegation of person injured, immaterial	241	188
immaterial, if do not affect substantial rights of defendant	242	193
in offense charged or county laid as venue of offense	253	
by court, when ground for new trial	255	
<i>Writ of, in civil actions—</i>		
not to affect existing lien of judgment appealed from	79	319
for what, and when may be sued out	116	432
manner of taking, precipe, notice and service of	116, 117	
duties of clerk, transcript of record and what shall contain	117, 118	
court of, to hear those assigned in precipe	119	439
stay of proceedings in court below	119	440
judgment of supreme court, damages to defendant in, costs, &c.	119, 120	
parties or privies may prosecute, and new parties brought in	120	
reversal of judgment on, not to affect title of property sold on execution	120	445
suits upon, and appeals, when the latter may be resorted to	120	447
what shall be considered by supreme court, in suits on	121	448
lies to proceedings of mandate and prohibition	161	641
may be taken in proceedings for contempt, but shall not stay proceedings in action wherein contempt was committed	171	680
in actions for appropriation of lands, a stay of what proceedings	349	9
<i>Writ of, in criminal actions—</i>		
what may be reviewed, and by whom sued out	260	261
notice, service of, and transcript of record	261	
judgment of supreme court, remanding of defendant or execution of	261	296
what shall be examined and adjudged upon	262	297
how far it operates as a stay of proceedings	262	
one or more of several defendants may take	262	300
on reversal of judgment, defendant may be remanded to		

ERROR—(Continued.)	Page.	Sec.
answer properly charged offense.....	262	301
shall not be dismissed for informality in taking.....	262	302
what prosecutions may be re-examined, and limitation of appeal.....	263	305
 ESCAPE—		
limitation of action against officer, for.....	9	
of defendant arrested, when sheriff liable as bail, and pro- ceedings.....	34	
person aiding or assisting prisoner to make, penalty.....	217	81
jailer voluntarily suffering prisoner to, punishment....	217	82
jailer suffering prisoner to, through negligence.....	218	83
party making, or rescued, may be retaken within Terri- tory.....	245	207
 ESTATE—SEE HUSBAND AND WIFE, PROPERTY, REAL ESTATE, AND REAL PROPERTY.		
married woman may sue alone concerning her separate..	4	6
limitations of actions for recovery of, and for rents and profits.....	8	
separate, of married woman exempt for husband's debts..	85	337
restoration of, to judgment debtor, on redemption of prop- erty sold on execution.....	99	
actions to recover and affecting real.....	128	
to be set forth in complaint, property how described..	128,	129
of defendant to be set out in answer, or evidence shall not be given of title.....	129	491
judgment in such actions.....	129	
in actions for real property, judgment conclusive as to...	131	
in dower, admeasurement of.....	131	132
partition of real property, (<i>see partition</i>).....	133	
of dower and curtesy, proportion of proceeds of sale in partition.....	139	537
of, in action of waste, and judgment of eviction (<i>see waste</i>)	143	
mortgage of, (<i>see foreclosure of mortgage</i>).....	145	
administration of, put in issue in actions against executors . administrators, inventory not evidence of assets, except	166	662
of judgment debtor holding a tenant in common, liable only for his....	174	694
personal, defined for taxing purposes.....	176	3
where and in whose name taxable.....	178,	179

ESTATE—(<i>Continued.</i>)		<i>Page.</i>	<i>Sec.</i>
of decedents, settlement without administration	298		
of separate, of husband and wife, (<i>see husband and wife</i>)	318		
ESTRAYS—			
conversion to use of, or willful violation of laws regarding, penalty	222	106	
stock raiser's privilege to drive into corrals for separation	408		
EVICTION—			
from property bought on execution, by reversal of judgment, remedy of purchaser	96	364	
judgment of, in favor of reversioner, in action of waste	143	554	
EVIDENCE— <i>SEE AFFIDAVITS, BOOKS, DEPOSITIONS, DOCUMENTS, RECORDS, VARIANCE, WITNESSES.</i>			
<i>In civil actions—</i>			
pleading shall not be used as, in a criminal prosecution	23	90	
when account or instrument on which suit is brought shall not be given in	24	91	
continuance, because of the absence of	50	209	
rules of, applicable in trials of challenge for cause	54	222	
party having burden of proof to produce first, and parties to be confined to rebutting, except	54	225	
to be addressed to jury, but rules of, to be decided by court	56		
what jury may take with them on retiring	57	235	
when jury disagree as to purport of, how to be settled	57	236	
exceptions to admission of, and settlement of in bills of exception	63		
laws of, to govern proceedings of arbitrators	66		
newly discovered, or insufficiency of, to justify verdict, new trial	67, 68		
of witnesses, their competency and credibility, and who shall not be examined as	103, 104		
manner of compelling attendance of witnesses, (<i>see subpœna</i>)	104		
examination of adverse party	106		
depositions of witnesses, (<i>see deposition</i>)	108		
proceedings to perpetuate testimony	113		
authentication and use of records, books, documents, &c.	115		
printed statutes of other States, when admitted as	116	431	
of title, defendant cannot give in real actions, except			

INDEX.

711

EVIDENCE— (<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
pleaded by answer.....	129	491
in actions between donation claimants, elder patent con- clusive, except the same be absolutely void.....	132	504
to contradict an inventory as evidence of assets, in actions against executor and administrators.....	166	662
the measure of, allowed to pleadings sworn to.....	173	683
<i>In criminal actions—</i>		
right of accused, to confront and produce witnesses, &c..	198	
sufficiency of, in prosecutions for rape of a child under twelve years.....	204	35
experts competent witnesses in prosecutions for forgery..	212	62
principal or agent in prosecutions for violation of license laws compelled to testify as against each other.....	220	95
Indians competent, in prosecutions for sale of liquor to..	228	133
grand jury not bound to hear for defendant, but duty of to weigh all, &c.....	238	168
where defendant pleads guilty, court will hear or empanel jury to fix degree of crime charged.....	247	218
general provisions as to witnesses and.....	248,	249
of competency of, and confessions to certain parties, or made under inducement.....	249	
rules governing in civil actions applicable.....	249	
oath administered as to trial jury as to true verdict... 251.	252	
a view may be ordered by court.....	252	245
one of several defendants may be discharged to testify, when.....	252	247
newly discovered, or that verdict is contrary to, or that illegal has been admitted, new trial.....	255	
defendant prosecuted for libel, what may be given by...	384	3
<i>Miscellaneous—</i>		
records and entries of county officers of assessments, taxes, &c., <i>prima facie</i>	196	79
copies of all papers, &c., filed by county auditor, <i>prima facie</i>	315	27
certificate of incorporation by auditor or Secretary of Territory, <i>prima facie</i>	331	3
copy of entry by clerk of corporations, right of any per- son to demand and use as.....	336	
view and, in actions by corporations for appropriation of lands.....	349	
requisites of notarial certificate, to be used as.....	376	5

EVIDENCE—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
form of oath or affirmation of witness in judicial proceedings.....	378,	379
affidavit of labor done on quartz claim, <i>prima facie</i>	387	5
EXAMINATION—SEE AFFIDAVIT, DEPOSITION, EVIDENCE, WITNESS.		
of qualification of bail in civil actions.....	33	
of parties attached as garnishee of defendants.....	44	
of jurors, as to qualifications as trial jurors.....	52,	53
of an account or other issue in case, court may direct reference.....	61	
re-, of issue tried by jury, court or referees (<i>see new trial</i>)	67	
of account, &c., may be ordered before entry of judgment for failure to answer.....	71	
of claim of party, that property seized is exempt....	89	
of judgment or absconding debtor, arrested for refusal to satisfy judgment.....	101	
of corporation or party garnishee of judgment debtor....	102	
of certain parties as witnesses, shall not be allowed....	104	
of parties (<i>see examination of parties</i>).....	106,	107
of a witness, to be perpetuated and used in an action, should it be required.....	113,	114
of document, &c., in possession of adverse party may be compelled.....	114,	115
by suit in error or appeal, what may be subject of.....	116	
by officer taking bail, concerning property and sufficiency of surety.....	173	690
in issues of search warrants for stolen or embezzled property, &c.....	232,	233
by Governor before making requisition for fugitive from justice.....	233	
of parties charged with offenses in another State or Territory.....	234	
of witnesses before grand juries.....	237	
grand jury restricted to what, and other matters of.....	237	
of defendant's witnesses, not bound to make, except.....	238	
by supreme court, suit in error or appeal in criminal cases	260	
<i>Of parties—</i>		
order to deposit in court or deliver money or other thing admitted to be due to adverse party.....	49	199
in proceedings supplementary to execution.....	101,	102

INDEX.

713

EXAMINATION—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
may be compelled to testify at trial, or upon commission	107	398
interrogatories for discovery, when may be filed	107	399
when said interrogatories shall be answered	107	400
filing of interrogatories shall not preclude examination as witness	107	401
such testimony may be rebutted by adverse testimony	107	402
party refusing to answer, guilty of contempt, but shall not be compelled to criminate self	107	403
to conform to provisions of civil practice act	175	699
EXCEPTIONS—SEE BILL OF EXCEPTIONS, ERROR, OBJECTION.		
by defendant to plaintiff's sureties in claim to personal property	36	
to challenge of juror for insufficiency, trial and decision	53, 54	
to charge, instructions and rulings of judge on trial	55	
shall be disregarded by supreme court, if specific parts of charge be not designated to which taken	55	
to proceedings of referees in trial	62	
definition of	63	261
to be disregarded if not material or do not affect sub- stantial rights of parties		<i>ibid</i>
how made, and of the settlement of testimony on disagree- ment between court and counsel	63	262
form of, immaterial and to embody enough evidence to ex- plain	64	263
bills of, how made and part of record, and need not be taken to written matter or files of court	64	264
decision or report made out of term, deemed as, on motion for new trial	64	265
to be in writing to award of arbitrators, and causes	65, 66	
depositions to be used subject to all legal	109	408
what the supreme court will consider and adjudge in a civil action on writ of error	121	448
to sufficiency of return of <i>habeas corpus</i>	157	615
law in civil actions goverus in criminal trials	252	243
may be taken by defendant in criminal case, or any mat- ter of law prejudicing his substantial rights	256	265
supreme court on hearing writs of error in criminal cases, will disregard such as do not affect substantial rights of defendant	262	297

EXECUTION—	Page.	Sec.
<i>In civil actions—</i>		
action against sheriff for money collected on, limitation . . .	9	28
against sheriff liable as bail returned unsatisfied, suit on official bond, (<i>see arrest</i>)	35	139
on judgment, where property has been attached	45, 46	
to satisfy part of claim admitted due by defendant's an- swer	49	203
on award of arbitrators, entered up as judgment	66	276
docket, to be kept by clerk, what shall contain	75	
leave to issue, after expiration of lien, revives judgment, and mode of proceeding	79, 80, 81	
writ of, to enforce judgment may issue of course within five years of rendition	79	320
for the payment of money or delivery of property, as dis- tinguished from order to perform another act	81	322
four kinds of, all accompanied by order to collect costs . .	81	325
requisites and essentials of the writ	82	
runs to any county, but in first instance to county where judgment rendered	83	
sheriff to indorse time received and make return in sixty days	83	326
penalty of sheriff or clerk retaining moneys collected on where judgment debtor may be arrested, and jail liberties defined	83	<i>ibid</i> 84
real and personal property not exempt, liable	84	329
assignee of judgment may have in his own name, when . .	84	330
bonds for stay of, and liability of sureties	84, 85	
property exempt from, (<i>see exemption</i>)	85	
claim to property as exempt, and claim of third parties to property levied upon or attached	89, 90	
manner of proceeding when property has been attached . .	91	351
manner of proceeding with property of debtor in hands of garnishee	91	352
proceedings in levy upon personal property	92	
sales of real and personal property, how conducted	93, 94, 95	
of real estate to be returned for confirmation, proceedings .	95	363
if purchaser be evicted, what he may recover from plaintiff	96	364
contribution by several defendants, when one pays more than proportion	96	365
certificate of sale to be given by sheriff, what shall con- tain	97	366

EXECUTION—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
who may redeem property sold, and are termed redemptioners	97, 98	
mode of redemption	99, 100	
possession and control of estate during time of redemption	100	
sheriff's deed to be entered in book of levies	100	375
proceedings supplementary to	101, 102	
stay of, in suing out writ of error	119	440
may issue from supreme court, or by its mandate from district court	119	441
reversal of judgment by supreme court shall not affect title of property sold on	120	445
when restitution may be awarded		<i>ibid</i>
may issue against guardian of infant plaintiff	125	471
against assignee of action after commencement	125	473
in suits for foreclosure of mortgage, order of sale takes place of	146	
order of sale in foreclosure suit, an execution for deficiency from sale of mortgaged premises	148	
to use of surety in judgment against principal and sureties	151	
in judgments against public corporations not to issue, but transcript to be voucher for draft on funds, payment of which enforced by attachment	155	
obedience to mandates and prohibitions, how enforced ..	161	
in corporations dissolved by information, against persons composing corporation	164	
against defendant owning interest jointly with another, restricted to defendant's interest, proceeding	174	694
of judgment of justice of peace, when can be levied upon real estate	174	695
for collection of delinquent taxes	191	
for enforcement of claims against estates settled without administration	301	7
to enforce judgment in kind of money specified in contract	416, 417	
<i>In criminal actions—(see warrant.)</i>		
obstruction of, of legal process, punishment	218	84
willful refusal of officer to serve, punishment	218	85
of search warrant, duty of officer as to stolen property, &c	233	151
of warrant of Governor, in surrendering fugitives from		

EXECUTION—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
justice	234	153
for payment of fine and costs, and stay of.....	257, 258	
judgment of imprisonment, of hard labor and solitary confinement	257	
proceedings in the event of no penitentiary or county jail	257, 258	
to enforce the penalty of death, warrant, return, &c.....	258	
in actions on forfeited recognizances.....	260	
of judgment of the supreme court.....	261	296
when writ of error will stay, and how far.....	262	
of warrant of pardon or commutation of Governor.....	264	312
 EXECUTION DOCKET—SEE DOCKET.		
 EXECUTORS AND ADMINISTRATORS—SEE LETTERS OF ADMINISTRATION, LETTERS TESTAMENTARY, REPRESENTA- TIVES AND SUCCESSORS IN INTEREST.		
may sue without joining beneficiary of action.....	4	5
suing or defending as such, adverse party cannot be witness for self.....	103	384
set-off pleaded in actions by and against.....	122	
liability of for costs in prosecuting or defending actions. actions by and against... ..	125	472
action for death of testator or intestate, damages restrict- ed to \$5,000, and to be assets.....	165	658
survivorship of actions to.....	165	659
all shall be considered as one.....	165	660
judgment against, for failure to answer, when not evidence of assets.....	166	661
in actions against, inventory may be contradicted or avoided, when.....	166	662
liability to, of executor of his own wrong.....	166	663
of an executor, no authority in estate of testator of first executor.....	166	664
when actions may be commenced against, proviso.....	167	665
arrest and attachment, for own acts allowed, but not for acts of intestate or testator.....	167	666
taxable property under control, where assessed.....	178	9
when assessed as, representative character to be designated	181	20
holding stock in corporation, right to vote.....	334	11
liability of for stock held as such, not personal but estate of testator or intestate to be, how far.....	335	17

INDEX.

717

EXEMPT, EXEMPTION—SEE HOMESTEAD.	<i>Page.</i>	<i>Sec.</i>
property, not liable to be attached.....	43	
from jury service, a privilege but no cause of challenge..	53	218
of separate estate of married woman, for debts of husband	86	337
homestead, and mode of securing, (<i>see homestead</i>).....	86	
specific articles of property, from attachment or execu- tion.....	87, 88	
waiver of, how made.....	88	344
defendant may select property and trial of right.....	88, 89	
of personal earnings of judgment debtor or garnishee....	102	
of property and of whom, from taxation.....	177	
for delinquent road tax, no property.....	279	34

EXTORTION—

threatened injury to person or property with intent to penalty.....	206	41
officer under color of office corruptly exacting greater than legal fees.....	219	92

F.

FACT, FACTS—SEE VERDICT.

method of statement of, in complaint.....	20	74
insufficiency of, to constitute cause of action, ground of demurrer.....	75	
objection to pleading, for insufficiency of, never waived...	21	76
demurrer to reply, for insufficiency of.....	22	87
conferring jurisdiction need not be stated, but if denied must be proven.....	24	94
showing performance of conditions precedent. need not be stated.....	25	95
in actions for libel or slander, how stated.....	25	95
proven, that party has been misled by adversary, amend- ment.....	26	103
if variance be immaterial. court will direct, to be found..	27	104
issues of, how arise.....	49, 50	
trial of issues of, by jury, unless waived or reference or- dered.....	50	
juror having served on previous trial, involving, same may		

FACT, FACTS—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
be challenged	52	216
parties to trial may submit to court as established by trial,		
conclusions of	56	226
all questions of, to be decided by jury	56	228
finding of, may be directed by court, to be reported in		
writing	59	246
special finding of, will control general verdict	60	247
trial by court and conclusions of, how stated, &c.	60	
trial by referees, what findings, &c.	61, 62	
proof of, when and how made in judgments on failure to		
answer	71	
constituting liability, to be stated by defendant in judg-		
ments by confession	73	298
agreed statement of, in submitted cases, without action . .	74	
pleadings sworn to, how far deemed as proof of alleged .	172	683
issues of, on indictment, trial	251	
 FAILURE—SEE DEFAULT.		
of proof, as distinguished from variance	26, 27	
failure of arbitrators or parties to attend at arbitrations,		
penalty	65	269
of plaintiff to appear or to prove cause, judgment of non-		
suit	70	288
to answer, judgment on, (<i>see judgment</i>)	70	71
willful, of officer to perform duty imposed by law, penalty	218	87
to return certificate of marriage, penalty	224	116
of county auditor to record instrument on tender of fees,		
penalty	314	20
 FALSE—SEE FRAUD.		
<i>charge</i> of incest, fornication, adultery, &c., against female,		
actionable	173	689
<i>entries</i> by clerk of corporation, penalty	336	19
<i>imprisonment</i> , limitation of action for	9	29
<i>imprisonment</i> , in action for, when recovery fixes measure of		
damages	123	460
<i>personation</i> , property received through, larceny	209	56
<i>receipt</i> by collector of taxes, penalty	187	38
of property, by certain bailees, agents or clerk, punishment	210	59
<i>return</i> of sheriff of taxes, &c., remedy for	187, 195	
<i>statement</i> of auditor, of incumbrance on real estate, penalty	314	23
<i>statement</i> of surveyor general of logs, of measurement,		

INDEX.

719

	<i>Page.</i>	<i>Sec.</i>
FALSE—(Continued.)		
penalty.....	393	12
<i>token or pretenses, obtaining money or property by, punishment.....</i>	209	57
FARO—		
dealing at, penalty for.....	222	104
FATHER—		
action by, for death or injury to child.....	4	9
action by, for seduction of daughter.....	5	10
action by, a bar to female suing in her own right for seduction.....	5	11
in suits against minors, service to be made upon.....	16	62
right of, to settle estate of decedent without administration.....	299	2
marriage contract invalid which derogates from rights of	322	
FAMILY AND HEAD OF FAMILY—SEE EXEMPTION, HOMESTEAD.		
allowance of property to, exempt from attachment or execution.....	86, 87, 88	
introduction into, of obscene publications, &c., penalty.	226	124
FEE BOOK—		
to be kept by clerks, sheriffs, auditors, probate judges and justices, what shall contain.....	372	9
FEEES—SEE COMPENSATION, COSTS.		
to sheriffs for food and maintenance of defendant arrested, how paid.....	31	121
of arbitrators, taxable as costs against losing party.....	66	275
of clerk, for transcript of judgment to be filed with auditor, to be paid.....	75	310
of witnesses, to be paid or tendered at service of subpoena for transcript of record, to be paid by plaintiff in error on filing precipe.....	118	436
attorney, taxed in favor of prevailing party.....	123	464
of witnesses and officers, taxed as costs, when to be claimed.....	124	465
of referees.....	124	466
of witnesses, payment of may be enforced as a condition of continuance.....	124	467
of referees, in partition proceedings, apportioned to par-		

FEES—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
ties in interest.....	142	553
of officers in relation to collection of delinquent tax, same as on execution and payable by defendant.....	193	65
extortion of greater, than allowed by law, penalty.....	219	92
ferryman receiving greater than allowed by law, penalty.	224	113
copies of indictment for felony, to be served on defendant without.....	246	
to witnesses in criminal cases, need not be paid on service for transcript of record, to be paid by defendant in error in criminal cases.....	248	224
of county auditor, for breaking county order.....	261	293
of county auditor for making annual exhibit.....	311	5
of county auditor for making annual exhibit.....	312	9
tendered to county auditor for recording, and failure of that officer.....	314	20
county auditor not obliged to perform service till tender or payment of.....	316	28
of marshals at agricultural and mechanical fairs.....	328	2
of officers under hog law.....	362	6
act regulating.....	364	
of clerk of supreme and district court.....	364, 365	
of sheriff.....	365, 366	
of judge of probate court.....	366, 367	
of justices of the peace.....	368	
of county auditor.....	369	
of constables.....	371	
of county commissioners.....	304, 371	
of jurors and witnesses.....	371	
of notaries public.....	371, 376	
of coroners.....	372	
of interpreters and translators.....	372	
of secretary of the Territory.....	372	
of county surveyors.....	372	8
book, of certain officers, what shall contain.....	372	9
act regulating, to be specially given in charge to grand jury.....	373	10
penalty for officer violating act regulating.....	373	11
penalty for taking greater than allowed by law.....	373	12
table of, to be made and posted in conspicuous place....	373	13
of publication, may be demanded in advance.....	373	14
folio as a measure of, defined.....	373	15
mileage, how computed.....	373, 374	

INDEX.

721

FEES—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
attorney in case shall not be paid as witness.....	374	17
shall not be charged for administering or certifying oath of office.....	374	18
where not allowed to officer, shall be paid what other officers receive for similar services.....	374	20
except for official services to county or Territory, invari- ably due in advance.....	374	21
of witnesses, as to attendance and mileage and what may be demanded.....	374	22
due by county to county auditor, how paid, &c.....	374	23
bill of, to be made by officer whenever requested.....	374	24
other than provided by law, receipt of prohibited.....	375	25
of county auditor for recording quartz claim.....	387	4
of surveyor general of logs and deputies.....	392, 393	
of health officer, payable by quarantined vessels.....	398	14
of county assessor.....	403	5
of officers in judgments in specie of contract not included in decree of specific performance of contract.....	416	1
jury, taxed against convicted defendant, and disposition of due officers, jurors and witnesses to be made up by clerk and certified as costs.....	418, 420	3
FELONY—SEE CRIMES.		
limitation of prosecution for.....	200	10
offenses punishable by imprisonment in penitentiary, are principals and accessaries in commission of.....	200	11
demand for surrender of person charged with commission of.....	229	
parties charged with, to be served with copies of indictment if indicted for, docket to recite.....	233	
defendant charged with, right of peremptory challenge..	246	217
defendant must be personally present at trial.....	247	234
sentence of parties convicted.....	251	
how far writ of error operates as stay of proceedings....	252	
duties of clerk in convictions for.....	258	4
FEMALE—		
actions for seduction, who may maintain.....	419	4
what charges falsely made, are actionable.....	46	5
carnal knowledge forcibly of a, and carnal knowledge of, under 12 years of age, rape.....	173	689
	35	204

FEMALE—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
carnal intercourse with, under promise of marriage, seduction.....	225	119
FENCE—		
around cemetery, willful injury to, punishment.....	226	127
an act concerning, applying to the counties of Walla Walla, Stevens, Yakima and Klickitat.....	323	
FERRY, FERRYMAN, FERRIAGE—		
penalty for receiving greater than lawful rates.....	224	113
license by county commissioners, tax, to whom notice of application and bond.....	280, 281	
boats, necessary hands and safe landings requisite.....	281	45
attendance upon, and penalty for neglect.....	281	46
at night, except in evident danger, may charge double....	282	46
commissioners to fix and alter rates, penalty for overcharging.....	282	
rates to be posted, penalty for failure to post.....	283	49
persons to be ferried as they arrive, except, penalty for giving preference.....	383	50
how far privilege is exclusive as to charges.....	283	51
of forfeiture of license, procedure.....	284	
penalty for keeping before license granted.....	284	53
power of county commissioners to license and fix rates..	305	11
on roads of corporations.....	345	8
FICTITIOUS NAME—		
defendant indicted by, and true name may be inserted.	241, 242	
FINAL RECORD—SEE CLERK, JUDGMENT, JUDGMENT ROLL.		
of proceedings in criminal prosecutions to be made by clerk.....	259	286
FINE, FINES AND FORFEITURES—SEE CONTEMPTS, PENALTIES.		
limitation of statutory action for forfeiture.....	9	
disabilities excepted in actions for.....	11	38
property taken for, cannot be recovered by claim to personal property.....	35	141
for arbitrator failing to attend without excuse.....	65	269
of sheriff and clerk for non-payment of money collected on execution.....	83	326

FINES AND FORFEITURES—(Continued.)	Page.	Sec.
of witness for failing to appear.....	106	
due by officer for official delinquencies, suits for recovery	152	
may be recovered by action, who may maintain.....	153	597
measurc of judgment, proportionate to offense.....	153	598
judgment for, through collusion, no bar to another party maintaining.....	153	599
to be paid into county treasury, except.....	153	600
venue of action for.....	154	600
action for, due to public corporation for official misfeas- ance.....	154	
obedience to writs of mandate and prohibition may be enforced by.....	161	637
of officer or property, by corporation or officer, action by information.....	163	
limitation of, for punishment for contempts.....	168	
of person refusing to furnish list of property to assessor.	180	16
of collector of taxes failing to make monthly returns to treasurer... ..	186	34
of county officer buying county order at less than face... .	187	38
of collector of taxes for neglect to return delinquent taxes.....	190	49
of officer misapplying funds or not keeping separate... .	196	75
of officer failing to comply with provisions of tax law.	196	76
when added as a punishment, for crimes, (<i>see crimes and misdemeanors</i>).....		
grades of assault, imprisonment and, or fine only.....	203	
simple mayhem, imprisonment or.....	204	34
extortion under threats, imprisonment or.....	206	41
forcible entry and detainer punishable by.....	212	63
malicious trespass, measure of, to which imprisonment may be added.....	212	64
willful trespass and destruction of property, measure of, to which may be added imprisonment.....	212, 213	
for setting fire to timber or grass lands, or allowing fire to pass lands.....	213	68
offenses against public peace punishable by, to which ad- ded imprisonment.....	214, 215	
offenses against public justice and by public officers, pun- ishable by, and imprisonment.....	216	
for usurpation of office or performance of duty before qualification.....	219	

FINES AND FORFEITURES—(Continued.)	Page.	Sec.
offenses against public policy	220	
offenses against morality and decency	225	
offenses against public health	227	
to go to county fund, receipts for and penalty for officers failing to pay over, collected	230	137
for offenses punishable only by arraignment may be by counsel	248	223
trial for offense punishable only by, defendant may be absent, but security given for judgment	252	242
judgment and sentence for, execution, stay of, and liability of defendant and sureties	257	
party committed for non-payment, may work out, per diem allowed	259	281
belong to county, where offense committed	264	310
of road supervisor for neglect of duty	279	
of person running ferry or collecting ferriage without license	284	53
for violation of rights of travel	288	69
for county commissioners being interested in county con- tract	308	25
of county auditor for refusing to record instrument	314	20
of clerk of corporation making false entries, &c.	336	19
for violation of law relative to inspecting and packing salmon	352	2
for using weights or measures without being sealed	353	4
for bringing into Territory animal diseased with glanders	361	3
for violation of law regulating fees and costs and special provisions thereof	373, 374	
of notary public refusing to deposit records with auditor on expiration of office	376	4
for bringing into Territory animal affected with conta- gious disease	377, 378	
or imprisonment, for libel	384	2
and imprisonment for surveyor general of logs, giving false statement	393	12
for violation of quarantine laws	396, 397, 398	
for violation of game laws	399	1
for keeping dangerous or vicious cattle	400	1
for introducing Texas cattle	404, 5	
for failing to send children to school, and remission of	406, 407	
for violation of law for protection of stock raisers	408, 409	

FINES AND FORFEITURES—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
for malicious destruction of coast survey signals, &c.	415	6
costs collected in prosecutions for, to go to county from which case came.	421	11
FINGER BOARD OR GUIDE BOARD—		
to be put up at forks of highway, what shall specify, &c.	278	30
FIRE—SEE ARSON.		
FLUMES—		
malicious injury to, or aperture in, penalty.	213	66
FOLIO—		
meaning of, as measure of compensation under fee law	373	15
FOOD—		
of defendant arrested in civil actions, plaintiff liable for.	31	121
to be provided to jury at expense of county.	57	252
penalty for selling diseased or unwholesome.	227	128
board of prisoners, who liable for, and allowance for, 308, 419, 420		
FOOTMAN—		
exemption from toll.	287	62
FORCE—		
joinder of actions for injuries to person or property, with or without.	25	100
felonious taking of property from person with, robbery.	204	36
abduction of person by, kidnapping.	204	37
use of, to influence or hinder elector, penalty.	221	102
FORCIBLE ENTRY OR FORCIBLE DETAINER—		
defined as a crime.	212	63
FORECLOSURE OF MORTGAGE—		
actions for, by whom maintainable	145	563
remedy confined to mortgaged premises, if no separate agreement	146	564
judgment of, order of sale, and judgment for deficiency.	146	
copy of order of sale is the execution, and proceedings of the sheriff.	146	567
plaintiff cannot maintain, if prosecuting for debt secured by	146	568

FORECLOSURE OF MORTGAGE—(<i>Continued.</i>)		<i>Page.</i>	<i>Sec.</i>
in cases of mortgage payable by instalments, and sale of premises for said instalments.....	147		
in all cases, surplus arising from sale to be paid mortgagor	147	571	
of bills of sale and chattel mortgages.....	147	572	
of levy on other property to satisfy deficiency.....	148		
judgments over, like other judgments, &c.....	149	575	
FOREIGN CORPORATION—SEE CORPORATION.			
service of process upon, by publication.....	17	63	
property of, may be attached.....	42	173	
when plaintiff, security for costs may be required.....	126	479	
what, shall enjoy some franchises as domestic.....	338	25	
FOREIGN JUDGMENTS—			
limitation of action upon.....	8	27	
used as evidence, how to be authenticated.....	115	426	
in suits upon, where personal service not had, shall be no higher evidence than original claim.....	171	681	
to suits upon, where personal service not had, defense same as if original proceeding.....	171	582	
FORGERY—			
the crime defined and punishment affixed.....	211	60	
sufficient averment of, fraud in indictment.....	211	62	
under intent to defraud, what shall not be deemed variance.....	211	62	
experts competent witnesses to prove.....	211	62	
seizure under search warrant of instruments used in.....	232		
misdescription of instrument immaterial, where lost thro' procurement of defendant.....	243	197	
FORM—			
of action, common law abolished and one established....	3	2	
of notice in commencement of civil actions.....	15	59	
of notice of publication of service of process.....	18	66	
of pleading and sufficiency of, how determined.....	19	71	
of oath of trial jury, in civil actions.....	54	224	
of verdict may be corrected when and how.....	58	242	
of taking exception immaterial, what shall be shown...	63, 64		
used by clerk in keeping execution docket.....	76, 77		
of certificate to deposition.....	108	406	

INDEX.

727

FORMS—(Continued.)	Page.	Sec.
as to, of interrogatories and settlement of.....	109	408
settlement of, of interrogatories for depositions by judge or court.....	112	416
of interrogatory to witness to perpetuate testimony, ob- jection to, when disallowed.....	114	423
defects in, of writ of <i>habeas corpus</i> , disregarded when....	159	627
want of, or defects in bonds, disregarded.....	173	691
of assessment roll.....	182,	183
of sheriff's return for delinquent taxes.....	189	
of oath to grand jury.....	236	162
of presentment by grand jury.....	239	179
of pleading in criminal cases existing heretofore, abolished and rules prescribed.....	240	180
of indictment.....	240	183
of indictments, defects in to be disregarded.....	242	193
of verdict in criminal case.....	254	258
of sentence and execution of convicts.....	258,	259
writ of error shall not be dismissed for defects in.....	263	302
of recognizance, defects in disregarded.....	265	314
of indices in recording of deeds, &c., by auditor.....	315	24
of voting for or against convention to form State consti- tution.....	355	2
of administering oaths and affirmations.....	378,	379
of judgment or decree on contract payable in specie.....	416	
FORNICATION—		
false charge of, against female actionable.....	173	689
penalty for living in open and notorious.....	225	120
FORT STEILACOOM—		
appropriation to purchase for insane asylum.....	356	
FORWARDING MERCHANT—		
altering receipt of property, larceny.....	210	58
FRAUD—		
limitation of action for.....	9	28
in contracting debt, ground for arrest of defendant.....	29	114
in contracting debt, ground for attachment.....	42	173
in purchase of property, receiver appointed.....	48	196
in award to arbitrators, cause for setting aside.....	66	270
of party leaving Territory without performing a contract		

FRAUD—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
not yet due.....	149	
of sheriff in collection of taxes, penalty.....	195	73
in practicing upon jury box, penalty.....	224	112
FRAUDULENT CONVERSION—SEE CONVERSION.		
by embezzlement, who may be guilty.....	210	
of estray property, penalty.....	222	106
FRIVOLOUS—		
pleadings stricken out... ..	21, 22	
parties making, complaints, liable for costs.....	237, 418	
FUGITIVES FROM JUSTICE—		
Governor authorized to make demand for, on other States and Territories, mode of proceeding.....	233	152
appointment of agents and payment of expenses.....	233	152
duty and power of Governor, in demand by Governors of other States.....	234	153
party charged may be arrested to await requisition.....	234	154
proceedings in charges of offenses committed in other States and Territories, bail, costs, discharge, &c.....	235	
FUND—SEE COUNTY, COMMON SCHOOLS.		
in controversy, being jeopardized, receiver may be ap- pointed.....	48	196
for specified object, to be kept separate by officer, penalty for not.....	196	75
county, all fines shall go to.....	230	137
county, authority over of, county commissioners.....	305	
if surplus in county treasury, county buildings may be erected.....	307	
costs in convictions of felony, to be credited to peniten- tiary labor, &c.....	419	
all costs for convictions, fines and forfeitures belong to county from whence case came.....	421	
FUNERAL—		
exempt from toll going to or returning from.....	287	62

G.

GAMBLING DEVICE, GAMBLING TABLE, &c.—SEE BANK-		
ING GAMES.		
	<i>Page.</i>	<i>Sec.</i>
penalty for keeping or suffering to be kept.....	222	
search warrant for.....	232	149
GAME—		
act for the preservation of certain kinds of.....	399	
penalty for violation of game laws.....	399	
GARNISHEE—SEE ATTACHMENT.		
service of writ of attachment and notices to.....	44	178
liable to plaintiff for amount of debts until attachment discharged.....	44	179
may be required to answer under oath, proceeding.....	44	180
may be required to give sheriff a memorandum of indebt- ness, &c.....	45	181
execution against, mode of proceeding.....	92	
sheriff's receipt a discharge of judgment debtor.....	92	353
any person indebted to judgment debtor may pay to sheriff and be discharged debt.....	101	377
summons of, in proceedings supplementary to execution	102	
examination of, by court or judge.....	102	
order to garnishee to apply debt to satisfaction of judg- ment.....	102	380
where interest is claimed by, in defendant's property, court may order action to try right of property.....	102	381
disobedience by, of order of court, contempt.....	102	382
GENDER—		
construction of word implying.....	175,	231
GIFT—SEE HUSBAND AND WIFE.		
property acquired by, to either husband and wife, shall be respectively separate property.....	318	
sale of separate property for benefit of husband, or he using proceeds of sale deemed a.....	320	7
rents and profits of property by, to wife, depend upon terms of instrument.....	320	9

	<i>Page.</i>	<i>Sec.</i>
GLANDERS—		
act to prevent introduction and spread of.....	360	
proccudre and penalty for violation of act.....	360, 361	
GOLD DUST, GOLD BULLION—SEE BARS OF GOLD, BULLION.		
counterfeiting of, or aiding in, punishment.....	213	67
equivalent to coin, in specific contract judgment.....	410	
GOVERNOR—		
power to pardon and commute death penalty to imprisonment for life, recognized.....	200	12
requisition and extradition of fugitives from justice.....	233	
powers conferred to pardon, commute, respite and reprieve	264	312
appointed a commissioner to purchase fort Steilacoom for insane asylum.....	356	
to appoint notaries public, approve seal, and may remove	375	
to appoint surveyor general of logs.....	391	
GRAIN—		
willful and malicious setting fire to, punishment.....	207	43
GRAND JURY—SEE JUROR, INDICTMENT, JURY.		
party held to answer upon indietment by.....	198	1
challenges to the panel, when allowed.....	236	158
challenges to individual grand jurors.....	236	159
discharge of panel or individual, and filling same.....	236	
oath of.....	236	162
appointment of foreman and clerk.....	237	163
duty of prosecuting officer.....	237	165
matters of inquiry limited and decision as to costs.....	237	166
matters of special inquiry.....	237	167
not bound to hear defendant's evidence, except.....	258	168
member of, shall not disclose what.....	258	
panel discharged, may be resummoned at same term.....	258	172
twelve members required to find true bill.....	258	
indictment, indorsement upon, &c., and presentation....	239	
punishment for disclosing acts of grand jury.....	239	176
duty when complaint is ignored.....	239	
presentment defined and disposition of.....	239	179
indictment must show it was found by competent.....	242	192
want of authority of, ground for arrest of judgment....	255	262
challenge to panel of, &c., to be embodied in transcript of records in suit of error or appeal.....	261	293

GRANTOR AND GRANTEE—	<i>Page.</i>	<i>Sec.</i>
as between, who shall pay taxes assessed	196	78
names of, how to appear in indices kept by county auditor	315	
 GROUNDS—SEE BURIAL GROUNDS, CEMETERY.		
action of waste for injury or carrying off shrubbery, trees, &c., from	143	536
willful and malicious injury to, penalty	225	118
fair, preservation of order during fairs	328	1
 GUARDIAN—		
may sue without joining the name of ward	4	5
never necessary to sue or defend for wife	4	6
action by, for death or injury of ward	4	9
action by, for seduction, and when by, a bar to action by her for her own seduction	5	
when court shall appoint <i>guardians ad litem</i>	5	
service of process in actions against wards	16	62
standing in relation of, challenge for implied bias	52	216
confession of judgment by	72	294
suing as, adverse party cannot testify in his own behalf	103	384
responsible for costs adjudged against infant plaintiff	125	471
for mismanagement or bad faith, may be held liable for suits prosecuted or defended	125	472
shall not be interested in purchase of property subject of partition, except for benefit of infant ward	140	541
receipt by, of ward's share of proceedings of sale in parti- tion proceedings	142	
writs of <i>habeas corpus</i> may be granted in favor of, for pro- tection of ward	159	628
assessment of taxable property of ward in name of	178	9
when assessed as such, representative character to be des- ignated	181	19
no marriage contract shall derogate from legal right of father or mother to be	322	
holding stock for ward, may vote at corporation meetings and elections	334	11
liability of, as shareholder in corporation	335	17
duty of, to send wards to school, compulsory	406	
 GUIDE BOARD—SEE FINGER BOARD.		
willful or malicious injury to, penalty	224	118
to be erected at forks of highway, what shall exhibit	278	30

H.

HABEAS CORPUS—

	<i>Page.</i>	<i>Sec.</i>
restraint of liberty under any pretense, inquiry into and discharge	156	606
complaint what to contain, and by whom verified.	156	607
by whom granted, to whom directed, and service.	156, 157	
return, traverse upon, amendment of, and hearing.	157	
if no legal cause for restraint, discharge of party.	157	616
limitation of inquiry.	157, 158	
application for reduction of bail, &c.	158	
court may compel attendance of witnesses, and do all other necessary acts.	158	620
obedience to writ, no liability in civil action.	158	621
to prevent party from being taken out of jurisdiction of court.	158	622
warrant may be issued for apprehension of party restraining.	158	623
returns to such writs and warrants.	129	624
temporary order as to custody of party may be made, &c.	159	625
may be issued and served on Sunday.	159	626
requisites of writ, defects immaterial, amendments, &c.	159	627
granted in favor of parents, guardians, masters and husbands	159	628

HARD LABOR—

confinement at, embodied in sentence to penitentiary.	258	279
---	-----	-----

HEALTH—SEE QUARANTINE.

acts injurious to, a nuisance, civil action for.	144	539
offenses against public, defined and punishment.	227, 228	
board of health and health officer for Puget Sound collection district (<i>see quarantine</i>).	394	

HEIRS, DEVISEES AND LEGATEES—SEE REPRESENTATIVES AND SUCCESSORS IN INTEREST.

execution against property in hands of.	82	324
action for partition of real property.	133	
assessment of undivided estate of decedent, and respective		

INDEX.

733

HEIRS, DEVISEES, LEGATEES—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
liabilities and rights of each.....	178	8
redemption of lands sold for taxes by minors who have no guardian at time of sale.....	192	57
rights of heirs saved in estates settled without administration ..	301	8
marriage contract derogating from rights of, invalid.....	322	
liability of, as owner of stock in a corporation.....	336	17
HIGHWAYS—SEE ROADS.		
obstruction of, a nuisance for which action lies.....	144	559
supervisor failing to keep in repair, penalty.....	223	111
when road straightened shall be considered a public....	271	11
guide boards to be erected at forks of, by road supervisors	277	30
leased or toll roads to be deemed as.....	287	62
rights of travel upon, "turn to the right".....	288	
appropriation of public, by private corporations.....	344	
roads built by corporations other than railroads, deemed	345	
bridge built by corporation, deemed a common	346	
HOGS—		
driven through Territory liable to taxation.....	193	66
branding or altering brand, to destroy identification, punishment.....	208	51
trespassing, may be taken up and kept at expense of owners	362	
posting of notice, redemption of property and sale, if unclaimed.....	362	
of settlement of amount of damages caused by trespass..	362	
fees of officers and disposition of proceeds of sale....	362, 363	
funds received after damages paid, to go to school fund..	363	8
penalty of officer refusing to pay over to county treasurer	363	9
hog law only operative in counties of Walla Walla, Island, Jefferson, Pacific, Whatcom, Mason and Clalm.....	363	10
penalty for bringing into Territory, infected with contagious disease.....	377	1
HOMESTEAD—SEE EXEMPTION.		
exempted to householder head of a family, value of \$1000	86	338
of what may consist, and requisites to preserve as such...	86	338
to go to survivors, failing which, liable for debts of deceased.....	86	339
may be mortgaged to be valid against wife, requisites...	86	340

HOMESTEAD—(Continued.)

	Page.	Sec.
proceeding of creditor to sell, if he believes worth more than \$1000.....	86	341
that sum, if sold, to be paid to judgment debtor free of expense.....	89	341
subsequent, obtained with proceeds, also exempt.....	87	342
exempt from lien of judgment if sold to <i>bona fide</i> purchaser	87	342

HORSE—SEE ANIMAL, GLANDERS.

number exempt from execution to farmer, physician and teamster or drayman.....	77, 78	
driven through Territory liable to taxation.....	193	66
stealing of, offense defined and punishment.....	208	50
branding or altering brand to prevent identification.....	208	51
cruelty to, punishment.....	227	127
diseased with glanders, penalty for keeping and procedure	360, 361	
stray among a band, may be driven into corral for separation	408, 409	

HOUSE—SEE BUILDING, DWELLING HOUSE, HOMESTEAD.

malicious setting fire to, arson.....	206	42
burning one's own, and thereby burning another's.....	207	44
felonious entry of, by night, and forcible by day, burglary	207	46
forcible entry or possession of, forcible entry and detainer	212	63
of correction, aiding prisoner to escape therefrom.....	217	81
gaming, or suffering to be used for gaming.....	222	
allowing a minor to play at cards in, penalty.....	228	138
searching of, for stolen or embezzled property, &c.....	232, 233	
may be broken into by officer making criminal arrest....	266	317
court, to be procured by county commissioners.....	305, 307	
pest, to be procured by health officer, (<i>see quarantine</i>)....	398	12

HOUSEHOLDER—SEE HOMESTEAD, HOUSE, EXEMPTION.

HUSBAND AND WIFE—SEE MARRIAGE CONTRACTS.

in what actions must join and when wife may sue alone..	4	
in no case necessary for guardian or next friend for wife.	4	
separate property of wife, what not liable for husband's debts.....	86	337
surviving, entitled to homestead.....	89	339
mortgage of homestead, when valid as to wife's interest..	86	340
waiver of exemption by, requisites to be valid.....	88	344

HUSBAND AND WIFE--(Continued.)		Page.	Sec.
in what cases cannot testify for or against each other, and	.		
when competent as witnesses.....		104	387
wife may commit arson, though property fired belong to			
husband.....		207	45
neither necessary after the fact for harboring the other af-			
ter committing offense.....		229	135
right of, as survivor to settle estates of deceased without			
administration.....		298	2
right of heirs of, saved in settlement of estate without ad-			
ministration.....		301	8
separate and common property defined.....		318,	319
wife to file inventory of separate property, requisites of.		319	
if no inventory is filed, deemed to have waived exemption			
from husband's liabilities.....		319	
husband to control wife's separate property, and alienation			
of to be valid.....		319	6
sale of wife's separate property by husband deemed a gift		320	7
wife may have court appoint trustee of separate estate...		320	8
husband, what shall control, rents and profits of wife's es-			
tate, depend on language of instrument creating.....		320	9
each separate property liable for respective debts.....		320	10
of marriage contracts, ante and post-nuptial.....		321,	322
powers of attorney may be made, requisites of.....		322	
HYDRAULIC POWER—			
malicious injury to, penalty.....		212	66

I.

IMPRISONMENT—SEE ARREST, CRIMES, FINES, MISDEMEAN-			
ORS.			
false, limitation of actions for.....		9	29
limitation for prosecutions, depend on nature of.....		200	10
in penitentiary or jail, punishment by, determines whether			
offense be felony or misdemeanor.....		200	11
for offense punishable by, defendant must be present at			
trial.....		252	242

IMPRISONMENT—(Continued.)	Page.	Sec.
for offense punishable by, defendant must be present at judgment	256	267
in addition to, defendant may be recognized to be of good behavior.....	257	273
sentences to undergo, for fines, in penitentiary and jail..	258, 259	
if solitary confinement added, form of sentence.....	258	279
sentence of, to county jail, may be worked out.....	259, 307	
 IMPROVEMENTS—		
value of, when set-off against damages for withholding real property.....	129	493
 INCEST—		
false charge of, against female, actionable.....	173	689
crime defined and punishment.....	225	121
 INCUMBRANCE—SEE LIEN.		
statement of, by auditor, penalty for making false certificate	314	23
duty of auditor in entering release of.....	315	25
 INDECENCY—		
public, punishment for.....	226	123
 INDIANS—		
or persons with more than half-blood, incompetent witnesses where white man is party.....	103	386
not citizens, property of, exempt from taxation, except... sale of liquors, what, prohibited, in prosecutions for, competent witnesses.....	228	133
in criminal cases, competent as witnesses where Indians are defendants, or in prosecutions for sale of liquor to.	249	226
 INDICTMENT—SEE ACCUSED, DEFENDANT.		
answer for charge to be upon, except.....	198	1
rights of accused, upon.....	198, 199	
malicious attempt or conspiracy to procure an, penalty..	220	94
of principals or accessaries.....	229	
for offenses relating to property, no variance to prove possession instead of ownership.....	231	142
no complainant shall be present or vote for finding an...	237	166
when ignored, grand jury to find whether complaint friv-		

INDEX.

737

INDICTMENT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
olous or malicious.....	237	166
number of grand jurors required to find an.....	238	
for felony of party not in custody, finding of shall not be disclosed.....	238	170
finding and presentation, general provisions.....	238	
endorsements, presentation, inspection and filing.....	239	
not a "true bill" disposition of and discharge of party charged.....	239	
first pleading on part of Territory, contents of and form.	240	
must be direct and certain as to what.....	241	184
if fictitious name used, may be corrected.....	241	185
must charge but one crime, means may be in alternative.	241	186
time immaterial if within statute, except.....	241	187
as to person injured, when immaterial.....	241	188
of description of animal, sufficiency of.....	241	189
of construction of words in and statutory definition of crime.....	241	
sufficiency of, and defect in form immaterial, when.....	242	
presumptions of law, and matters of judicial notice not to be stated.....	242	194
judgment of special jurisdiction, how pleaded.....	242	195
pleading of private statute or right derivable therefrom.	243	196
sufficiency of statement in charges of libel.....	243	197
for forgery, when misdescription immaterial.....	243	198
for perjury, what is necessary to be stated... ..	243	199
against several, one or more may be convicted.....	243	200
when found, warrant to issue, service of, &c.....	244,	245
for felony, copy to be served on defendant.....	246	
for offense, where action for damages lies, satisfaction of plaintiff a stay of proceedings.....	246	215
duty of clerk in docketing, &c.....	247	217
arraignment of defendant, pleading and inserting true name, &c.....	247	
Territory cannot continue, except for absence of witness endorsed upon.....	249	225
issue of fact upon, and trial.....	251	
amendment as to charge, or venue before verdict.....	253	
for offenses including degrees, verdict of jury and bar to further.....	253	
acquittal of charge in, because of insanity.....	254	256
insufficiency of facts stated in, cause of arrest of judgment	255	262

INDICTMENT—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
when judgment arrested, defendant may answer new . . .	256	
quashing of, entitles prosecuting attorney to writ of error	261	
where supreme court reverses judgment on defective, de- fendant may be remanded to answer new	262	301
 INFANTICIDE—		
crime defined and punishment	205	39
 INFANTS—SEE GUARDIAN, CHILD AND CHILDREN, MINOR.		
actions by and against, guardians appointed	5	
disability, not to be included within limitation	11	38
of cost adjudged against as plaintiff, guardian responsible	125	471
referee's sales of shares of, in partition proceedings, guar- dian shall only purchase for benefit of	140	541
compensation by, in suits of partition	141	549
proceeds of sale in partition, to whom payable and of rep- resentation of by guardian	142	
<i>habeas corpus</i> for protection and enforcement and rights of	159	628
redemption by, of real estate sold for taxes, when and how	192	57
crime of infanticide defined and punishment	205	39
 INFECTIOUS DISEASES—SEE CONTAGIOUS DISEASES.		
 INFERIOR COURT—SEE MANDATE AND PROHIBITION.		
 INFORMATION—		
causes for which may be filed and by whom	162	
what shall be contained therein, notice and service	162, 163	
judgment in, where right to office tried	163	
defendant disobeying order to deliver to successor, con- tempt	163	649
damages may be claimed in, or by subsequent action	163	650
one may be filed, to try the claims of several to an office or franchise	163	651
judgment of forfeiture for usurpation and ouster	163	652
judgment against corporations, members liable to costs	164	653
of judgments of forfeiture to Territory	164	654
liability for costs, of prosecuting attorney and private relator	164	653
may be resorted to, to annul letters patent and by whom filed	164, 165	

INJUNCTIONS AND RESTRAINING ORDERS—	<i>Page.</i>	<i>Sec.</i>
continuation of, not included within time of limitation . . .	11	42
by whom, may be granted	38	151
complaint on affidavit, what must show, and when may be applied for	38, 39	
except temporary, in emergencies, only granted upon notice, &c.	39	154
affidavits may be used by both parties on hearing	39	155
terms may be imposed on granting or continuing	39	156
bond to be given	39	
copy of order, to be the writ, and service of	39	159
for stay of proceedings after adjournment, release of errors to be made	39	160
shall bind every person and officer from time of informa- tion	40	161
notice of application served, party bound from filing of plaintiff's bond	40	162
money collected on judgment enjoined, disposition of . . .	40	162
disobedience to, how punished, procedure	40	
of motions to dissolve or modify	40	167
damages for injunction to stay proceeding	41	
of reinstatement of	41	170
judge's power in vacation, same as in term	41	171
 INJURY—SEE DAMAGES, CRIMES, &C.		
to person or property of husband and wife, joinder of par- ties	4	7
to child, action for	4	9
occasioning death, action shall not abate	6	18
to property, limitation of action for	8	28
damage for, to property, venue of actions	12	48
to person or property, joinder of causes of actions	25	100
threatened to property, defendant may be arrested	29	114
anticipated to plaintiff, relief by injunction	38	152
to property, fund or rents and profits, receiver may be ap- pointed	48	196
to person or reputation, action for, damages recovered, when to govern in application for new trial	67, 68	
what are subjects of actions of waste and trespass, damages	143, 144	
what are subjects of action of nuisance, remedy	144, 145	
to rights of public corporation, action by corporation or		

INJURY—(<i>Continued.</i>)	Page.	Sec.
officer.....	154,	155
sustained by a party through a contempt, relief for.....	170	675
willful, of property, malicious trespass.....	212	64
of bridge, dam, canal, flumt, aqueduct or reservoir, &c., penalty.....	212	66
of material used in construction of road or bridge, pen- alty.....	222	107
of guide board, bridge, &c., of a corporation, penalty....	224	118
of tomb stone, &c., in or about cemetery, penalty.....	227	126
of erroneous allegations in indictment for.....	241	
 INQUEST, INQUIRY—SEE GRAND JURY.		
by sheriff's jury, to try whether property be exempt....	89	346
by grand jury (<i>see grand jury</i>).....	237	
 INSANE ASYLUM—		
appropriation to purchase fort Steilacoom for.....	356	
 INSANITY—		
acquittal of accused on ground of.....	254	256
 INSPECTING OF SALMON—SEE SALMON.		
act relative to packing and.....	352	
office of inspector of salmon abolished.....	352	
 INSPECTOR OF ELECTIONS—SEE ELECTION, ELECTOR.		
 INSTALLMENT—		
judgment on mortgage, payable in.....	147	
 INSTRUCTIONS—SEE CHARGE OF COURT, ERROR, EXCEPTIONS.		
either party may request, exception to refusal by court..	55	
may be requested to be put in writing, and refusal to comply, error, provided pertinent and consistent....	55	
when not requested, may be oral.....	55	
of exceptions to.....	63	
 INSTRUMENT OF WRITING—SEE DOCUMENTS, EVIDENCE.		
copy of, need not be set out in pleading, but when must be served on adverse party.....	24	91
of authentication of, to be used as evidence.....	114	
remedy confined to mortgaged premises, in action of fore- closure where no separate.....	146	564

INDEX.

741

INSTRUMENT OF WRITING—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
forgery or counterfeiting of.....	211	60
recording of, and satisfaction of, by county auditor....	314, 315	
validity of, alienation of wife's separate property.....	319	6
terms of, give right of wife to separate control of rents and profits.....	320	9
INSURANCE—		
foreign corporations doing, same franchise as domestic corporations.....	338	25
INTENT—SEE ASSAULT, CRIMES, FALSE, FRAUD, INDICTMENT.		
to defraud plaintiff, ground for arrest of defendant.....	29	
to defraud creditors, ground for injunction.....	42	
to defraud creditors, ground for attachment.....	42	
to defraud, indictment what sufficient, and proof.....	311	62
INTEREST—		
in event of action, challenge for implied bias.....	52	216
on judgments, legal rate or rate specially agreed upon...	78	316
claimed by garnishee in property of judgment debtor, trial of.....	102	381
in event of action, may be shown to affect credibility of witness.....	103	384
defendant owning property jointly, liability on execution	174	694
INTERROGATORIES—SEE DEPOSITION, EXAMINATION.		
INTERVENTION—		
who may petition for, and mode of proceeding.....	7	
INTESTATE—SEE EXECUTOR OR ADMINISTRATOR.		
settlement of estates of, without administration.....	298	
what representatives of entitled to settle, and priority...	298	2
appraisalment of estate and filing of bond.....	299	3
if bond not filed within forty days, letters of administra- tion.....	299	4
non-residence no disqualification, and who liable for costs	299	4
mode of procedure, and presentation of claims against..	300	
rights of heirs preserved.....	301	
respective rights of brothers and sisters, whether giving bond or not.....	302	

INTOXICATION—	<i>Page.</i>	<i>Sec.</i>
person in state of, incompetent to testify	103	386
selling or giving liquor to minor, penalty	228	131
selling or giving liquor to Indian, penalty	228	133
INVENTORY—		
of estate, when may be contradicted or avoided	166	662
of wife's separate estate, to be filed with auditor	319	
ISSUE—SEE FACT.		
<i>In civil actions—</i>		
arise upon pleadings, and are of law or of fact	49	204
of law, upon demurrer, of fact on material allegations controverted in pleadings	50	
may arise on different parts of pleading, of law first tried	50	207
how tried, (<i>see trial</i>)	50	
<i>In criminal actions—</i>		
joined upon indictment, and how tried	251	

J.

JAIL—SEE ARREST, BAIL, CRIMES, FINES, IMPRISONMENT, MIS- DEMEANOR.		
party disobeying injunction, commitment of, in default of bail	40	166
judgment debtor, confinement in, upon execution	82	324
liberties, allowed to debtors imprisoned	84	328
confinement of judgment debtor, disobeying order of court or absconding	101	376
evidence of party confined in, how taken and mode of ob- taining	106	
confinement of parties on writ of <i>ne exeat</i>	149	
setting fire to, arson	206	42
conveyance into, of a disguise, tool or weapon to aid es- cape of prisoner	217	81
used for custody of fugitive from justice from other States at cost of complainant	235	157

<i>JAIL—(Continued.)</i>	<i>Page.</i>	<i>Sec.</i>
condition of to be especially inquired into by grand jury	237	167
offenses punishable in, defendant to be present at trial	252	
of sentences of imprisonment to	258	
temporarily adopted for penitentiary, and proceeding where no jail	259, 307	
to be used for convicted felon, pending suit in error	262	299
of county where court held, free to all prisoners, board, &c., of prisoners	264	
to be provided by county commissioners, and building of	305, 307	
in Pierce county used as penitentiary, appropriation for repair of	388	
county in which court held, to furnish	421	10

JAIL LIBERTIES—SEE JAIL.

JAILOR—SEE JAIL.

punishment for rescuing from	217	81
punishment for escape of convict, through connivance or negligence	217, 218	
punishment for inhumanity and oppression	218	86

JOINDER OF ACTIONS—SEE ACTION.

improper, cause for demurrer	20	75
what may be united in same complaint	25	100

JOINDER OF PARTIES—SEE PARTIES.

when beneficiary need not be joined with trustee, executor of husband and wife maintaining actions	4	5
who shall be as plaintiff, and who defendant	5	
improper, ground for demurrer	20	75
judgment may be rendered for or against one of several	69	
where several suits are brought against parties to same contract, costs allowed but once	123	
costs allowed to same, of several	124	
in actions for recovery of real property	128	
on suits for partition	133	
defendants indicted may be tried separately	252	247
a defendant may be discharged to become witness	252	248
several indicted, one or more may be acquitted	253	254
one or more tried jointly may sue writ of error or appeal	262	300

JOINT CONVENTION OF LEGISLATURE—		<i>Page.</i>	<i>Sec.</i>
act providing for holding of, mode of conducting, who eligible and certificate of election.....	327		
JOINT OWNERSHIP—			
interest of defendant, liable to execution, how.....	174	694	
JOINT TENANT—SEE REAL PROPERTY.			
JOINTURE—SEE HUSBAND AND WIFE.			
JOURNAL—SEE CLERK, LAWS AND JOURNALS.			
JUDGE—SEE COURT.			
acceptance of bribe and bribery of.....	216, 217		
to give the fee bill in special charge to grand jury.....	373	10	
assignment of.....	385		
JUDGE OF ELECTION—SEE ELECTION AND ELECTOR.			
JUDGMENT—SEE ACTION, COURT, EXECUTION.			
<i>In civil actions—</i>			
of any court of record, limitation of action on.....	8	27	
on the pleadings, when defendant may ask for.....	22	86	
how pleaded, and what to be proven.....	24	94	
stay of, by injunction.....	39, 40, 41		
upon decision, in trial by the court.....	60		
entry of, upon award of referees.....	62		
award of arbitrators, may be entered as, when.....	66		
definition of, and for and against whom may be entered..	69		
of non-suit, for what given, dismisses action but no bar to commencement of another suit.....	70		
on failure to answer, proceedings.....	70, 71		
by confession, (<i>see confession</i>).....	72, 73		
on submitted cases, without action.....	74		
of the mode of taking and entering, (<i>see clerk</i>).....	74		
lien of, and interest they bear.....	78		
of revival of, mode of procedure.....	79, 80		
final, in supreme court, fixes commencement of lien....	79	319	
enforcement of, (<i>see execution</i>).....	79		
entered against sureties on bonds for stay of, when.....	85		
in claims to property levied upon or attached....	90		
how authenticated to be used as evidence.....	115		
final, may be re-examined in supreme court, procedure..	116		

JUDGMENT—(Continued.)	Page.	Sec.
of the supreme court in suits of error.....	119	
reversal of, by supreme court does not affect title of prop- erty sold on execution.....		
in form only, may be ordered by court for purposes of ap- peal to supreme court.....	120	447
in actions, where set-off pleaded.....	122	
carries costs in favor of prevailing party, (<i>see costs</i>).....	123	
in actions affecting real property.....	129	
for failure to answer, in actions for real property where service by publication, vacation of.....	131	
in proceedings in partition.....	135	
in actions of waste, and where forfeiture and eviction al- lowed.....	143	
in actions of trespass, damages allowed, &c.....	143	
for abatement of nuisance.....	144	
of foreclosure of mortgage, and of deficiency.....	146	
in trials of suretyship, and when surety or co-obligor shall not confess, or suffer a default.....	151	
in suits on official bonds and for fines and forfeitures....	153	
against public corporations and officers, and how enforced	154	
in mandates and prohibitions and appeals therefrom....	160	
mandate or prohibition will not control judicial discretion of officer or tribunal to whom directed.....	160	631
in information, and enforcement of.....	163	
in proceedings for contempts.....	170	
suits on foreign, (<i>see foreign judgments</i>).....	171	
execution against a defendant's interest in joint property..	174	694
of justice of peace, made liens against real property....	174	695
in proceedings by corporations to appropriate lands for corporate uses.....	349, 350	
on contracts, to be enforced in specie of contract.....	416	
<i>In criminal actions—</i>		
obtained through bribery, penalty.....	216	73
of special jurisdiction, how pleaded.....	242	195
when <i>nolle prosequi</i> may be entered.....	246	216
arrest of, causes for which granted.....	256	
when can be rendered only in defendant's presence.....	256	
of fine and costs, how enforced.....	257, 260, 307	
of conviction for felonies and misdemeanors, and execution of.....	258, 259	
of forfeited recognizances.....	260	

JUDGMENT—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
review of, by supreme court on error or appeal.....	260	261
of supreme court, reversal or <i>remittitur</i>	267	
of supreme court, transcript of, authority to whom.....	263	304
pardon, commutation and reprieve by Governor.....	264	312
JUDGMENT CREDITOR—SEE CREDITOR.		
JUDGMENT DEBTOR—SEE ARREST, DEBT, DEFENDANT.		
when may be arrested, for disobeying an order of court..	29	114
lien upon real estate of, for judgment, how secured.....	75, 78	
agreeing to continuance of lien or revival of judgment..	79	318
notice upon, and rights of, proceedings to revive judgment	80	320
different kinds of execution against person or property of	81, 82	
arrest of, and privileges when arrested.....	83, 84	
exemption of property from execution (<i>see exemption</i>)....	85	
sales of property of, under execution.....	91	
when sheriff may permit, to retain possession of property levied upon.....	92	354
receipt by, of surplus of proceeds of sale of property on execution, and waiver of objections to sale.....	96	363
one paying more than share, entitled to contribution from others.....	97	365
rights of, to redeem property sold on execution (<i>see redemption</i>)	97, 98	
proceedings against, supplementary to execution.....	101	
examination of, for refusal to satisfy judgment.....	101	376
about to abscond, security may be ordered or committed to prison.....	101	376
parties indebted to, may pay sheriff the debts.....	101	377
garnishee of, proceedings against (<i>see garnishee</i>).....	102	
earnings of, exempt from execution or order.....	102	380
contempt by, for disobedience of order of court or referee	102	382
JUDGMENT LIEN—SEE LIEN.		
JUDGMENT ROLL—SEE CLERK, JUDGMENT.		
what shall constitute in judgment by confession.....	73	299
what shall constitute in submitted cases.....	74	302
JUDICIAL DISTRICT—SEE DISTRICT.		
terms of court in.....	329, 383, 389	
judges assigned to.....	385, 386	

INDEX.

747

JUDICIAL OFFICER—SEE COURT, JUDGE.	<i>Page.</i>	<i>Sec.</i>
may require witness present to testify.....	106	392
power of, to punish contempts, proceedings.....	168	169
accepting bribe, and bribery of.....	216, 217	

JURISDICTION—

In civil actions—

non-resident defendant, having property with, served by publication.....	17	63
when court deemed to acquire.....	19	69
want of, ground for demurrer.....	20	72
objection that court has not, never waived.....	21	79
facts conferring, need not be averred, but must be proved when costs not allowed, if written, of justice of peace.	125	459
in construing county as district, of county officers not enlarged.....	175	696

In criminal actions—

agreeing within Territory to fight a duel without, death ensuing.....	201	15
offense commenced in one county and consummated in another.....	230	138
offense committed on boundary line of two counties or within one hundred rods.....	230	139
property stolen or embezzled in one county and conveyed to another.....	230	140
mortal wound given in one, death in another.....	230	141
each judicial district regarded as county, for purposes of facts conferring, need not be averred in pleading, but must be established on trial.....	232	147
arrest of judgment because of want of.....	255	262

JUROR—

accepting bribe, and bribery of, penalties.....	216, 217	
changing of, or fraud in drawing of, by officer of court, penalty.....	224	112

JURY—SEE GRAND JURY, TRIAL JURY.

JURY BOX—

practicing on, by clerk before draft, penalty.....	224	112
--	-----	-----

JURY, GRAND—SEE GRAND JURY.

JURY, TRIAL—

Page. Sec.

In civil actions—

sheriff's to try rights of property attached.....	45	183
issue of fact to be tried by, unless waived.....	50	208
empannelling of, and number.....	51	211
challenge of, and grounds of challenge.....	51, 52	
exemption from service a privilege, not cause.....	53	218
order of challenges, peremptory and for cause, and trial of latter.....	53	54
oath administered to.....	54	224
order of proceeding of trial.....	54, 55,	56
judges of fact and evidence addressed to.....	56	228
view of property by, and duty of during absence.....	56	229
when and how allowed to separate before verdict.....	56	230
discharge of a juror, effect of.....	56	231
juror may be examined as witness, but if not, must not communicate private knowledge.....	57	238
retirement of, and refreshments during deliberation.....	57	
what may take with them on retiring.....	57	235
as to disagreements among, as to testimony.....	57	236
when may be discharged without returning verdict.....	58	
adjournment of courts while out.....	58	
verdict of, declaring, filing, &c.....	58, 59	
verdict of, general or special, and court may direct them to find facts, &c.....	59	
manner of waiving trial by.....	60	
misconduct of, and what shall be considered, ground for new trial.....	67	
findings of, in actions affecting real property.....	129	
in actions for appropriation of lands by corporations....	349	

In criminal actions—

to try issues of fact joined on indictments, how many shall compose.....	252	233
of peremptory challenge and challenges for cause.....	251	
law applicable to challenges in civil cases to govern in..	251	23
persons opposed to death penalty not to serve on in capi- tal cases.....	251	
oath or affirmation of.....	251	239
law in civil cases as to order of trial, to govern in.....	252	243
when may be allowed to separate.....	252	244
when may be discharged without prejudice to prosecution	253	250
may render a verdict as to some defendants.....	254	254

INDEX.

749

JURY—(Continued.)	Page.	Sec.
when may be directed to reconsider their verdict	254	255
to return verdict when defendant acquitted because insane	254	256
agreement of, rendition of verdict and form of	254	
on verdict of guilty, defendant liable for costs	254	259
misconduct of, ground for new trial	255	

JUSTICE OF THE PEACE—SEE JUDICIAL OFFICER.

power to compel attendance of witnesses by attachment.	106	395
competent to take depositions (<i>see depositions</i>)	108, 112	
if action within jurisdiction of, costs not allowed if com- menced in district court	123	459
in appeal from, when appellant shall pay costs	125	471
may issue <i>ne exeat</i> in cases within jurisdiction	150	582
contempts of court of, how punished	171	680
how judgment of, becomes a lien on real estate	174	695
power to disperse unlawful and riotous assemblies.	214	70
acceptance of bribe by, or bribery of, penalties	216, 217	
duty of, when complaint is made of horses diseased with glanders	360, 361	
fees of	368	
duty of, to keep a fee book, what shall contain	372	9
empowered to administer oaths and affirmations	378	1
to try parties owning dangerous or vicious cattle	400	1
duty of, on complaints for introducing Texas cattle	405	
jurisdiction of offenses against law for protection of stock raisers	409	
hearing of complaints of parties injured by entry of lands, U. S. coast survey parties	414, 415	
in hearing of complaints, to decide whether county or complainant liable for costs	418	

JUSTIFICATION—

of bail in civil actions, mode of procedure	33	
of bail, discharges sheriff from liability	34	137
bail unless, liable to sheriff for damages, when	35	139
of sureties of defendant retaining property claimed	36	145
of surety of defendant in actions for nuisance	145	562
authority conferred on every court and officer taking bail	173	689
of bail by officer authorized to arrest in criminal cases	245	209
of bail in criminal cases same as in civil actions	265	316

K.

KANAKAS, OR NATIVES OF SANDWICH OR SOCIETY
ISLANDS.

	<i>Page.</i>	<i>Sec.</i>
all police taxes discriminating against, abolished.....	351	

KIDNAPPING—

offense defined and punishment.....	204,	205
-------------------------------------	------	-----

KILLING—SEE CRIMES, MANSLAUGHTER, MURDER.

in a duel, action against survivor, who may maintain....	4	8
by officers in dispersing rioters, officers guiltless.....	214	70
vicious cattle in self defense, not liable for damages.....	401	2

L.

LABOR ON ROADS—SEE ROADS.

due by petitioners for county roads, or payment in lieu thereof	274	20
list of persons liable to perform, to be made by supervisor, what to contain.....	274,	275
notification of parties owing, and penalty for neglect.....	275	24
duty of person notified by assessor, hours of, tools, &c....	275	26
warning out, to repair roads or bridge.....	278	31
person performing, entitled to certificate of extra.....	278	32
account of, to be kept by supervisor.....	278	33
when insufficient, county commissioners may lease roads.	285	54

LANDLORD—

may be substituted as defendant for tenant.....	128,	349
in such actions, judgment conclusive against.....	129	491
action by for rent, equivalent to demand and re-entry....	131	500

INDEX.

751

LANDS—SEE DAMAGES, ESTATE, REAL PROPERTY.	Page.	Sec.
in action for recovery of purchase money, what relief granted.....	6	19
sale of, under execution, confirmation proceedings.....	95	363
actions of waste and trespass for injury of, &c.....	143	
mortgaged, sold upon judgment for installments.....	147	
meaning of, for taxing purposes.....	176	2
of Indian's acquired by purchase, taxable.....	177	4
shall be assessed in county where it lies.....	177	6
manner of assessing (<i>see assessment</i>).....	180,	181
duty of collector of taxes, if assessed more than once....	188	
sale of, for delinquent taxes, redemption and deed. 190, 191,	192	
no sale valid if taxes paid prior to sale.....	195	74
payment of taxes as between grantor and grantee.....	196	78
conveyance of, personal goods, of which larceny may be committed.....	208	49
willful destruction of monuments, &c., marking corner, &c. of, penalty.....	212	65
timber, setting fire to, penalty.....	213	68
road supervisor may enter adjoining, for what.....	277	
partition fences on boundaries of land.....	325	
right of corporations to appropriate private, for corporate purposes.....	343	
mode of proceeding to appropriate by corporations....	348	
trespassing upon, by hogs, remedy.....	362	
school, leasing by county commissioners.....	401	
vacation of town plats, streets, alleys, &c., procedure and disposition of.....	409	
entry upon, by U. S. coast survey parties, for buildings, signals, &c.....	413	
LAPSE OF TIME—		
action barred for, in other State, cannot be maintained in this Territory.....	12	47
LARCENY—		
grand and petit, defined and penalties.....	207	
what are included in term "personal goods".....	208	49
horse stealing defined, punishment.....	208	50
branding or altering brand to destroy identification....	208	51
receiving stolen goods, purchasing or concealing same...	208	52
in trials for receiving stolen property, conviction of thief immaterial.....	209	35

LARCENY—(<i>Continued.</i>)	Page.	Sec.
property obtained by, to be restored to owner, and reward may be allowed by court for securing.....	209	
by false personation.....	209	50
embezzlement and false receipts of property, deemed as..	210	
county where shall be tried	230	140
sufficiency of indictment and of variance.....	231	142
search warrant for stolen property.....	232	
LAW—SEE COMMON LAW.		
common, how far in force, and the rule of decision in our courts	3	1
common, forms of action abrogated.....	3	2
distinctions between law and equity abolished.....	3	2
issue of, how arises and trial of.	49, 50	
conclusions of, may be submitted to court.. ..	56	226
all questions of, to be decided by court.....	56	227
conclusions of, how stated in trial by court.....	60	
conclusions of, how stated in report of referees.....	62	
objection to ruling upon, by court, and exception.....	63	
governing proceedings of arbitrators.....		
verdict against, ground for new trial.....	68	
provisions of civil practice, to be liberally construed....	175	700
offenses cognizable at common, if not controlled by stat- ute, indictable.....	199	9
phrases defined by, construed according to legal meaning	241	190
presumptions of, not to be stated in indictment.....	242	194
heretofore in force governing criminal procedure, contin- ued, except.....	266	319
LAWS AND JOURNALS—		
provision for distribution of, and who entitled to.....	316, 317	
LEASE—		
of real property, action upon by.....	130	
of roads, by county commissioners.....	285	
of school lands, by county commissioners.....	401	
LEGATEES—SEE HEIRS, DEVISEES AND LEGATEES.		
LEGISLATIVE ASSEMBLY—SEE JOINT CONVENTION, LAWS AND JOURNALS.		
bribery of member of, or acceptance of bribe, penalty.	216, 217	
laws and journals, distribution of.....	316	

LEGISLATIVE ASSEMBLY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
election of Territorial and militia officers, joint convention of.....	327	
to call convention to frame State constitution, if people so vote.....	355	
 LETTERS OF ADMINISTRATION—SEE EXECUTOR AND ADMINISTRATOR.		
on estates of decedents, where survivor fail to give bond to settle without administration.....	299,	302
 LETTERS PATENT—SEE PATENT.		
proceeding by information to vacate and annul... ..	164,	165
 LEVIES—SEE BOOK OF LEVIES, CLERK, EXECUTION, SHERIFF.		
 LEWDNESS—		
notorious, or other public indecency, punishment of.....	226	123
 LIBEL, LIBEL OR SLANDER—		
limitation of action for.....	9	29
sufficiency of allegation in complaint, and defenses to action.....	25	
what charges against female, and what false words spoken of any person actionable.....	173	689
sufficiency of averments in indictments for, and proof necessary.....	243	197
definition of, as an offense.....	383	1
party making, publishing, or circulating, or aiding therein, punishment.....	384	2
if matter true and published without malice, defendant to be acquitted.....	384	3
publication necessary to consummate offense.....	384	4
what shall constitute a publication of.....	384	5
 LIBRARY—		
of professional men, to what value exempt from execution public, and property connected with same, exempt from taxation.	177	5
incorporation of.....	341	
deposit in Territorial, of residue of laws and journals not distributed.....	317	2

LICENSE—SEE COUNTY COMMISSIONERS, FERRIES.	<i>Page.</i>	<i>Sec.</i>
penalty for violating laws regulating, or selling without where necessary, by self or agent	220	95
in prosecutions against principal or agent, either may be compelled to testify against the other	220	95
liquor, shall be revoked for sale to minors, or allowing minors to play cards	228	
of ferries by county commissioners, (<i>see ferries</i>)	280	
revocation of ferry, for negligence of keeper	284	
penalty for receiving ferriage without first obtaining	284	53
 LIEN—SEE JUDGMENT, LIEN CREDITOR, REDEMPTION.		
of judgments, on real estate	75, 78	
continuance of, by revival and leave to issue execution	79, 80	
not affected by appeal, writ of error or stay of execution	79	319
sale of homestead to <i>bona fide</i> purchaser not subject to any, against vendor	87	342
attaches to personalty from time of actual levy	91	357
creditor's right to redeem property sold on execution	97	
parties holding unsatisfied, to be made defendants in partition, and proceedings to ascertain amount of	136, 137	
on personal property, by chattel mortgages, &c., foreclosure of	147, 572	
of judgments of foreclosure, and for deficiency after sale	148, 149	
of judgment against defendant owing joint interest in property	174	694
to acquire, on real estate, for judgment of justice of peace	174	695
party holding, may redeem land sold for taxes	192	
 LIEN CREDITOR—SEE LIEN, REDEMPTION.		
right of, to redeem real property sold on execution	97	
time, proof and priority of right	98, 99	
in suits for partition when made defendants	136	137
may redeem property sold for taxes	192	
 LIMITATION—SEE COMMENCEMENT OF ACTIONS.		
<i>In civil actions—</i>		
for recovery of real property	8	26
upon a judgment or decree of any court	8	27
upon a contract in writing, or liability arising by written agreement	8	27
for rents and profits of occupancy of real estate	8	27

INDEX.

755

LIMITATION—(Continued.)	<i>Page.</i>	<i>Sec.</i>
for waste or trespass on real estate.....	8	28
for taking or injuring personal property:.....	8	28
for injury to person or rights, not otherwise provided...	8	28
upon a parol contract or liability.....	9	28
for relief from fraud.....	9	28
against sheriff or officer for malfeasance and misfeasance and failure to pay money collected on execution.....	9	28
for statutory penalty or forfeiture by party aggrieved....	9	28
for libel, slander, assault, assault and battery and false im- prisonment.....	9	29
for statutory penalty or forfeiture due to Territory.....	9	29
for sheriff or officer for escape.....	9	30
for statutory penalty or forfeiture by informer.....	9	31
for statutory penalty by prosecuting attorney for Territory	9	31
for other relief not herein provided for.....	9	32
when statute commences to run in accounts.....	10	33
applies to Territory and corporations same as private par- ties.....	10	34
when action shall be deemed commenced.....	10	35
time of absence or concealment of defendant to be de- ducted.....	10	37
during disabilities, statute does not run.....	11	38
if person entitled to sue dies, action survives.....	11	39
alien enemy, continuance of war excluded from time....	11	40
time of stay by injunction or prohibition, excluded.....	11	41
in action reversed on appeal or error, where plaintiff dies	11	42
disability must exist when cause of action accrues.....	11	43
does not attach until all disabilities removed.....	11	44
if barred by statute, promise to revive must be in writing	11	45
in partial payments, time runs from last.....	12	46
if barred in State or Territory where cause arose, barred.	12	47
for opening judgment on failure to answer against defend- ant served by publication, in suits for real property...	131	501
of actions against executors and administrators.....	166	665
of action for recovery of land sold for taxes.....	195	71
of actions by creditors against estate settled without ad- ministration.....	300	301
for taking appeal against order or decision of county com- missioners, and suits against county on disallowed ac- counts.....	309	29

LIMITATION—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
<i>Of judgment liens—</i>		
on real estate.....	78	317
on personal property... ..	79	319
<i>In criminal prosecutions—</i>		
murder and arson where death ensues, none.....	200	10
of offenses punishable by imprisonment in penitentiary..	200	10
of all other offenses.....	200	10
absence from Territory not included in time.....	200	10
if an indictment be quashed, statute then begins to run..	200	10
of writs of error and appeals.....	263	305
 LIMITED PARTNERSHIP—		
for what purposes may be formed.....	380	1
of what may consist, contribution by general and special partners and liability.....	380	2
certificate of, requisites of.....	380	3
false statement in certificate of, penalty.....	380	4
publication of certificate of formation.....	381	4
continuance or renewal of, mode.....	381	5
name of firm and special partner when to be regarded as general.....	381	6
capital stock not to be reduced, and liability of special partners when assets not equal to debts of.....	381	7
actions, to be by and against general partners, except....	381	8
dissolution of.....	381	9
how far all partners liable as general.....	381	10
 LIQUOR—SEE LICENSE.		
prohibited within one mile of assembly convened for wor- ship.....	214	72
selling or giving to minor, penalty.....	228	131
selling or giving to Indians.....	228	132
 LITERARY SOCIETIES—SEE CORPORATION.		
personal property and realty occupied for use of, exempt from taxation.....	177	4
incorporation of.....	341	
 LOGS—SEE LUMBER, SURVEYOR GENERAL OF LOGS.		
office of surveyor general created, duty of.....	391, 392	
scaling and measuring of, by Bangor scale.....	392	

INDEX.

757

	<i>Page.</i>	<i>Sec.</i>
LOTTERY—		
defined, prohibition of, penalty	222	103
LUMBER—		
malicious setting fire to, punishment	206	43
measurement and survey of, not regulating	391	
surveyor general of logs to measure, how, Bangor scale adopted	391, 392	
penalty for using other scale	393	10
penalty for surveyor general of logs or deputies giving false certificates of quantity	393	12
amount measured to be reported to Governor and Legis- lative Assembly	394	13
LUNATIC—SEE GUARDIAN.		
guardian of, may sue without joining name of	4	5

M.

MAGISTRATE—		
contempts of, defined	168	
authority of to disperse riotous assemblies	214	70
in what cases, and authority to issue search warrants	232, 233	
hearing of complaints for extradition of fugitives from justice	234, 235	
recognizances taken by, not void for defects in form	265, 314	
trying complaints for damages by coast survey parties en- tering lands	414	
duty of, in hearing complaints for crimes and misdemean- ors	418	1
to decide whether complaint frivolous or malicious, and if so, commit complainant for costs	418	1
MAIL—		
service by, notice of publication in commencing actions	17, 19	
return of deposition by	109	112
MAINTENANCE—		
of defendants arrested in civil action, costs of	31	121

MAINTENANCE—

	<i>Page.</i>	<i>Sec.</i>
of family, what shall be exempt from execution.....	87	343
of criminals, when party shall thereby become accessory after fact	220	135
complainant liable for, in case of persons charged as fugi- tives from justice.....	235	157
of prisoners, and who liable.....	263, 264, 410, 420	

MALICE—

waste through, entitles reversioner to judgment of eviction	143	555
---	-----	-----

MALICIOUS—SEE CRIMES, FRIVOLOUS.

if complaint be decided by grand jury or magistrate, complainant to pay costs.....	237, 418	
<i>injury</i> of public or private property.....	212, 213, 225	
<i>mayhem</i> , felony defined and punishment.....	202	26
<i>prosecution</i> , offense defined, punishment.....	220	94
<i>trespass</i> , offense defined and punishment.....	212	63

MANDATE AND PROHIBITION—

district and supreme courts may issue; the latter in aid of its functions.....	160	629
return of writ from former in term or vacation.....	160	629
jurisdiction of courts to issue, further defined and limited	160	630
to whom may issue, but never control judicial discretion.	160	631
shall not issue if any other legal remedy.....	160	631
issue on affidavit and motion, how returnable, and failure to make return, contempt.....	160	632
shall be alternative or peremptory.....	161	633
issues upon return, and proceedings.....	161	634
judgment upon and peremptory writ.....	161	635
enlargement of time for return, and pleadings and contin- uance.....	161	636
enforced by attachment, fine and imprisonment.....	161	637
prohibition, what shall contain.....	161	638
judgment in proceedings for prohibition.....	161	639
costs, and writs of error, as in civil actions.....	161	

MANSLAUGHTER—

crime defined.....	201	16
deliberately assisting another to commit suicide, deemed.	201	17
death resulting from careless navigation or overloading vessel.....	201	18

INDEX.

759

	<i>Page.</i>	<i>Sec.</i>
MANSLAUGHTER— (<i>Continued.</i>)		
officer of steamboat racing, guilty of, if death ensues from explosion of boiler	201	19
presence at a duel resulting in death, deemed as	202	20
punishment prescribed	202	21
MANUFACTORY—		
setting fire to, arson	206	42
MARK OR BRAND—		
using or altering on stock, to destroy identification, punishment	208	51
forgery or counterfeiting of, forgery, punishment	211	60
used in packing salmon, penalties for violating law regulating	352	
MARRIAGE—SEE MARRIAGE CONTRACTS.		
unlawful joining of parties, by authorized parties to marry, penalty	224	114
penalty for person having joined parties in, not returning certificate	224	115
penalty for unauthorized person joining parties in	224	116
seduction under promise of, penalty, subsequent intermarriage a bar to conviction	225	119
what are incestuous, punishment	225	121
polygamy defined and punishment	226	122
rights of husband and wife defined, except when a contract conflicts with law	321	
MARRIAGE CONTRACT—SEE HUSBAND AND WIFE.		
actions for breach of, limitation	9	28
rights of husband and wife, depends upon	321	11
stipulations in, to govern, if conflicting with law defining rights	321	12
shall be in writing and acknowledged	321	13
shall be recorded in office of auditor, and in all counties where real estate lies, affected by it	321	14
filing of, in auditor's office, full notice	321	15
only valid as to real estate, when recorded	321	16
minor may make with assent of parties who can consent to marriage	321	17
may be altered before but not after marriage	322	
derogating from rights over children or altering descents, void	322	

MARRIED WOMAN—SEE HUSBAND AND WIFE, WIFE.	<i>Page.</i>	<i>Sec.</i>
in what actions she can sue or be sued alone.	4	
separate estate of, exempt from husband's debts.	86	337
inchoate right of dower, protected in suits of partition. .	140	539
may commit arson, though husband owner of property. .	207	45
to record inventory of her separate estate, to exempt same from liabilities of husband, requisites of.	319	
may execute power of attorney regarding personal estate of, requisites of.	322	
MARSHAL—SEE OFFICER, CONSTABLE, SHERIFF.		
power of, to disperse riotous assemblages.	214	
obstruction of service of process by, penalty.	218	
appointment of, for agricultural and mechanical fairs. . .	328	
MASTER AND MATE—SEE BOAT AND VESSEL CAPTAIN, QUARANTINE.		
discharge of ballast into navigable channels by, penalty. .	223	108
disobedience of, to quarantine regulations, penalties. .	396, 397	
to notify health officer of presence of infectious disease. .	398	
MATERIAL—SEE ALLEGATION AND VARIANCE.		
MAYHEM—		
malicious, defined and punishment affixed.	202	26
simple, defined and punishment.	204	34
MAYOR—		
authority to take depositions.	108	405
authority to disperse rioters.	214	
MEASURES—SEE SEALER OF WEIGHTS AND MEASURES.		
MEAT AND DRINK—SEE MAINTENANCE, POISON, PROVISIONS.		
to be furnished juries by order of court.	57, 252	
penalty for selling unwholesome or diseased.	227	128
MECHANICAL FAIRS—		
act for the protection of.	328	
MERCHANT—		
altering receipt of property, punishment.	210	59
MILEAGE—SEE FEES.		
in service of more than one process in one journey, only		

INDEX.

761

	<i>Page.</i>	<i>Sec.</i>
MILEAGE—(Continued.)		
chargeable for most distant service.....	373	16
to be computed from county seat, portion of mile computed as mile.....	374	19
MILE-STONE—		
erection of, on public roads.....	268,	269
MILK HOUSE—		
arson of, punishment.....	206	42
MILL—SEE MILLER.		
arson of, punishment.....	206	42
MILLER—		
false receipt of property brought to mill, penalty.....	210	59
MINING CLAIM—SEE QUARTZ MINING CLAIM.		
deed of, as capital to mining corporation.....	340	
MINOR—SEE CHILD AND CHILDREN, GUARDIAN AND INFANTS.		
while under age, not included in time of limitation.....	11	38
service of process upon.....	16	62
confessions of judgment by.....	72	294
guardian at time of sale may redeem property sold for taxes, when.....	192	57
seduction of female defined, punishment.....	225	119
selling or giving liquor to, penalty.....	228	131
allowing to play at cards, penalty.....	228	132
protection of rights of, in settlement of estates without administration.....	301,	302
what marriage contract of, valid.....	321	17
MISCARRIAGE—		
procurement of, unless necessary for life, punishment....	205	40
MISDEMEANORS—SEE CRIMES, FINES, IMPRISONMENT, OFFENSES.		
of officers under tax laws.....	186,	187, 190, 196
limitation for prosecution.....	200	10
definition of.....	200	11
sale of liquor to a minor, defined as.....	228	131
prosecutions for, where actions for damages exists, stayed on satisfaction of prosecutor.....	246	215

MISDEMEANORS--(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
how docketed.....	247	217
punishment by fine only, arraignment may be by counsel.....	248	223
peremptory challenges allowed in trials for.....	251	
what may be tried in absence of defendant, when.....	252	
insufficiency of averment to constitute, judgment may be arrested.....	255	262
judgments on conviction of.....	257, 258	
supervisor of roads, neglects of duty by.....	279	35
county commissioners interested in county contracts.....	308	25
county auditor refusing to record instrument.....	314	20
clerk of corporation making false entry.....	336	19
violations of law regulating packing of salmon.....	352	2
for using weights and measures not sealed.....	353	4
keeping animal diseased with glanders.....	361	2
for violation of law prescribing fees of officers.....	373, 374	
notary public failing to deposit official records, when....	376	4
for introducing animals infected with contagious disease.....	377	
libel defined and punishment.....	383, 384	
party using unlawful scale to measure lumber.....	393	10
surveyor general of logs or deputies making false certificates.....	393	12
violations of quarantine regulations.....	396, 397, 398	
violation of game laws.....	399	
keeping dangerous or vicious cattle.....	400	
introducing Texas cattle.....	404, 405	
violation of act for protection of stock raisers.....	409	
destroying signals, buildings, &c., of coast survey parties.....	415	
in complaints of, inquiry to be made, whether charge frivolous or malicious and costs.....	418	
 MISTAKE—SEE AMENDMENTS, ERRORS.		
 MONEY—SEE DEPOSIT, GOLD, SALES.		
action for recovery of, attachment may issue.....	41	172
collected on attachment, disposition of.....	46	
deposited or paid into court, shall not be loaned, except.....	49	201
recovery of, verdict for.....	59, 60	
judgment for recovery of, on failure to answer.....	70	
due or to become due, judgment by confession.....	73	
judgments for, and execution.....	81	
penalty of sheriff and clerk withholding, collected on execution.....	83	326

INDEX.

763

MONEY—(Continued.)	Page.	Sec.
proceeds of sale of real estate on execution to be returned into court, when	95	
investment of proceeds of sales on partition for infants . . .	138	
secured by mortgage, and separate agreement to pay . . .	146	
judgment for recovery of, against corporations, how en- forced	154, 155	
deposit of, in lieu of bail or other bond authorized	173	692
included in term personal property, for purposes of tax- ation	176	3
specie in which taxes are payable	197	81
penalty for collector of taxes failing to pay over . 186, 190,	195	
collected for one object, not to be applied to different . . .	195	75
extortion of, by threatened injury to person or property . .	205	41
what instruments for payment of, personal goods of which larceny may be committed	208	49
receiving of stolen, and prosecutions for	208, 209	
obtaining by false personation and false pretenses	209	
forgery or counterfeiting of, and things representing	40	60
neglect or refusal of officer to pay over, and taking unlaw- fully under color of office	219	
concealment or compounding crime for	224	117
collected by road supervisors, expenditure of	278	
road, may be applied to building or repairing bridges . . .	289	
annual exhibit of, belonging to county by auditor	312	
separate property of wife, need not be inventoried	319	
division of, on dissolution of corporation	338	
shall only be paid out of Territorial treasury on warrant .	408	
judgments for specific kind for which contract made	416	
MONGOLIAN—SEE CHINESE.		
MONUMENT—		
marking corner or boundaries of land, injury to, penalty .	212	65
belonging to public or other corporation, wilful injury to	225	118
in burying ground, malicious injury of, penalty	227	126
erected by U. S. coast survey parties, malicious injury, &c, penalty	415	6
MORALITY AND DECENCY—		
offenses against, defined and penalties	225	

MORTGAGE—SEE FORECLOSURE OF MORTGAGE, MORTGAGEE.		
	<i>Page.</i>	<i>Sec.</i>
venue of action upon.....	12	48
authentication of copy, to be used as evidence.....	115, 315	
not deemed a conveyance, to recover real property except by foreclosure.....	130	498
actions of foreclosure,.....	145	
debts due upon, taxable as personal property.....	176	3
of personal property, party in possession taxable.....	179	14
recording of, and time of day of presenting for record...	313	18
auditor to give statement of, when required, penalty for false.....	314	23
of indexing records, and entry of satisfaction.....	315	
 MORTGAGEE—		
may redeem property sold on execution.....	97	
cannot maintain action for possession, except by foreclo- sure and sale.....	130	498
cannot sue for debt while foreclosing his mortgage....	146	
may redeem property sold for taxes.....	192, 194	
 MOTHER—SEE CHILD AND CHILDREN, FATHER.		
when, may maintain action for injury or death of child..	4	9
when, may maintain action for seduction of daughter....	5	
right and order of priority to settle estates without ad- ministration.....	299	3
 MOTION—		
for change of place of trial.....	13, 249	
before demurrer or answer, not a voluntary appearance..	19	70
to strike out sham, frivolous and irrelevant pleadings...	21, 22	
to strike out irrelevant and redundant matter, and render pleadings definite and certain.....	24	93
to strike out pleading and for amendments generally....	27	
for dissolution, modification and reinstatement of injunc- tions.....	40, 41	
to discharge attached property or dissolve attachment...	46, 47	
for order on defendant to satisfy claim of plaintiff admit- ted.....	49	203
for continuances because of absence of witnesses.....	50	209
for appointment of referees where parties fail to consent.	61	
set aside report of referees, in which case report deemed as a verdict.....	62, 63	
on, for new trial, how exceptions regarded.....	63	

INDEX.

765

MOTION—(Continued.)	Page.	Sec.
decision by court or referee made out of term, deemed as		
. excepted to on, for new trial.....	64	265
for new trial.....	67, 68	
for judgment of non-suit.....	70	
for leave to issue execution and revive judgment.....	79, 80	
for judgment against sureties in stay bonds.....	85	
for order confirming sale of real estate on execution.....	95	363
for leave of entry to make survey in suits affecting real property.....	130	
for admeasurement of dower in suits for real property... ..	132	
for leave to file supplemental complaint in suits for partition.....	136	
for issue of warrant to abate nuisance.....	144, 145	
for non-suit by defendant in suit upon official bond for official delinquency.....	153	594
writs of mandate and prohibition issued upon.....	160, 161	
of prosecuting attorney for leave to enter <i>nolle prosequi</i> ..	246	216
for new trial and arrest of judgment in criminal cases..	255, 256	
for order of view in actions for appropriation of lands by corporations.....	349	7
MULE OR ASS—		
stealing of, punishment.....	208	50
MURDER—SEE DEGREES.		
prosecutions for, may be commenced at any time.....	200	10
plea of guilty entered, jury to find the degree.....		
<i>In the first degree—</i>		
crime, not bailable.....	199	8
crime defined, punishment.....	200	11
death ensuing from arson, deemed.....	206	42
assault with intent to commit	203, 204	
<i>In the second degree—</i>		
crime defined and punishment.....	200	13
survivor in a duel, deemed guilty of.....	201	14
duel agreed upon within Territory, fought without, survivor guilty of, triable in any county.....	201	15
setting fire to one's house and burning another's, death ensuing, deemed as.....	207	44

N.

NAME—	Page.	Sec.
of real party in interest, actions to be prosecuted in.....	3	4
of beneficiary, when need not be used or joined.....	4	5
where unknown, how may be designated in pleading and amendment of.....	28	110
indictment of party by fictitious or erroneous.....	241, 242	
of animal, sufficiency of description.....	241	189
true, defendant to give on arraignment.....	248	
of corporation to be stated in certificate.....	331	341
of limited partnership and of partners.....	380	
NAVIGABLE WATERS—		
discharging ballast into, prohibited, penalty.....	222	108
NAVIGATING, NAVIGATION—		
receiving too many passengers or overloading, death there- from, manslaughter.....	201	18
obstructions to, prohibited, penalty.....	223	109
NE EXEAT—		
actions upon agreement in writing not yet due, commence- ment of.....	149	576
when writ of, may issue.....	149	577
arrest under, and proceedings of sheriff in admitting party to special bail.....	149	578
defendant may secure performance of contract instead of bail.....	150	580
may be had against party jointly bound with defendant, or against one or more of several co-contractors, when	150	580
writ of <i>habeas corpus</i> may be used by defendant.....	150	582
justices of peace may issue, within their jurisdiction.....	150	583
may issue in district where defendant found.....	150	584
NEGLECT OR NEGLIGENCE—		
of collector of taxes to pay over money.....	186, 190	
of person navigating vessel, causing death, manslaughter	201	18

NEGLECT OR NEGLIGENCE—(Continued.)	Page.	Sec.
of captain or engineer of steamboat causing death, man- slaughter	201	19
of officer in charge, escape of prisoner through, penalty . .	218	83
of road supervisor	211, 279	
of officer to pay over money as required by law	219	88
 NEW PROMISE—		
to revive an outlawed contract to be in writing	11	45
 NEW MATTER—SEE PLEADING.		
 NEW PARTY—		
bringing in of, and notice to	6	
introduction of in supreme court	120	444
supplemental complaint as to lien creditor made defend- ant's in suits of partition	136	
 NEW TRIAL—		
<i>In civil actions—</i>		
on conclusions of referees	62	
decision by court or referees made out of term deemed as excepted to on motion for	64	265
by arbitrators may be ordered by court	66	271
definition of, and causes for which may be made	67	
shall not be made, on account of smallness of damages, when	68	279
when to be accompanied by affidavits	68	280
when notice of motion shall be given, and hearing of . . .	68	281
in cases tried by court, decided out of term, when must be made	68	282
causes for, must be specifically stated, and none other can be regarded	68	283
both parties may use affidavits	68	284
judgments of the supreme court, remanding case for fur- ther proceedings	119	441
when ordered by supreme court, costs a matter of discre- tion	126	476
 <i>In criminal actions—</i>		
when motion must be made, and causes for	255	260
in what cases affidavits necessary	255	261
may be ordered by supreme court	261	296

	<i>Page.</i>	<i>Sec.</i>
NEXT FRIEND --		
in no case need a married woman appear by.....	4	6
application of, for guardian <i>pendente lite</i> of infants.....	5	13
NOILE PROSEQUI—		
prosecuting attorney may enter, by leave of court.....	246	216
NON RESIDENT—		
time during absence not included in limitation.....	10	37
causes of action between, barred by lapse of time, cannot be maintained in this Territory.....	12	47
service by publication upon, of commencement of action.	17	
attachment of property of.....	42	173
proceeding to perpetuate testimony of, notice.....	113, 114	
plaintiff to give security for costs.....	126	479
parties in proceedings in partition, notice to.....	134	137
when co-contractors are, when writ of <i>ne exeat</i> may issue.	150	580
taxation of property of.....	178	10
time of absence not included in limitation for prosecutions for crime.....	200	
rights of, secured in settlement of estates without admin- istration.....	299, 302	
owning land appropriated by corporation, notice to.....	349	4
NON-SUIT—SEE JUDGMENT.		
when and for what causes given.....	69	288
effect of, to dismiss, but not bar another action....	70	290
defendant in suit on official bond when entitled to.....	153	594
NOTARIES PUBLIC—		
appointment and term of office.....	375	1
powers and authority of.....	375	2
fees of office.....	371, 376	
to provide official seal, approval and deposit of.....	376	3
power of Governor to remove, and disposition of official records on removal or expiration of office.....	376	4
sufficiency of official certificate of.....	376	5
official acts of certain, under color of office, legalized....	377	5
NOTE—SEE PROMISSORY NOTE.		
NOTICE—		
<i>In civil actions—</i>		
to new party.....	6	21
commencement of civil actions by....	15	59

INDEX.

769

NOTICE—(Continued.)	Page.	Sec.
form of, to commence.....	15	59
by whom served	16	61
manner of service, and upon whom.....	16	62
when may be made by publication.....	17	63
mode of, by publication.....	17	64
form of publication, and subsequent proceedings.....	18	66
proof of service, how and by whom made.....	19	68
voluntary appearance equivalent to service of.....	19	70
by plaintiff, excepting to bail in arrest.....	32	128
by defendant of justification of bail in arrest.....	33	129
in actions for claim of personal property.....	36	
in applications for injunction.....	39	154
injunction applies from service of.....	40	162
of applications to dissolve or modify injunctions.....	40	167
of application to reinstate injunction.....	41	170
of application to release property attached by bond.....	46	188
of application to dissolve attachment improvidently issued for sale of attached property pending suit.....	47	190
by arbitrators, to compel attendance of witnesses.....	66	272
of motion for new trial.....	68	281
on revivals of judgment.....	79	318
requisites of, in revivals of judgment.....	80	320
of holding real estate as homestead.....	86	338
in sales of property on execution.....	93	355
of adjournment of sheriff's sale.....	94	357
of redemption of property sold on execution.....	98	9
to judgment debtor, in proceedings supplementary to ex- ecution.....	101	376
to witnesses to be by subpœna.....	105	388
to adverse party for examination.....	106	398
of taking depositions of witnesses residing in Territory.....	108	405
of taking deposition of witness out of Territory.....	111	414
in proceedings to perpetuate testimony.....	113	420
to produce records, books, documents.....	114	424
of suing writ of error or appeal.....	116	433
by clerk of court, of taking out writ of error.....	177	434
in real actions when landlord is substituted.....	128	489
to tenants in common, in suits of partition.....	133	508
to encumbrancers in suits of partition.....	136	522
of sale to make up deficiency on foreclosure of mortgage.....	148	572
of pendency of proceedings in <i>habeas corpus</i> where party		

NOTICE—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
cannot be found.....	157	612
in an information.....	163	646
in all cases in this act, must be in writing.....	173	688
 <i>Miscellaneous—</i>		
of writ of error, by defendant in criminal cases.....	261	292
for laying out, altering or vacating road.....	267	272
by supervisors to parties to labor.....	275, 276, 278	
of application for ferry license.....	281	
of the leasing of public roads.....	285	
of the letting of contracts to repair or build bridges.....	289	
of applications in settlement of estates without administration.....	299, 300, 302	
for extra meetings of county commissioners' court.....	304	
for voting special tax for county buildings.....	307	
of appeals from decision of county commissioners.....	309	
filing inventory of separate estate shall be.....	319	5
recording marriage contract imparts full.....	321	15
requisites in the erection of partition fences or laying open inclosures.....	325	
required to be given in law providing for formation of corporations of meetings, elections, assessments, of increasing or diminution of stock, and dissolution and change of place of business.....	333 to 339	
of bridge being fit for travel, to be given, how.....	346	
Governor to give, of voting on proposition to call a constitutional convention.....	355	
in complaints for keeping animals diseased with glanders	361	
of hogs trespassing being taken up and sale of.....	362	
for publication of, price due in advance.....	373	
of formation or dissolution of limited partnership.....	380, 382	
of location of quartz mining claims to be recorded.....	387	
of quarantine regulations to be made by board of health.	398	
of applications to vacate town plats, streets and alleys...	410	
by county auditors to secure registry of outstanding county orders.....	411, 412	
of hearings of complaints for entry by coast survey parties on private lands.....	414	
 <i>NUISANCE—</i>		
what shall be deemed, and who may bring action.....	144	
judgment in such cases, and when defendant may be en-		

INDEX.

771

NUISANCE—(Continued.)	Page.	Sec.
joined	145	560
warrant for abatement of, and proceedings.....	145	561
stay of, warrant, on application of defendant and proceedings.....	145	562
 NUMBER—		
construction of words implying.....	175,	231

O.

OATHS AND AFFIRMATIONS—SEE AFFIDAVIT, VERIFICATION.

administered to receiver.....	48	198
to trial jurors.....	54,	251
referees power to administer.....	62	257
administered to arbitrators.....	65	268
examination of plaintiff in judgments on failure to answer where service by publication.....	71	
verification of statement of defendant in judgments by confession.....	73	298
sheriff may administer to jurors trying defendant's right of exemption.....	89	346
to answers of adverse party, by way of discovery.....	107	399
of witness making deposition.....	109,	112
to statements of parties desiring to perpetuate testimony.	113	
sureties upon bail may be examined on, by party taking.	173	690
required by assessor to returns of taxable property.....	180	16
perjury and subornation of, defined.....	215,	216
penalty of party performing duties of office before taking complaint made upon, for search warrant.....	219	91
complaint under, against fugitives from justice.....	232	
complaint under, against fugitives from justice.....	234	
administered to grand jury.....	236	162
foreman of grand jury may administer.....	237	163
sufficiency of averment in indictment of perjury.....	243	199
required under road law, who may administer.....	269	6
of office of county commissioners.....	303	4
county commissioners have power to administer, what...	308	26
of office of county auditor and deputies.....	310,	312

OATHS AND AFFIRMATIONS—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
auditors and deputies may administer.....	312	11
marshals of fairs shall take same as sheriffs.....	328	2
power of notaries public to administer.....	375	2
official, of notary public.....	376	3
attested by notary, how certified to be evidence.....	376	5
officers competent to administer.....	378	1
forms of administration of.....	378, 379	
religious scruples of party respected.....	379	
false, both alike deemed perjury.....	379	6
of office, surveyor general of logs and deputies.....	391	
of office, of health officer for Puget Sound collection district under quarantine laws.....	395	
of office of county assessor and deputies.....	403	
 OBJECTIONS—SEE EXCEPTIONS.		
that action not commenced within time limited for commencement, how taken.....	8	25
grounds of, to complaint, must be distinctly specified in demurrer.....	20	76
to the complaint, when must be taken by answer.....	20	77
waiver of, and what, are never waived.....	21	79
filing of, to confirmations of sheriff's sale.....	95	
 OBSCENE—		
penalty for publishing, selling or circulating pictures, ballads, language, &c.....	226	124
 OBSTRUCTING AND OBSTRUCTION—		
of peace officers in quelling riots, &c.....	214	
the execution of legal process by officer.....	218	
of public highway, road or bridge, penalty.....	222	107
of navigable channel, bay or river, penalty.....	223	109
 OCCUPATION AND USE—SEE POSSESSION.		
of real estate, limitation of action for.....	8	27
 OFFENSE—SEE ACTIONS CRIMINAL, CRIMES, DEFENDANT.		
FINES, IMPRISONMENT, MISDEMEANOR.		
when person may be held to answer.....	198	1
rights of party charged.....	198	2
conviction of, only upon confession or verdict.....	198	3
second indictment barred by trial, except.....	198, 199	

INDEX.

773

OFFENSE—(Continued.)	<i>Page.</i>	<i>Sec.</i>
punishment for, to depend upon legal conviction by court		
of competent jurisdiction	199	7
right to speedy trial and admission to bail	199	
cognizable at common law when not controlled by statute, indictable	199	9
time within which prosecutions must be commenced	200	
distinction between felonies and misdemeanors	200	11
against life and persons of individuals	200	
against property	206	
against public peace	214	
against public justice and by and against public officers	215	
against public policy	220	
against morality and decency	225	
against public health	227	
all concerned in commission of, or counseling or aiding principals	229	134
place of trial for, and general provisions relating to	230	
what, shall be inquired into by grand jury	237	
indictment for, what shall contain, &c.	240	241
arrest of defendant, trial, judgment	245	
OFFICE—SEE OFFICER.		
action for liability for act by virtue of, limitation	9	28
venue of action for act done by virtue of	13	49
of special jurisdiction, judgment of, how pleaded	24	94
furniture, &c., of professional men exempt from execution	88	344
performance of duties resulting from, may be compelled by mandate	160	
usurpation of, or intrusion into, relief by information	162	
professional or printing, setting fire to, arson	206	
performance of duties of, before qualification, penalty	219	91
extorting money, &c., under color of, penalty	219	92
of road supervisor, how and when filled, duties of	273	
of county commissioners, term, qualification, duties	303	
of county auditor, qualification, term, duties, &c.	310	
of salmon inspector abolished	352	
of sealer of weights and measures, created	353	
oath of, fees shall not be charged for administering and certifying	374	18
of notaries public, commission, term, qualification and du- ties	375, 376	

OFFICE—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
of surveyor general of logs, term, qualification and duties	391	
of board of health and health officer (quarantine).....	394	
of county assessor, term, qualification, duties.....	402	
 OFFICER—SEE ARREST, ATTACHMENT, EXECUTION, OFFICE, SHERIFF.		
limitations of actions against.....	9	
venue of actions against, defined.....	13	49
of corporation, for what may be arrested in civil actions.	29	114
restraint of, and duties under injunctions.....	40	
duty of, in charge of trial jurors.....	57, 252,	254
refusal of, to obey order of court, contempt.....	81	322
duty of, when party claims property levied upon as exempt	80	346
duty of, where property levied upon is claimed by other than judgment debtor.....	89	347
duty of, in sale of land upon execution.....	95	
requisites of <i>subpoena</i> of party to appear before an.....	104	
authentication of records by, to be used as evidence...115,	116	
fees of, taxed as costs.....	124	465
suits on bonds of, and for fines and forfeitures.....	152	
actions by and against public.....	154	
writs of <i>habeas corpus</i> addressed to, returns, &c.....	156	
mandates addressed to, what is required of.....	160	
proceedings against by information.....	162	
contempts by, and to whom may be committed.....	168	
power of, to deputize the performance of duties.....	172	687
process served by, return sufficient.....	172	688
authorized to take bail, may justify sureties.....	172	690
includes any person authorized to perform duties.....	173	697
county, buying county orders less than face.....	187,	223
fees of, under tax laws defined.....	193	65
money collected by, to be appropriated to specific object.	195	75
recovery of stolen property, duty of, and recompense....	209	
embezzlement by, with or without hire.....	210	
forgery or counterfeiting certificate or warrant of.....	211	60
peace, powers and immunities in suppressing of riots, &c.	214	
offenses by and against public.....	215	
of elections, misfeasance, malfeasance of.....	221	
of vessel, discharging ballast into bays, &c.....	222	108
duty of, under search warrants.....	232,	233
prosecuting and other, in requisition and extradition of		

OFFICER—(Continued.)	Page.	Sec.
fugitives from justice.....	233,	234
drawing of grand jury by other than proper, challenge to panel.....	236	
prohibited from disclosing proceedings of grand jury...	239	
of special jurisdiction, judgment how pleaded.....	242	195
service by, of criminal process.....	244,	245
in execution of death warrant.....	259	
authority of mandates of supreme court.....	263	304
certain, to make complaints of violation of law.....	264	311
distribution of laws and journals to.....	317	
Territorial and militia, election of.....	327	
of corporations, power to elect.....	331,	341
duties of, under law preventing hogs trespassing.....	362	
fees of, act fixing and duties under law.....	364	
what, may administer oaths and affirmations.....	378	
health, of Puget Sound collection district, (quarantine)..	395	
of vessel violating quarantine regulations, (<i>see quarantine</i>).....	396,	397
hearing of complaint for offenses, duties of, costs, &c....	418	
 ORDER—SEE COUNTY ORDER, DECREE, JUDGMENT, WARRANT.		
in actions for recovery of purchase money, what may be made.....	6	19
of substitution of new party for defendant, when.....	7	22
of change of venue of action.....	14,	250
of further account or bill of particulars.....	24	91
to amend pleadings.....	26,	27
of court necessary for arrest of defendants.....	28	
of allowance of money deposited in lieu of bail.....	34	
restraining, and injunctions.....	38	
of discharge of attached property or dissolution of attachment.....	46,	47
for deposit or delivery of property, contempt for disobedience.....	49	
upon defendant to satisfy claim of plaintiff admitted....	49	203
of challenges in election of trial juries.....	53	
of proceedings in trials.....	54,	60,
of view by trial jury.....	56,	252,
of refreshments to juries, their retirement.....	57	
to jury to find special verdict.....	59	
on report of trials by referee.....	62	

ORDER—(Continued.)	Page.	Sec.
irregularity of, by court, ground for new trial.....	67	
disobedience of plaintiff to, ground for non-suit.....	70	288
of restitution, security to abide may be exacted on judgments for failure to answer when service by publication.....	71	
to collect costs, to be embodied in execution.....	81	323
execution to enforce a special.....	82	
for confirmation of sale of realty on execution.....	95	
to stay waste during period allowed for redemption of real property sold on execution.....	100	373
to judgment or absconding debtor to satisfy or secure plaintiff's debt, supplementary to execution.....	101	
as to property in hands of garnishees.....	102	
for examination of prisoner as witness.....	106	
of allowance of examination of witness in proceeding to perpetuate testimony.....	113	
on party to furnish document to allow inspection by adverse party.....	114	624
final, may be re-examined on writ of error.....	116	432
what may be made by supreme court.....	119	
effect of reversals of... ..	120	
of judgment in form, and appeal to be taken.....	120	447
authorizing adverse party to enter upon lands to make survey... ..	130	
of sale of property in partition proceedings, for distributees and lien creditors.....	126, 138	
of confirmation of sale by referees, in partition proceedings.....	140	
for warrant to abate nuisance.....	144, 145	
of sale, foreclosure of mortgage.....	146, 149, 148	
of arrest and bail, in proceedings <i>ne exeat</i>	149	
in proceedings between principals and sureties.....	151	
to be drawn on treasurer of public corporation for amount of judgment against.....	153, 350	
of commitment, person held by shall not be discharged on <i>habeas corpus</i>	158	
what may be made in proceedings on <i>habeas corpus</i>	159	
judgment on mandate and prohibition.....	161	
in proceedings on information.....	163	
disobedience of any, of court, &c., contempt.....	167	
to produce prisoner in prison, to answer contempt.....	169	

INDEX.

777

ORDER—	<i>Page.</i>	<i>Sec.</i>
as to return of stolen property and recompense of officer.	209	
fixing amount of bail of parties indicted.	244	203
book, recognizances to be entered by clerks in.	245	
of stay of proceedings in indictments for misdemeanors, the injured party having received satisfaction.	246	215
court may, entry of <i>nolle prosequi</i> .	246	216
when prisoner stands mute, plea of "not guilty" to be entered.	247	219
of discharge of one of several defendants to testify.	253	248
that venue in indictment improperly laid, be changed.	253	249
of commitment of party acquitted through insanity.	254	256
of re-commitment of defendant to answer new indictment.	256, 262	
of bench warrant to bring defendant into court.	256, 257	
of commitment till fine and costs paid.	257	
of sentence to penitentiary or jail.	257, 259	
final in criminal case, re-examination of, on error.	260	
of supreme court in criminal proceedings.	261, 262,	263
book, opinions of supreme court, to be recorded in.	263	303
of supreme court, transcript of, full authority to whom.	263	304
of county commissioners appointing road supervisors.	274	
of county commissioners to lease public roads.	285	
of priority of right to settle estates without administration.	298	2
of sale of property of intestate settled without administration for education of children.	301	8
for adjourned or extra terms of county commissioners courts.	304	7
of sale of real estate of county, by commissioners.	305	12
for jail convicts to work on roads, by county commissioners.	307	24
to kill or take up animal diseased with glanders.	360, 361	
by health officer and quarantine regulations.	395, 396, 397	
vacating town plats, street or alley.	410	
OREGON—		
copies of papers filed by surveyor general of, made evidence.	115	428
certificate of residence or settlement by surveyor general of, evidence.	116	429

ORPHANS—		<i>Page.</i>	<i>Sec.</i>
act to secure to, a common school education.....	406		
OUT HOUSE—			
malicious setting fire to. arson.....	206	42	

P.

PANEL—

to be filled, before challenging peremptorily.....	53	
of grand jurors, challenge to.....	236	
of petit jurors, when allowed and how made.....	251	

PARDON—

for conviction of perjury, makes witness competent... .	103	385
power of Governor to, recognized and conferred.....	200, 264	

PARENT AND CHILD—SEE CHILD AND CHILDREN, FATHER, MOTHER.

writ of <i>habeas corpus</i> to enforce rights.....	159	628
marriage contract void, which derogate from rights of... .	322	

PARTIES—SEE ACTION, DEFENDANT, INTERVENOR, JOINDER, PLAINTIFF.

In civil actions—

how designated.....	3	3
actions must be prosecuted in name of real party in interest, except.....	3	4
beneficiary need not be joined in certain cases.....	4	5
married woman, joinder or non-joinder of husband.....	4	6
when husband and wife may join.....	4	7
in action for damages for person killed in duel.....	4	8
for death or injury to child or ward.....	4	9
by parent or guardian, for seduction.....	4	10
by unmarried female for her own seduction.....	5	11
infants to appear by guardian.....	5	12
appointment of guardians.....	5	13
who shall be joined as plaintiffs and who defendants....	5	14

INDEX.

779

PARTIES—(Continued.)	<i>Page.</i>	<i>Sec.</i>
when numerous, one may sue or defend for all.....	5	15
severally liable, may be joined at option of plaintiff.....	6	16
death or disability of, does not abate action.....	6	17
transfer of interest does not abate.....	6	17
successors in interest to, may maintain action.....	6	17
in actions for personal injury resulting in death of injured	6	18
in actions for recovery of purchase money or specific per- formance.....	6	19
court to decide controversy between, before it.....	6	20
rights of other parties to be saved, or they brought in..	6	20
of introduction of new.....	6	21
of substitution of third, for defendant.....	7	22
of intervention by petition.....	7	
Territory same as private, in statute of limitations.....	10	33
disability of, time not included in limitation.....	10	
may have change of venue.....	13	
non-resident, served by publication.....	17	
defect of, in pleading.....	20	
shall subscribe and verify pleading, except.....	23	89
no pleading shall be used against, in criminal prosecution	23	90
substantial justice to, regarded in construing pleadings..	24	
where plaintiff ignorant of name of defendant.....	28	110
arrest of, in civil actions.....	28	
in claims to recover personal property.....	35	
in the issuing of injunctions, and who bound thereby....	38	
in attachment proceedings....	41	
on appointments of receiver.....	48	
right of challenge of, in empaneling trial jury..	51	
may waive trial by jury and consent to trial by court....	60	
may consent to trial by referees.....	61	
may settle differences by arbitration.....	64	
application and proceedings in new trial.....	67	
rights of, determined by a judgment.....	69	
in judgment of non-suit.....	69	
may agree upon submitted case....	73	
duties of clerk in entering judgment.....	76	
names of, to be indexed, both direct and inverse.....	77	
right of, to execution.....	79	
exemption, and right of waiver by.....	85	
claim by third, to property levied on or attached....	89	
redemption of property by, sold on execution.....	98	

PARTIES—(<i>Continued.</i>)	<i>Page.</i>	<i>Ser.</i>
in proceedings supplementary to execution.....	101	
not disqualified as witness on ground of interest.....	103	
of examination of.....	106	
may be compelled to produce books, records, &c.....	114	
costs shall be allowed to, and measure of.....	123	
in actions to recover and affecting real estate.....	128	
in partition of real property.....	133	
who may be prosecuted in action of waste.....	143	
in actions for nuisance.....	144	
in foreclosure of mortgage.....	145	
in <i>ne execut.</i>	149	
in actions, sureties against principal.....	150	
in actions on official bonds, fines and forfeitures.....	152	
in actions by and against public corporations and officers	154	
in <i>habeas corpus</i>	156	
in mandate and prohibition.....	160	
in information.....	162	
in actions by and against executors.....	165	
in contempts.....	167	
in certain classes of foreign judgments.....	171	
pleadings sworn to by, how regarded.....	172	683
introduction of new, same notice as original.....	172	684
entitled to give bail, may make deposit.....	173	692
may make a judgment of justice a judgment in district court.....	174	695
construction of term.....	175	698
PARTITION OF REAL PROPERTY—		
suit for, who may maintain.....	133	505
complaint, what shall contain.....	133	506
lien creditors may be made defendants.....	133	507
service of notice, in suits of.....	133, 134	
answer of defendant, what to set forth.....	134	510
issues in, and proof of title on failure to answer.....	134	512
when property cannot be divided without prejudice, sale may be ordered.....	134	513
appointment of referees to divide... ..	134	
confirmation of report of referees and decree.....	135	
what parties not concluded by decree.....	135	515
expenses to be paid by plaintiff and taxed as costs.....	135	516
order of sale on report of referees, and sale.....	136	

PARTITION OF REAL ESTATE—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
estate for life or years, when set-off	136	518
lien creditor must be made defendants before sale, and supplemental complaint filed	136	519
when reference ordered to ascertain liens	136	520
proceedings of referees, report and confirmation	136,	137
distribution of proceeds of sale	137,	138
sales, how conducted, notice of, order and securities	138	
estate for life or years, set-off or sale of	139	
proceeds of sale, investment of	139	
provision for inchoate dower and counting out witnesses	140	530
in all sales in partition proceedings, general provisions	140	
investment of proceeds due unknown owner	141	
may be equalized by compensation	141	549
of shares due to infants or insane, paid to guardian, and when latter may consent	142	
of costs, and enforcement of decree in	142	533
 PARTITION FENCE—SEE FENCES.		
what are, and liability of owners of lands adjoining	325	4
when and where party may erect, and cause neighbor to pay half expense	325	
to be maintained by neighbors at equal share of expense	325	7
counties to which law applicable	326	13
 PARTNERS AND PARTNERSHIP—SEE LIMITED PARTNERSHIP, PARTIES TO ACTION.		
 PATENT—SEE LETTERS PATENT.		
in claims to property under acts of Congress, elder, to govern if not void	132	504
 PEACE AND PEACE OFFICER—SEE MAGISTRATE, OFFICER.		
offenses against	214	
 PIERCE COUNTY—		
location of site for penitentiary, in	359	
appropriation to, for expenses of repair of county jail, adopted as Territorial penitentiary	388	
 PENALTIES—SEE CRIMES, FINES, MISDEMEANORS, OFFENSES.		

PENITENTIARY—SEE ACTIONS CRIMINAL, COSTS, CRIMES,		
FELONIES, OFFENSES.		<i>Page. Sec.</i>
offenses punishable by imprisonment in, felonies, and limitation.....	200	
site of, located at or near Steilacoom, Pierce county.....	359	
PERJURY AND SUBORNATION OF PERJURY—		
conviction of, renders witness incompetent.....	103	385
definition of, and how and by whom committed.....	215, 216	
sufficiency of allegation and proof, in indictment for....	243	199
PERPETUATING TESTIMONY—		
deposition for, when and how taken.....	113	114
PERSON—		
offenses against lives and.....	200	
PETITION—		
for right to intervene in an action.....	7	
for laying out, altering or locating roads.....	267, 271, 272	
for ferry license.....	281	
for building or repairing bridge on line of two counties.	290	
for establishment of election precincts.....	307	
PETIT JURORS—SEE JURY, TRIAL.		
list of, to be served on party indicted for capital offense,		
when.....	246	213
when challenge to panel allowed.....	251	236
PHYSICIAN—		
what property of, shall be exempt.....	88	
shall not be examined as a witness in civil actions as to		
communications by client without consent of.....	104	387
penalty for prescribing poison while intoxicated.....	227	130
not protected in criminal prosecutions from testifying...	249	226
PICTURES AND PRINTS—SEE LIBEL, OBSCENE.		
PLACE OF TRIAL—SEE CHANGE OF VENUE, VENUE.		
PLAINTIFF—SEE COMPLAINANT, PARTIES.		
the party commencing action shall be called.....	3	3
party in interest shall prosecute.....	3	4
an unmarried female may be, for her own seduction.....	5	11
infant, appointment of guardian.....	5	13

PLAINTIFF—(*Continued.*)

	<i>Page.</i>	<i>Sec.</i>
all persons interested in cause of action to be joined, except.....	5	14
may make defendants of all or any of parties severally liable.....	6	16
when third party may join, by intervention.....	7	23
seisin of, in actions for recovery of real property.....	8	26
duty of, in commencement of actions.....	15	59
when may obtain service of complaint by publication....	18	66
when may proceed against defendants served.....	18	67
pleadings by, and rules regarding.....	20	
verification of pleadings by.....	23	
what must be shown by, in action for libel.....	25	97
what causes of action may be united.....	25	100
in possessory actions, when may amend complaint.....	27	106
when ignorant of defendant's name, shall so state in complaint.....	28	110
proceedings of, to arrest defendant.....	28	
in arrest, liable for custody of defendant.....	31	121
in claim to recover personal property.....	35	
when entitled to apply for injunction or restraining order	38	
when entitled to attachment of defendant's property..	41	
proceedings by, against garnishees.....	44	
proceedings in motion to dissolve attachment.....	47	
may challenge jurors, how many, and procedure.....	53	
judgment may be given for or against one or more of several.....	69	286
motion of, to enter judgment of non-suit.....	69	288
failing to appear, defendant entitled to dismissal of action	70	288
when shall suffer non-suit, generally.....	70	288
when entitled to judgment for failure of defendant to answer.....	70	
when may take a judgment by confession.....	72	
who is, in suits of claim to property levied on or attached	90	349
may file interrogatories to be answered by defendant....	107	399
in error, proceedings on suing out writ.....	116	
in actions where set-off is pleaded by defendant.....	121	
when not entitled to costs.....	123	459
when costs to, shall be limited by amount recovered....	123	460
when part costs only shall be allowed to.....	123	461
defendant shall have judgment for costs, when.....	123	462
when a non-resident. may be required to give security for		

PLAINTIFF—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
costs	126	479
in actions to recover and affecting real estate.....	128	
in suits of partition of real property.....	133	
in actions of waste and trespass.....	143	
who may be, in actions for nuisance.....	144	
in foreclosure of mortgage.....	146	
when can apply for <i>ne exeat</i> , procedure.....	149	
in actions of sureties against principals.....	150	
in suits on official bonds, fines and forfeitures.....	152	
in actions by and against public corporations and officers	154	
in petitions for <i>habeas corpus</i> , procedure.....	156	
in mandate and prohibition.....	160	
in informations.....	162	
in actions by and against executors.....	165	
Territory is, in proceedings for contempt.....	169	672
 PLANK ROADS—SEE ROADS.		
willful injury of, or to, penalty.....	222	107
 PLAT—SEE TOWN PLAT.		
 PLEA—SEE ARRAIGNMENT, PLEADING.		
of guilty entered, when testimony shall be heard and when		
jury empanelled.....	247	218
not guilty to be entered when defendant refuses.....	247	219
benefit of clergy, abolished.....	266	318
 PLEADING—		
<i>In civil actions—</i>		
forms of, to conform to the civil practice act, and rule of		
sufficiency prescribed.....	19	71
on the part of plaintiff.....	20	72
on the part of defendant.....	20	72
of the complaint, and what shall contain.....	20	73
demurrer by defendant, when allowed and how taken....	20	75
when objection to complaint must be by answer.....	20	77
complaint amended, must be served on defendant.....	20	78
when defendant is deemed to have waived objections, ex-		
cept.....	21	79
to jurisdiction or insufficiency of complaint, may be made		
at any stage.....	21	79
answer, what shall contain.....	21	80

PLEADING—(Continued.)	Page.	Sec.
a counter claim, and when it exists.....	21	81
defendant may demur to part, and answer residue.....	21	82
sham, irrelevant and frivolous, may be stricken out on motion.....	21	83
of the reply by plaintiff, what may contain.....	21	84
plaintiff may demur to defendant's answer, when.....	21	85
if plaintiff fail to reply or demur to new matter in answer, judgment.....	21	86
defendant may demur or move to strike out, reply.....	21	87
supplemental, may be filed, rules prescribed by court...	21	88
verification of.....	23	89
when verification to answer may be omitted.....	23	90
shall not be used in criminal prosecutions as evidence...	23	90
general rules regarding.....	24	
copy of instrument of writing or account, need not be set forth.....	24	91
but copy of, or bill of particulars may be demanded by adverse party.....	24	91
penalty for failure to serve such copy on adverse party if demanded.....		<i>ibid</i>
court or judge may order further account, or bill of particulars.....		<i>ibid</i>
to be liberally construed, with view to substantial justice.....	24	92
motion to strike out irrelevant or redundant matter.....	24	93
court may order, to be made definite and certain....		<i>ibid</i>
of judgment of court of special jurisdiction.....	24	94
of the performance of conditions precedent.....	24	95
a private statute or right derived therefrom.....	25	96
in actions for libel or slander, defamatory matter how stated.....	25	97
in such actions, defendant may aver truth of matter and justify.....	25	98
in an action to recover possession of distrained personal property.....	25	99
plaintiff may join what causes of action, when.....	25	100
material allegation of, not controverted, taken as true...	26	101
material allegation defined.....	26	102
mistakes in, and amendments.....	26	
when variance between allegation and proof deemed material.....	26	103
when party has been misled, amendments of.....	26	103

PLEADING—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
if variance be immaterial, amended of course.....	27	104
if allegation be not proved, not variance but failure of proof.....	27	105
amendment of, in certain actions for recovery of personal property.....	27	106
amendment of, generally, terms and when and how made	27	107
if amended, new must be filed, complete in itself.....	27	108
not verified, may be stricken out on motion.....	27	109
duplicate, may be stricken out on motion.....	27	109
when stricken out, party may amend or plead over, terms defendant may be fictitiously named, when true name un- known.....	29	109
defects, to be disregarded which do not affect substantial rights of adverse party... ..	28	110
supplemental, may be allowed showing subsequent facts.	29	111
affidavit of plaintiff in claim to recover personal property, what shall contain.....	28	112
issues of law or fact arise upon, when.....	35	141
the jury upon retiring may take with them the.....	49	
in suits of error, copies of, shall be contained in transcript	57	235
in suits of error, limited to the errors as signed in precipe	118	437
by defendant in set-off.....	119	439
in actions to recover and affecting real estate.....	121	449
in suits of partition of real property	128	
verification of, in suits by and against public corporations or officers.....	133	
in hearings upon <i>habeas corpus</i>	154	603
in mandate and prohibition.....	156	
in informations.....	160	
in suits on former judgments	162	
sworn to, not to be deemed as proof.....	171	
in actions pending, to conform to provisions of this act..	172	683
	175	699
<i>In criminal prosecutions—</i>		
no person held to answer, except upon indictment.....	198	1
acquittal on merits in formal trial, bar to second in indict- ment.....	198	4
when second indictment may be found.....	198	5
who may be indicted as principals.....	229	134
in prosecutions affecting property, what deemed a variance	231	142
what the term "person" shall include.....	231	143
construction of terms implying number, sex, &c.....	231	144

PLEADING--(Continued.)	<i>Page.</i>	<i>Sec.</i>
forms of, heretofore existing, abolished, and rules herein prescribed	240	180
indictment, to be first on part of Territory.	240	181
what indictment shall contain, and form of.	240	182
indictment must be direct and certain in regard to.	241	184
when defendant is indicted under fictitious or erroneous name.	241	185
must charge but one crime, but means may be alleged in alternative.	241	186
allegation in indictment as to time.	241	187
erroneous allegation as to injured person, when immaterial	241	188
what description of animal sufficient in indictment.	241	189
words and language of, how construed.	241	190
statute definition of offense need not be followed, but words of same meaning sufficient.	241	191
tests of sufficiency prescribed.	242	192
defects disregarded, which do not prejudice substantial rights.	242	193
presumptions of law and matters of judicial notice need not be stated.	242	194
judgment of special jurisdiction, how averred.	242	195
how private statute or right derived therefrom may be pleaded.	243	196
what need be stated in indictments for libel.	243	197
when misdescription of instrument subject of indictment for forgery, immaterial	243	198
sufficiency of allegation in indictment for perjury.	243	199
of arraignment of defendant.	247	
plea of guilty may be entered, proceedings on such entry standing mute, same as plea of not guilty.	247	218
true name of defendant may be substituted in indictment if mistake of charging proper offense, defendant may be held.	248	219
conviction or acquittal, when a plea in bar to other prosecution.	248	221
in arrest of judgment when defendant may be held to answer new indictment.	253	248
conviction or acquittal, when a plea in bar to other prosecution.	253	251
in arrest of judgment when defendant may be held to answer new indictment.	255	264
for error in quashing indictment, Territory may sue out writ of error.	261	290
on reversal of judgment because defectively charged, de-		

PLEADING—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
fendant remanded for trial on new indictment.....	262	301
of benefit of clergy abolished.....	266	318
laws and usages regulating, continued in force, except...	266	319
 POISON—		
administering with intent to kill.....	202	24
mingling with food, &c., or putting in spring, &c.....	202	25
selling without label, and English name.....	227	729
prescribing while intoxicated.....	227	730
 POLL TAX—		
assessed on every male inhabitant between twenty-one and fifty years.....	177	5
 POLYGAMY—		
crime defined and punishment.....	226	122
 POOR—		
superintendence of, vested in county commissioners.....	307	19
 POSTPONEMENT—SEE ADJOURNMENT, CONTINUANCE.		
 POSSESSION—SEE OCCUPATION AND USE, PROPERTY.		
of real and personal property, action for recovery, limita- tion.....	8	
of property, action for venue.....	12	48
of property distrained, doing damages, action for, suffi- ciency of answer.....	25	99
of property, joinder of action.....	26	100
in actions for, concealment of property, ground of arrest.	29	
of personal property, claim to recover.....	35	
of personal property, action to recover, judgment.....	75	306
execution for delivery of personal property, in actions for claim to, for property levied on or attached.....	82	
of property, in garnishee, proceedings.....	91, 102	
of personal property levied upon, debtor may retain.....	92	354
of real property, action to recover.....	128	
of real property, action by tenant in dower.....	131, 132	
of real property, partition by parties holding.....	133	
tenant in, actions of waste against.....	143	
party enjoying, liable for taxes.....	178	179
forcible taking or keeping of house, forcible entry and de- tainer, punishment.....	212	63

	<i>Page.</i>	<i>Sec.</i>
POWER OF ATTORNEY—		
married woman may make, for sale or incumbrance of separate estate, requisites.....	322	
PRACTICE—SEE CODE OF CIVIL AND CRIMINAL PROCEDURE.		
PRAIRIE—		
setting fire to, or neglecting to stop fire, penalty.....	213	68
PRECINCT—		
attempting to vote in more than one, penalty.....	221	98
two county commissioners from one, not to serve.....	303	2
establishment of, by commissioners.....	306	18
PRESENTMENT—		
by grand jury, what deemed and disposition of.....	239	179
PRESUMPTIONS—		
of law, not to be stated in indictments.....	242	194
in actions by supervisor for delinquent road tax.....	278	34
PRIEST—SEE CLERGYMAN.		
in civil actions not to testify as to confessions, without consent of party making.....	104	387
in criminal cases, not protected from testifying as to con- fessions.....	249	226
PRINCIPALS—SEE ACCESSARIES, PRINCIPALS AND SURETIES.		
and accessory before fact, distinction abolished.....	229	134
first and second degrees abolished.....	229	134
who shall be tried and punished as.....	229	134
harboring of, party becomes accessory after fact, when...	229	135
before trial of, accessory after fact may be tried.....	229	136
PRINCIPAL AND SURETIES—SEE ACTION, BAIL.		
action of sureties against.....	150	
when surety may require creditor or obligee to commence action against, or be released.....	150	
property of, to be exhausted before levy upon surety's...	151	
judgment against, to be for use of surety, if latter com- pelled to pay.....	151	
entering as defendant and securing surety, no surety to confess judgment or suffer default....	151	590

PRISON—SEE JAIL, PRISONER.	<i>Page.</i>	<i>Sec.</i>
conveyance into, of tool, disguise, &c., to aid escape of prisoner	217	81
grand jury to inquire into condition of.....	237	167
when none, court may name place of confinement of pris- oners.....	258	280
 PRISONER—SEE ARREST, BAIL, JAIL, PRISON.		
actions against officer for escapes, limitation.....	9	
terms of imprisonment, not included in limitation.....	11	38
evidence of, how and when can be taken.....	106	396
production of, to answer for contempt.....	169	671
indicted or charged with crimes, right to bail and trial..	199	
escape or rescue of, penalties for officers and parties suffer- ing or causing.....	217, 218	
oppressions or inhumanity to, by officer.....	218	86
judgments and executions against.....	256	
maintenance, transportation and costs of, by whom paid and allowance for.....	264, 265, 419, 420	
acquitted by verdict or discharged without prosecution, liable only for witnesses subpoenaed by himself.....	265	315
 PRIVATE PROSECUTOR—SEE COMPLAINANT.		
endorsement of, on back of indictment.....	239	174
 PRIVATE STATUTES—		
and right derived therefrom, how pleaded.....	25,	243
 PROBATE COURT AND PROBATE JUDGE—		
duty of, in settlement of estates without administra- tion.....	299,	302
fees of.....	366	
salary of, in Walla Walla county, in lieu of fees.....	367	
 PROCESS—SEE NOTICE, EXECUTION, SERVICE, SUBPENA.		
abuse, or unlawful interference with, contempt.....	167,	168
issuing from district court, to whom directed... ..	172,	686
of service of, qualification of officer, sufficiency of return..	172,	173
obstruction of service of legal, or refusing to assist officer	218	84
officer corruptly refusing to serve, penalty	218	85
criminal and final, requisites of, and who must execute... ..	244	202

	<i>Page.</i>	<i>Sec.</i>
PROCLAMATION—		
to be made by sheriff, on sale of real estate.....	94	359
of Governor, as to voting on call of a constitutional convention.....	355	5
PRODUCTION OF PAPERS—		
subpœna for, authorized.....	105	389
examination of adverse party by way of discovery.....	107	
may be compelled, on motion of adverse party.....	115	424
PROHIBITION—SEE MANDATE AND PROHIBITION.		
actions stayed by, not included in limitation.....	11	41
PROMISE—		
to continue a contract, after expiration of limitation, to be in writing.....	12	45
PROMISSORY NOTES—SEE BILLS OF EXCHANGE.		
actions upon by assignee, when subject to defense as against original party.....	4,	121
parties severally liable upon, all or any may be sued.....	6	16
limitation of action upon.....	8	27
limitation commences from time of last payment.....	12	46
set-off, when and how pleaded.....	121	
of costs, where plaintiff brings several actions upon the same.....	123	461
personal property, for purposes of taxation.....	176	3
personal goods, of which larceny may be committed.....	208	49
receipt of, under false pretenses, punishment.....	209	57
forgery or counterfeiting of, punishment.....	211	60
extortion of, under color of office for illegal fees.....	219	92
protest of, by notaries public.....	375	2
PROOF—SEE FAILURE, SERVICE, VARIANCE.		
PROPERTY—SEE ATTACHMENT, EXECUTOR, EXEMPTION, LAND, PARTITION, REAL ESTATE, REDEMPTION, SALE, TRESPASS, WASTE.		
separate, or common, of husband and wife, joinder in actions concerning.....	4	
substitution of new party by defendant delivering.....	7	22
defense in actions to recover distrained, doing damage...	25	
injuries to, joinder of actions.....	25	100
concealment or destruction of, ground for arrest of defend-		

PROPERTY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
ant in actions concerning.....	29	
claim to recover possession of personal.....	35 to 38	
threatened removal or disposition of, may be restrained..	38	152
disposition or concealment of, ground for attachment....	42	
how attached, and claims of parties to.....	43 to 47	
receivers appointed in regard to, when, and deposit of, or delivery ordered.....	48, 49	
verdict, in actions regarding.....	59	
judgment on failure to answer in actions concerning....	71	
when plaintiff in actions where service by publication must bind himself to restore, sold under execution....	72	291
entry of judgments in actions to recover possession of per- sonal.....	75	
revival of judgments concerning undelivered.....	80	
of the execution to enforce delivery of, and what may be taken to satisfy judgments.....	81, 82, 83	
exempt from attachment and execution.....	85	
claim to, levied upon or attached.....	89	
sales of, under execution, and proceedings supplementary to execution.....	91 to 101	
title of, sold on execution not affected by reversal of judg- ment.....	120	
obstructing enjoyment of, a nuisance for which action lies, (<i>see nuisance</i>).....	144	
in actions on foreclosure of mortgage, when mortgagee confined to mortgaged....	146, 148	
party taking, out of Territory, when arrested on <i>ne exeat</i> .	149	
forfeiture of, to Territory or county, venue of actions....	154	
of public corporations, injury to, suit for.....	154	
of corporation, receivers appointed to distribute upon dis- solution, in information.....	164	
liability of executor in his own wrong for taking.....	166	
held jointly, lien against interest of defendant.....	174	
what, subject to taxation, and what exempt.....	176, 177	
where to be assessed, and who liable to taxation upon....	178	179
manner of making assessment.....	180	
levy of taxes upon, collection, sale of, redemption, &c., (<i>see</i> <i>taxes</i>).....	183 to 194	
offenses against.....	206	
conversion of estray, to own use, penalty....	222	106
taken feloniously in one county, brought to another, juris-		

INDEX.

793

PROPERTY—(Continued.)	Page.	Sec.
diction	230	140
averment as to, or title to, in indictments.....	231	141
search warrants for stolen, &c.....	232	
assessment of road labor based on valuation of.....	274, 275	
levy and sale of, for road taxes.....	275	
no property exempt for road tax.....	279	34
disposition of, in estates settled without administration	299,	301
county, under control of county commissioners.....	305	
of husband and wife, (<i>see husband and wife</i>).....	318	
right to hold by corporations.....	321	341
distribution of, on dissolution of corporation.....	338	
private, right to appropriate by corporations for corporate uses.....	343	
party owning, on each side of vacated street or alley to be- come owners of land vacated.....	410	
 <i>Personal—</i>		
limitation of action for detention, injury, &c., of.....	8	28
actions regarding, where to be commenced.....	12	48
joinder of claims to recover.....	26	100
in actions to recover, proof of right of possession suffi- cient.....	27	106
in actions for, concealment ground of arrest.....	29	114
claim to recover personal.....	35	
attachment of, when and how made.....	41	
verdict in actions for specific... ..	59	
judgment on failure to answer, in actions regarding... ..	71	
all, liable to execution, except exempt by law.....	84	329
exempt from attachment and execution.....	87, 88	
until levy, no lien upon.....	91	351
sale of, on execution.....	92, 93, 94	
may be retained by debtor till day of sale, how.....	92	354
liens upon, foreclosure of.....	147	572
owned jointly, interest of defendant may be sold.....	174	694
what included in, for purposes of taxation	176	3
what exempt from taxation	177	4
when and who shall be assessed for, (<i>see property, taxes</i>)	178, 179	
 <i>Real—see real estate.</i>		
limitation of action to recover, and for rents and profits of	8	
action regarding, venue of.....	12	48
claims to recover, joinder of causes of action.....	26	100

PROPERTY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
manner of attaching.....	43	
view of, may be ordered.....	56	229
judgment on failure to answer in actions affecting.....	71	
lien upon of judgments, and revival.....	78	79
execution in actions affecting.....	81, 82, 83	
sale of, on execution and redemption.....	96 to 100	
partition of, (<i>see partition</i>).....	133	
what included in, for taxing purposes.....	176	2
what exempt from taxation.....	174	4
assessment, taxing, &c., (<i>see taxes</i>).....		
 PROSECUTING ATTORNEY—SEE ATTORNEY.		
actions in behalf of Territory, limitation.....	9	31
filing of information by, in what cases.....	162	
duty of, in judgments against corporations.....	164	653
in informations filed by, not liable for costs.....	164	655
information may be filed on the relation of, annulling let- ters patent.....	164	
to prosecute contempts.....	169	672
duty of, in requisitions for fugitives from justice.....	233, 234	
may examine witnesses before grand jury.....	237	165
authorized to present complaints to grand jury.....	237	166
may enter <i>nolle prosequi</i> on leave of court.....	246	216
right of peremptory challenge.....	251	
may consent to trial by court, except.....	252	240
may consent to jury separating.....	252	244
for what cause, entitled to writ of error.....	261	290
of appeals by, and service of writ of error upon.....	261	
transcript of record, in suits of error by.....	261	291
notice to be given, before granting of <i>supersedeas</i>	262	
duty in forfeitures of recognizance.....	265	
 PROSECUTOR—SEE COMPLAINANT, PRIVATE PROSECUTOR.		
in burglary, robbery and larceny, court may allow recom- pense for recovery of property.....	209	
 PROSECUTIONS—SEE ACTIONS CRIMINAL.		
<i>malicious</i> , recovery of damages, when to be the measure of costs.....	125	460
conspiracy to institute, without cause, punishment.....	220	94
 PROTEST—		
of bill of exchange and promissory notes.....	375	2

INDEX.

795

PROVISIONS—SEE MEAT AND DRINK, MAINTENANCE.	<i>Page.</i>	<i>Sec.</i>
mingling poison with, punishment.....	202	25
selling diseased, corrupted or unwholesome.....	227	129
 PUBLIC—		
<i>buildings</i> , setting fire to, arson.....	206	42
<i>bridge</i> , setting fire to, arson.....		<i>ibid</i>
<i>corporations</i> , actions by and against.....	154	
<i>corporations</i> , property of exempt from taxation.....	177	
<i>corporations</i> , compensations by, for land appropriated...	350	
<i>health</i> , offenses against.....	227	
<i>highway</i> , injury to, penalty (<i>see highway</i>).....	220	107
<i>indecenty</i> , punishment.....	226	123
<i>justice</i> , offenses against.....	215	
<i>libraries</i> , exempt from taxation.....	177	
<i>nuisance</i> , maintenance of, penalty.....	220	93
<i>officers</i> , actions by and against.....	154	
<i>officers</i> , offenses by and against.....	215	
<i>peace</i> , offenses against.....	214	
<i>policy</i> , offenses against.....	220	
 PUBLICATION—SEE COMMENCEMENT OF ACTIONS.		
fee for, payable in advance.....	373	14
 PUGET SOUND—		
quarantine regulations established for collection district of.....		394
 PUNISHMENT—SEE CRIMES, FINES, MISDEMEANORS, OFFENSE.		
conviction to precede.....	199	6
general provisions relative to.....	230	
by judgment for fines and costs.....	257, 258	
of imprisonment in jail or penitentiary.....	258	
of death, how inflicted.....	259	
if mitigated by present act, defendant to have benefit....	266	319
 PURCHASE MONEY—		
in action for recovery of, who may be made party, and or- der of court as to performance of contract.....	6	19
 PURCHASER—		
of homestead, when lien against vendor shall not bind property.....	87	342

Q-

*QUALIFICATION—		<i>Page.</i>	<i>Sec.</i>
of bail, in arrest.....	33		
of jurors.....	51, 52, 53		
of referees.....	61		
of officer appointed for special service.....	172	687	
performing duties of office previous to, penalty.....	219		
QUARANTINE—			
act in relation to.....	394		
board of health and health officer provided for Puget Sound collection district.....	394	395	
qualification, residence, duty of health officer.....	395		
what vessels may be required to perform.....	395		
board of health may seize goods from infected vessel, pu- rification.....	395		
penalty for failing to obey orders of board of health....	396	4	
sick person may be sent upon shore.....	396	5	
penalty for sick person disobeying health officer.....	396	6	
penalty for person going aboard vessel, or to place desig- nated for sick.....	396	7	
flags to be procured, purpose of and what to be.....	396, 397		
penalty for vessel coming near to wharf or reporting falsely as to port, or loading passengers or freight without per- mission	397	9	
penalty for vessel not going to ground designated by health officer.....	397	10	
duties of vessels to report to health officer, what.....	398	11	
a pest-house to be procured by board.....	398	12	
notice of regulations to be published.....	398	13	
compensation of health officer, how paid and disposition of fines.....	398, 399		
QUARTERMASTER GENERAL—			
act fixing compensation of.....	421		

INDEX.

797

QUARTZ MINING CLAIMS—	<i>Page.</i>	<i>Sec.</i>
extent of, defined, and discovery	386	•
duty of party taking, and record of.	386, 387	
book of, to be kept by county auditor.	387	4
to do \$100 worth of work, affidavit of.	387	5
companies holding, will not forfeit if work done on any equal to what is due on the number.	387	6
may pay into treasury \$100 in lieu of work.	387	6
sales to be valid must be recorded.	387	7
QUORUM—		
of county commissioners.	303	1
of joint conventions of Legislative Assembly.	327	3
R.		
RAILROAD—SEE CORPORATIONS, ROADS.		
corporations, assessment of property and taxation of private.	179	12
corporations, to enter upon private land and appropriation for purposes of.	343	
corporation for construction, common carriers and powers of.	347	
RAPE—		
homicide in attempting to perpetrate, murder.	200	12
assault with intent to commit, punishment.	203	28
definition of crime, punishment.	204	35
with female under 12 years of age, carnal knowledge with or without consent, and proof.		<i>ibid</i>
REAL ESTATE—SEE LANDS, PROPERTY, REAL.		
actions affecting, and for rents and profits of, limitation.	8	
controversy affecting title, cannot be arbitrated.	64	266
lien of judgments upon, how acquired, revival, &c.	78	
of married woman, exempt from husband's liabilities.	85	377
exempted as a homestead (<i>see homestead</i>).	86	
sales of, under execution (<i>see execution, sales</i>).	91	

REAL ESTATE—(<i>Continued.</i>)	Page.	Sec.
redemption of, sold upon execution (<i>see redemption</i>)	97	
deposition relating to, may be taken to perpetuate testimony	113	
conveyance of, by commissioners, when may be appointed and procedure	127	
owned jointly by debtor and other person, execution against interest in	174	694
how judgment of justice of peace may become a lien upon taxation of, (<i>see property, taxes</i>)	175	695
rights of heirs-at-law in, saved in the settlement of estates without administration	301	
conveyance of, belonging to a county	305	12
recording and satisfaction of conveyance, liens, encumbrances, &c., by county auditor	314	315
separate and common, of husband and wife	319	
<i>Actions to recover and affecting—</i>		
who may maintain, and parties to	128	488
defendant may have landlord substituted, how	128	489
of making the landlord a defendant at his application, or on motion of plaintiff		<i>ibid</i>
complaint, what shall be set forth		<i>ib.</i> 490
of the answer		<i>ib.</i> 491
findings of jury by verdict		<i>ib.</i> 492
damages, limitation of	129,	130
adverse party may be allowed to enter upon for survey . .	130	
alienation after commencement, does not affect rights of parties, but purchaser may be liable for damages, when mortgagee must first proceed by foreclosure	130	498
plaintiff must show a denial of his rights by defendant . .	130	499
brought by landlord against tenant, equivalent to demand for rent and re-entry	131	500
judgments in, upon whom conclusive	131	501
possession taken under judgment, how affected by new trial	131	502
admeasurement of dower, after judgment	131,	132
in adverse claims under donation law, eldest patent conclusive	132	504
partition of, (<i>see partition of real estate</i>)	133	
for waste and trespass upon	143	
for nuisance	144	
foreclosure of mortgage	145	

RECEIPT—

	<i>Page.</i>	<i>Sec.</i>
of taxes, to be given by collector.	187	
personal goods, of which larceny may be committed.	208	49
obtaining of, by false pretenses.	209	57
of property, fraudulent making or altering.	210	59
forgery or counterfeiting of.	211	60
by road supervisor, penalty for false.	279	
officers, to give of fees, when requested.	374	

RECEIVERS—

In civil actions—

when may be appointed.	48	196
no attorney or party interested can be appointed.	48	197
oath and bond of.	48	198
powers of.	49	202
appointment of, in settling judgments against corporations dissolved.	164	653

RECEIVING STOLEN PROPERTY—

knowingly, punishment.	208	52
in prosecutions for, conviction of thief immaterial.	209	53
owner of, not divested of rights, and entitled to restitution.	209	54
search warrant, issue of.	232	

RECOGNIZANCE—SEE ACTIONS CRIMINAL. BALL, BOND.

RECORDER—SEE AUDITOR, COUNTY.

RECORDS—SEE EVIDENCE, BOOKS, DOCUMENTS.

officer controlling, served with subpoena to produce.	105	390
general provisions regarding use as evidence.	114	
of proceeding of court, authentication of, as evidence.	115	426
of deeds, conveyance, &c., of land, copies how certified.	115	427
of officers in Oregon and Washington, how certified.	115	428
seal to, sufficiency of.	116	431
public, of county, to be examined by grand jury.	237	167
final, of criminal prosecutions to be made by clerk, &c.	259	286
of county auditor, to be delivered to successor in office.	314	22
of notary public, to be deposited with county auditor.	376	4

RECOMPENSE—

to be ordered to officer for recovery of stolen property.	209	
---	-----	--

REDEMPTION—SEE EXECUTION, REAL PROPERTY.	<i>Page.</i>	<i>Sec.</i>
equity of, foreclosed in suit on mortgage.....	146,	147
<i>Of property sold on execution—</i>		
parties entitled to, term of, and order of priority.....	97,	98
mode of proceeding in.....	99	
in claims by two or more, order of priority to be respected	99	372
sheriff refusing to allow, may be compelled... ..	99	372
waste may be restrained during time allowed for.....	190	373
who allowed possession, during time for.....	100	374
<i>Of property sold for taxes—</i>		
who entitled to, terms of.....	192	
minor heirs without guardian at time of sale may, within one year after majority.....	192	
who are privileged.....	192	
REDEMPTIONER—SEE REDEMPTION.		
REFEREES—		
issues in action may be tried by, when.....	61	252
when court will direct a trial by.....	61	253
appointment, qualification and challenge of.....	61	
powers of, and trial by... ..	62	
report of, judgment upon, or motion to set aside.....	62,	63
exception to report of.....	63,	64
compensation of, taxed as costs, &c.....	124	
to admeasure dower in real actions.....	132	
in partition proceedings, (<i>see partition</i>).....	134	
bribery of, or acceptance of bribe by.....	216,	217
REGISTRY OF COUNTY ORDERS—		
act enabling county auditors to supply lost.....	411	
RELIGIOUS MEETING—		
disturbance of, penalty.....	214	72
RENTS AND PROFITS—		
limitation of actions for.....	8	27
endangered, receiver appointed.....	48,	49
on wife's separate estate, exempt from husband's liabilities	86	337
action for (<i>see real estate</i>).....		
REPLY—SEE PLEADING.		

REPRESENTATIVES AND SUCCESSORS IN INTEREST—

SEE HEIRS, LEGATEES AND DEVISEES.

	<i>Page.</i>	<i>Sec.</i>
continuance of actions by or against, on death or disability of original parties	6	17
survivorship of actions to, limitation	11	39
commencement of new action by, or reversal of judgment right to come in and defend, where service by publication	11	42
restitution to, on opening judgments on failure to answer where service by publication	17	65
right of, to resist revival of judgment against original . . .	72	291
property in hands of, taken to satisfy judgment	80	
objections by, to confirmation of sale of land sold on execution	82	
right of, to redeem property sold on execution	95, 96	
in actions conducted by party to record, not to testify in behalf of self	97	
entitled to use of deposition taken to perpetrate testimony of pleading of set-off by and against	103	
costs, liability to, in actions	114	423
of defendant in real action served by publication, to have judgment vacated	122	
decree in partition binding upon what	125	
shall not confess judgment or suffer default, when	131	
actions by for, death, limitation of time and damages	135	152
survivorship of actions to and against	165	658
property held by, how assessed	165	659
redemption by, for property sold for taxes	181	
rights of, to settle estates without administration	192	
	298	

REPRIEVE AND RESPITE—

power of Governor to grant	265	312
--------------------------------------	-----	-----

REQUISITION FOR FUGITIVES FROM JUSTICE—

Governor may make, procedure	233, 234
--	----------

RESCUE—SEE ARREST, ESCAPE, OFFICER.

RESTITUTION—

in judgments upon failure to answer when service by publication, plaintiff may be ordered to file security for, of property sold on execution	71
on reversal of judgment by supreme court, plaintiff may have action for, of property sold on execution	120

	<i>Page.</i>	<i>Sec.</i>
RESTITUTION—(<i>Continued.</i>)		
to defendant on new trial in real actions.....	131	
of stolen property to owner.....	209, 233	
RESTRAINING ORDER—SEE INJUNCTIONS.		
RETURN—SEE JUDGMENT, NOTICE, PROCESS, SERVICE.		
REVENUE—SEE TAXES.		
act to provide for assessment and collection of county and Territorial.....	176, 358	
REVERSIONER—		
in actions of waste, when entitled to judgment of eviction of tenant.....	143	555
REVERSAL—SEE JUDGMENT.		
RIOT AND RIOTOUS ASSEMBLIES—		
what deemed, and penalties.....	214	
duties, powers and immunities of peace officers concerning	214	
homicide by officer in dispersing, justifiable.....	214	
RIVERS—		
discharging ballast into, penalty.....	223	108
obstruction of navigation of, penalty.....	223	109
ROADS—		
obstruction of, or injury to material.....	222	107
neglect of, by road supervisor, penalty.....	223	111
county, under supervision of county commissioners, except in incorporated towns.....	266	1
not opened for four years, vacated.....	280	37
all Territorial, declared county.....	280	38
law of travel on, "turn to right," penalty for violating..	288	
bridges on public, (<i>see bridges</i>).....	289	
<i>Public or county—</i>		
establishment of, altering and vacating.....	267	1
petitions for laying out, altering or locating.....	267	2
notice of application, requisites.....	267	3
viewers and surveyor appointed, duties of.....	267, 268, 269	
oaths necessary, by whom administered.....	269	6
county, not to be surveyed, unless.....	269	6
damages on account of location of, how ascertained and by whom paid.....	269	270

ROADS—(Continued.)	Page.	Sec.
appeals from assessment of damages.....	270	9
width of, to be sixty feet, unless.....	271	10
review of, for purposes of straightening.....	271	11
change of line, through petitioner's premises.....	271	12
penalty for neglect by viewers.....	272	13
petitioners for, may be ordered to give bond.....	272	14
<i>Private way—</i>		
applications for and location of.....	272	15
viewers to determine whether gates necessary, and amount of damages.....	273	
damages for location of, and appeals.....	273	17
<i>Districts—</i>		
county commissioners to establish, when.....	273	18
brief description of, to be recorded in county books.....		<i>ibid</i>
each district to have supervisor.....	273	19
<i>Supervisors—</i>		
nonfeasances of office, penalty.....	223	111
appointment, oath of office, &c.....	273, 274	
petitioners for roads to perform labor or pay money, what to make list of persons liable to road labor.....	274	20 21
estimate and assessment of, what shall contain.....	274	22
omissions in estimate may be supplied.....	275	23
to notify person to perform labor, and liability of delin- quents.....	275	24
additional penalty imposed on delinquents.....	276	25
hours of labor, tools, &c.....	276	26
actions by, for delinquent tax.....	276	27
to open and keep in repair all public roads.....	277	28
authority of, to enter lands, take materials, dig drains, &c		<i>ibid</i>
penalty for parties obstructing.....		<i>ibid</i>
suits decided adversely to, to be credited in settlement of accounts of.....		<i>ibid</i>
parties aggrieved at acts of, appeal.....	277	29
to erect guide boards, &c., at forks of roads.....	278	30
to cause obstructions to be removed, bridges repaired, notice to persons to perform labor.....	278	31
to give certificate to parties for extra labor.....	278	32
accounts of, and settlements.....	278	33
in actions by, against delinquents, presumption.....	278	34
no property exempt for delinquent road tax.....	279	34

ROADS—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
neglect of duty, or false receipts or certificates, penalty..	279	35
compensation of.....	279	36
<i>Leased for tolls—</i>		
where little local labor, may be leased.....	285	54
order of commissioners for, notice, bids, &c.....	285	
contract for, bonds, sureties, &c.....	285, 286	
to be cleared of timber, bridged or ferries when necessary	286	
toll, when collectable, number of gates, &c.....	286	
rates of, specified in lease, penalty for taking any other..	286	61
deemed a highway, parties exempt from toll.....	287	62
county commissioners may cancel or modify lease, and forfeiture of.....	287	63
upon what chargeable and writ of, prescribed.....	287	
what shall be specified in order for, and in bids.....	288	66
powers of commissioners in considering bids.....	288	
<i>By corporations—see corporations.</i>		
rail, macademized, plank or clay, built by, authority to enter land for what purposes.....	343	1
appropriation of lands for, and general rights of.....	343, 344	
except railroads, must be cleared, &c., width.....	344	7
streams to be bridged or ferries established.....	345	
when to become a highway.....	345	9
of collection of tolls upon.....	345, 346	
account of expenses, tolls, &c., to be kept.....	347	
may be purchased by county, when.....	347, 348	
ROAD TAXES—SEE ROAD SUPERVISOR.		
assessment of, in labor and commutation.....	274	275
expenditure of, and collection of delinquent.....	275, 276, 277	
extra assessment of.....	278	
ROBBERY—		
homicide in attempt to commit, murder.....	200	11
assault with intent to commit, punishment.....	203	28
crime defined, punishment.....	204	36
property obtained by, to be restored, duty of officer in making arrests and orders of court regarding.....	209	
property taken in one county, carried to another, juris- diction.....	230	140
search warrant for property....	232	

S.

SALARY—SEE COMPENSATION, FEES.	Page.	Sec.
of probate judge in Walla Walla county.....	367	
of quartermaster general.....	422	
SALE—		
of perishable property attached.....	45	
of property under attachment and proceeds.....	46	
in partition, proceedings by referees, (<i>see partition of real property</i>).....	136 to 142	
made by executor or administrator at less than price inventoried....	166	662
of personal property for delinquent taxes.....	187, 188	
of real property for delinquent taxes.....	191, 192, 193	
of land for taxes, void if taxes paid prior to.....	195	74
of stolen property, void.....	209	54
of obscene prints, pictures, &c., penalty.....	226	124
of unwholesome, diseased or corrupted provisions....	227	128
by druggist or apothecary, of poison, except.....	227	129
of liquor to minors or Indians, penalties.....	228	
of estates of decedents settled without administration.		
for education of children.....	301	
of real estate of county, by county commissioners.....	305	12
of separate estate of wife.....	319, 320, 322	
of salmon without branding, penalty.....	352	
of government buildings at Fort Steilacoom.....	357	
of hogs committing trespass in certain counties.....	362, 363	
of quartz mining claims, validity of transfers.....	387	
of logs, by other than the Bangor scale, penalty.....	393	
of game in certain months of year, prohibited.....	399	
<i>Of property under execution—</i>		
how made, general rule and of property of garnishee....	91, 92	
notice to be given, requisites prescribed.....	93	355
shall be by auction, mode of conducting.....	93, 94	
of personal property, delivery of.....	94	
of real property, method.....	94, 95	

<i>SALE—(Continued.)</i>	<i>Page.</i>	<i>Sec.</i>
of real property, confirmation of.....	95,	96
when absolute and what subject to redemption.....	97	
of real estate, sheriff's deed.....	100	
under order of sale or decree in foreclosure.....	146, 147, 148	
of interest of debtor, held jointly with another.....	174	694
on judgments payable in specie of contract.....	416, 417	
 SALMON—		
act to regulate inspecting and branding.....	332	
 SATISFACTION—		
entry of, by clerks of courts and county auditors.....	77	
acknowledgment of, by prosecutor, when a stay of proceedings on indictment.....	246	215
manner of entry by county auditor prescribed.....	315, 316	
 SAW LOGS—SEE LOGS, LUMBER, SURVEYOR GENERAL OF LOGS.		
act creating office of surveyor general of, and providing for measurement of.....	391	
 SCHOOLS—SEE COMMON SCHOOLS.		
property, real and personal, exempt from taxes.....	177	
officers, to make complaint of violations of law relating to land, leasing of, by county commissioners.....	401, 402	311
act securing education to orphans, duties of directors, clerks, &c., prescribed.....	406, 407	
 SEAL—		
of courts or officers, to be attached to records, to be used in evidence.....	115	
sufficiency of.....	116	
of notary public, approval of by Governor.....	376	3
of notary public, need not be appended to certain papers used in this Territory.....	376	4
 SEALER OF WEIGHTS AND MEASURES—		
county auditors, made for respective counties.....	353	1
duty of, and standard prescribed.....	353	2
to keep standard in office and file certificates, where.....	353	3
to certify beams, weights and measures, when, and penalty of party using without sealing.....	353	4
fees of office.....	353	5

SEARCH WARRANT—		<i>Page.</i>	<i>Sec.</i>
in what cases may be issued, complaint for.....	232		348
to seize counterfeit coin, or tools for making.....	232		349
to seize gaming apparatus.....	232		349
to whom directed, and duty under writ.....	232,	233	
disposition of property seized.....	233		151
SECRETARY OF TERRITORY—			
attested copies of records, used in evidence.....		115	
distribution of laws and journals by.....	316		317
settlement of expenses attending distribution.....		318	
certificate of articles of incorporation <i>prima facie</i> evidence	331		1
fees of.....		372	
SECURITY—SEE BOND, COSTS.			
SEDUCTION—			
who may maintain actions for damages for.....		4, 5	
limitation of actions for.....		9	29
crime defined, punishment.....	225		119
subsequent intermarriage bar to prosecution.....			<i>ibid</i>
SEMINARIES—			
incorporations of.....	341,		342
authority of, to confer degrees.....		342	3
SENTENCE—			
of party adjudged to pay a fine.....		257	
of imprisonment in jail or penitentiary.....		358	
of death.....		259	
SERVICE—			
<i>In civil actions—</i>			
of complaint on a co-defendant or defendant a commence-			
ment of suit.....	10		35
delivery of complaint and notice to sheriff for, equivalent			
thereto.....	10		36
of complaint and notice.....		15	59
by whom shall be made.....		16	61
manner of.....		16	62
by publication, and mode thereof.....		16	
personal, out of Territory equivalent to publication.....		17	64
against defendants jointly liable.....		18	67
proof of.....		19	68

SERVICE—(Continued.)	Page.	Sec.
completion of, gives court control of case.....	19	69
voluntary appearance equivalent to.....	19	70
of amended complaint.....	20	78
of warrant of arrest in civil actions.....	31	
on defendant in claims for personal property.....	36	142
of injunction or restraining order.....	39	159
of writ of attachment.....	43	177
of award of arbitrators on losing party.....	65	268
proof of, to be made before entry of judgment on failure to answer.....	71	291
of notice on judgment debtor for revival of judgment....	80	320
of subpoena for witnesses.....	105	391
of interrogatories in examination of adverse party.....	107	400
of notice to take deposition of witness in Territory.....	108	405
of notice to take deposition of witness out of Territory.	111	415
of notice in proceedings to perpetuate testimony.....	113	420
of writ of error.....	116	433
of notice in suits of partition.....	134	509
of notice upon lien creditors in suits of partition.....	136	522
of writs of <i>ne exeat</i>	149	577
of writs of <i>habeas corpus</i>	156	
of writ of <i>habeas corpus</i> may be on Sunday.....	159	626
on one of several co-administrators or co-executors good against all.....	165	660
of warrant for contempt.....	169	
personal, required to entitle a foreign judgment to more consideration than original demand.....	171	
of all process, to be by sheriff.....	172	686
exceptional cases to foregoing.....	172	687
when made by officer, return sufficient proof.....	173	688
when by other person, affidavit requisite.....	173	688
<i>In criminal actions—</i>		
obstruction of, or refusal to assist in, penalty.....	218	84
officer refusing to make due, penalty.....	218	85
of search warrant.....	232,	233
of warrant of Governor giving up fugitives.....		
of criminal and final process.....	244	245
of notice of writ of error on prosecuting attorney.....	261	
SET-OFF—SEE COUNTER CLAIM.		
issue of fact arising upon.....	50	206
verdict for defendant, when beyond plaintiff's claim.....	60	248

INDEX.

809

SET-OFF—(Continued.)	Page.	Sec.
judgment, where pleaded.....	74,	122
what may be pleaded in.....	121	449
when plaintiff sues for a beneficiary, what may be.....	121	450
in actions by and against executors and other representa- tives	122	
must be set forth in answer.....		
in real actions, value of permanent improvements, when may be allowed against damages.....	129	493
 SEX—SEE GENDER.		
 SHAKES—SEE CLAPBOARDS AND SHAKES.		
 SHEEP—		
driven through Territory, liable to taxation.....	193	66
altering brand to destroy identification.....	208	51
toll upon leased roads.....	287	
penalty for bringing infected, into Territory	377	
 SHERIFF—SEE ARREST, BAIL, OFFICER, SERVICE.		
action against, limitations of.....	9	
to serve notice in commencement of actions, except.....	16	
return of, competent proof of service.....	19	68
arrest in civil actions, fees of, and maintenance of prisoner	31	
duty of, on surrender of defendant by bail....	32	
return of to warrant, bail and qualification of, on excep- tion by plaintiff.....	32,	33
disqualified to become bail in any action.....	33	130
duty of, in deposits by defendant in lieu of bail.....	34	
liability of, for escape of defendant.....	34,	35
duty of, in claims to recover personal property and taking bonds for delivering or retention.....	35,	36
if property concealed, may break into inclosure.....	37	147
duty of, in keeping property claimed, or when demanded by a third party.....	37	
return of proceedings of, in claims to property.....	38	150
service by, of rule upon party disobeying injunction..	40	
service of writs of attachment, (<i>see attachment</i>).....	43	
sale of perishable property attached.....	45,	46
in summoning bystanders, names of talesmen to be returned to clerk.....	51	
to provide jury with food and lodging, when.....	57,	252
execution directed to, and duties of.....	81, 82, 83,	84

SHERIFF--(Continued.)	Page.	Sec.
penalty for failing to pay over money collected on.....	83	326
claims to property as exempt, jury called by, and trial...	89	
claims to property levied upon or attached, service of af- fidavit, taking of bond, &c.....	89, 90	
made a defendant in action.....	90	349
judgment when against, and when liable for costs.....	90	350
sales of property on execution, (see <i>execution, sale</i>).....	91 to 97	
redemption of property sold on execution, duties of sheriff.....	98, 99, 100	
deed of, for property sold, entry and record of.....	100	375
receipt of, to a debtor of judgment debtor, discharges debt.....	101	377
duty of, under warrant to abate nuisance.....	145	
duty of, under judgment of foreclosure.....	146, 148	
duty of, in <i>ne exeat</i> proceedings.....	149	
compelled to pay a judgment by reason of a default, judgment to remain in force for use of.....	151	
service of writs of <i>habeas corpus</i> by, (see <i>habeas corpus</i>)...	156	
duty of, in warrants for contempt.....	169	
when none, or disqualified, of special officers, &c.....	172	
shall be tax collector, (see <i>taxes</i>).....	185	
power and immunities to disperse riotous assemblies....	214	
obstructing or refusing to aid, in serving process.....	218	84
inhumanity or oppression to prisoners, penalty.....	218	86
purchasing county orders at less than face, penalty.....	223	110
search warrants, and duties of, under.....	232, 233	
duty of, in execution of sentences for fine and imprison- ment.....	258, 259	
execution of death penalty by.....	259	
prisoners in custody of, of county where offense commit- mitted.....	263	308
of conveyance of prisoners by.....	263	309
duty of, to make complaint of violations of law.....	263	311
parties sentenced to jail, to be put to work by.....	307	24
duties of under law to prevent hogs trespassing.....	362, 363	
fees of.....	365, 366	
to keep a fee book.....	372	9
mileage to, how computed.....	373, 374	
of Pierce county, to pay county commissioners of said county, proceeds of labor of Territorial convicts.....	389	
duty of, in arresting parties introducing Texas cattle....	405	

SHERIFF—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
duty of, in enforcing judgments in specie of contract	416, 417	
conveyance of prisoners by, costs of maintenance	419	
for attendance of, upon court, bills allowed, how	420	
 SIGNALS—		
of U. S. coast survey parties, act to prevent injury to	413	
penalty, for injury to	415	6
 SLANDER—SEE LIBEL.		
 SOLITARY CONFINEMENT—		
sentence to, not to exceed twenty days at one time, and precede hard labor penalty	258	279
 SPECIFIC CONTRACT AND SPECIFIC PERFORMANCE—		
in actions for recovery of purchase money, when order for may be made	6	19
judgment to be paid in the kind of money contracted	416	
executions for judgments to be collected in specie of contract	416, 417	
redemptioners to redeem property sold on execution in the specie of judgment	417	
no other money receivable but specie of contract	417	6
 STATE—		
action upon a judgment of any court of, limitation	8	27
records and proceedings of courts of, used as evidence	115	426
statute laws of, when to be received as evidence	116	431
requisition upon, and extradition to, of fugitives from justice	233	
submission to vote, of call of constitutional convention	354	
 STATUTE—SEE LIMITATION.		
action for penalty imposed by, limitation	9	
private, or right derived therefrom, pleading of	25, 243	
of other States or Territories, evidence	116	431
controls offenses cognizable by common law	199	9
words of, defining crime, need not be followed	241	191
 STAY—		
of commencement of actions, by injunction or prohibition not included in time of limitation	11	41
of proceedings by injunction, (<i>see injunction</i>)	39, 40, 41	

STAY—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
of proceedings in suing out writ of error.....	119,	262
<i>Of execution—</i>		
does not affect existing lien of judgment.....	79	319
allowed on judgments.....	84	331
bond for, to be given, conditions of, &c....	85	332
if judgment not satisfied within time of, execution against defendant and surety, when.....	85	333
justification of sureties on bonds.....	85	334
stay for balance of time after issue of execution.....	85	325
bonds required, to be filed where.....	85	336
of warrant to abate nuisance.....	145	561
 STEAMBOAT—SEE BOATS AND VESSELS.		
where to be assessed and taxed	179	12
rearing, death ensuing from explosion of boiler.....	201	19
setting fire to, arson.....	206	42
entry of, with intent to commit felony, punishment.....	207	46
 STOCK—SEE ANIMALS, CATTLE.		
 STOCK RAISERS—		
act for protection of.....	408	
 STOLEN PROPERTY—SEE LARCENY, PROPERTY, SEARCH WARRANT.		
buying, receiving or concealment of, punishment.....	208	52
averments and proofs in prosecutions concerning.....	208	53
conviction of thief before prosecution immaterial.....		<i>ibid</i>
shall be restored to owner, sales of, void.....	<i>ib.</i>	54
duties of officer in regard to, and recompense of.....	209	
search warrants for, and proceedings of officer.....	232,	233
 STORE HOUSE—		
setting fire to, arson.....	206	42
entry of, with intent to commit felony, punishment.....	207	47
property delivered in, false receipts concerning, punish- ment	200	10
 STREAMS—SEE BRIDGES. FERRIES.		
 STREETS—		
appropriation of, for road of private corporation... ..	344	
vacation of, by county or municipal authorities.....	409	

INDEX.

813

SUBPENA—ATTENDANCE. DEPOSITION, EVIDENCE, WIT- NESSES.	<i>Page.</i>	<i>Sec.</i>
at time of service of, witness entitled to payment of what fees	105	388
may require personal attendance, and production of books and papers	<i>ib.</i>	389
how issued, and commands of writ	<i>ib.</i>	390
service of and return	<i>ib.</i>	391
personal presence in court, witness compelled as though served	106	392
failure to obey, contempt, penalties for	<i>ib.</i>	
by officer taking depositions	110	412
disobedience to, contempt	168	667
right of defendant in criminal case to	248	224
SUCCESSOR IN INTEREST—SEE REPRESENTATIVES AND SUCCESSORS IN INTEREST.		
SUICIDE AND SELF-MURDER—		
deliberate assisting party to commit, manslaughter	201	17
SUNDAY—		
writs of <i>habeas corpus</i> may be issued in emergencies	159	626
if last day be, excluded from time for performance of service	172	687
SUPESEDEAS—SEE STAY.		
writ of error operates as, in criminal case, when	262	
SUPERVISOR OF ROADS—SEE ROADS.		
SUPREME COURT—SEE COURT.		
SURETY AND SURETIES—SEE BAIL, BOND, PRINCIPAL AND SURETIES.		
SURRENDER—SEE ARREST, BAIL.		
SURVEYOR GENERAL—		
of Oregon and Washington, records of, used as evidence	115	428
certificates of residence or settlement in, used as evidence	116	429
SURVEYOR GENERAL OF LOGS—SEE LOGS, LUMBER.		
office created, duties of, and qualification	391	
may appoint deputies, qualification of	391	
method of measurement, Bangor scale adopted	392	

SURVEYOR GENERAL OF LOGS—(<i>Continued.</i>)		<i>Page.</i>	<i>Sec.</i>
statement of measure of logs, a public record	392		
quarterly returns to be made of measured	392	7	
compensation of, and deputies	392	8	
deputies to pay to, a per centage for keeping books, records, &c.	393	9	
action by, against parties using unlawful scale	393	10	
vacancy, how filled	394	11	
penalty for false statement of measure	393	12	
to make annual report to Governor	394	13	
SURVIVOR—SEE REPRESENTATIVES.			
guilty of murder in second degree if party killed in duel in interest, right of, to settle estate of deceased without administration	201		
			298
SURVIVORSHIP OF ACTIONS—SEE ABATEMENT, REPRESENTATIVES.			

T.

TAXES—

to be assessed on polls in equal and rateable proportion	176	1
on all property not expressly exempt	176	1
real property and land include what	176	2
personal estate and personal property include what	176	3
property exempt	177	4
poll, assessed upon whom	177	5
property, where and to whom assessed, (<i>see assessment</i>)	177	
manner of making assessment, (<i>see assessment</i>)	180	
<i>Estimate and apportionment of</i> —		
assessment roll, examination and correction of	183	24
for county purposes, Territorial and school tax to be determined by commissioners at May term	183	24
county, not to exceed eight mills	183	25
Territorial and poll, fixed	184	26
Territorial auditor to file statement of Territorial	184	29
county auditor to make transcript of roll with warrant to		

INDEX.

815

TAXES—(Continued.)	Page.	Sec.
sheriff to collect.....	184	30
<i>Collection and return of—</i>		
sheriff to be collector of	185	31
warrant to collect, what to contain, and bond of sheriff as collector.....	185	32
notice to be given to tax payers, what.....	185	33
failing to pay as required by notice, to pay mileage of sheriff, what.....	186	33
moneys collected to be paid over monthly, penalty... ..	186	34
commissions for, and special taxes.....	186	35
county orders receivable for what, and credit for, on set- tlement.....	187	36
county orders not to be received for less than face.....	187	37
receipts to be given tax payers, penalty for false return..	187	38
distress and sale of goods and chattels, on non-payment.	187	39
proceedings on distraint and sale.....	187, 188	
duplicate assessments, collection of.....	188	44
return of delinquent taxes and verification.....	188, 189, 190	
penalty of sheriff failing to pay over moneys collected... ..	190	49
when money is to be remitted to Territorial treasurer ...	190	50
warrant for collection of delinquent taxes.....	190, 191	
real property sold for, certificate of sale	191	56
redemption of realty sold.....	191	57
sale of property for, what it conveys.....	192	58
sale of real property for, certificate.....	192, 193	
personal property about to be removed, when may be sold	193	64
fees of officers for collection of delinquent taxes.....	193	65
upon live stock driven through Territory	193, 194	
rolls, &c., to be delivered to sheriff and charged with amount.....	194	68
<i>Miscellaneous—</i>		
lien creditor may pay, and be secured by lien.....	194	69
paid by tenant, how he may recover.....	195	70
lands sold for, action for recovery of, limitation.....	<i>ib.</i>	71
penalty for sheriff's misfeasance or malfeasance.....	<i>ib.</i>	
sale of land for, void if payment made before sale.....	<i>ib.</i>	74
penalty for officer's refusing to perform duties under tax law	196	76
as between grantor and grantee, who shall pay.....	<i>ib.</i>	78
entries and rolls concerning, <i>prima facie</i> evidence.....	<i>ib.</i>	79

TAXES—(<i>Continued.</i>)		<i>Page.</i>	<i>Sec.</i>
money in which payable.....	197	81	
special laws for levying, not affected.....	<i>ib.</i>	82	
per centage for collection, how settled.....	<i>ib.</i>	83	
levied on real property, a lien till paid.....	<i>ib.</i>	84	
delinquent taxes now due, collected by existing laws....	<i>ib.</i>	85	
TENANT—			
in possession, actions against, for real property.....	128	488	
may have landlord substituted, when and how.....		<i>ibid</i>	
in common, action by, plaintiff must also show denial of right by defendant.....	130	499	
payment of rent by, entitled to a continuance of possess- ion.....	131	500	
in dower, admeasurement of, before possession.....	131, 132		
in common, suit for partition.....	133		
interests of, concluded on decree in partition.....	135		
for life or years, set off on partition or sold.....	138	534	
share of proceeds of sale on partition.....	139, 140,	141	
compensation to, when sold.....	141	549	
action against, for waste.....	143		
by curtesy and dower, rights of, saved in settlement of es- tates without administration.....	301	8	
TENDER—SEE COSTS, DEPOSIT.			
made by defendant, who liable for costs.....	124,	125	
TERMS OF COURT—			
of county commissioners.....	303,	304	
act prescribing, district and supreme.....	329		
TERRITORIAL AUDITOR—SEE AUDITOR, TERRITORIAL.			
TERRITORIAL AND MILITIA OFFICERS—			
joint convention to elect, act regulating.....	327		
TERRITORIAL PENITENTIARY—SEE PENITENTIARY.			
TERRITORIAL ROADS—SEE ROADS.			
TERRITORIAL TREASURER—			
copies of papers certified by, evidence.....	115	428	
to record the statement of Territorial tax.....	184	29	
duty of, to defaulting county treasurers.....	196	77	
penalty for buying Territorial orders at less than face....	223	110	

INDEX.

817

	<i>Page.</i>	<i>Sec.</i>
TERRITORIAL TREASURER—(Continued.)		
entitled to copy of laws.....	317	1
to pay no money from treasury except on warrant.....	408	1
to indorse warrants not paid, how.....	408	2
duty as to cost bills, Territorial convicts and prisoners...	419	
TERRITORIAL WARRANTS OR ORDERS—		
money shall not be paid out of treasury except on.....	408	1
to draw interest if unpaid on presentation.....	408	1
treasurer to endorse, what.....	408	1
TERRITORY—SEE PROSECUTING ATTORNEY.		
action for statutory penalty to, limitation.....	9	
limitation applies to, as a private party.....	10	34
verification of pleadings by.....	23	89
who may confess judgment for.....	72	294
liable for costs as private party.....	126	474
suits on official bonds, fines and forfeitures.....	152	
informations for forfeitures to.....	164	
plaintiff in cases of contempts.....	169	
property of, exempt from taxation.....	177	4
taxes levied by authority of, payable in what money....	197	81
included within the term "person" when intent to defraud or injure is averred, without naming party injured or de- frauded.....	211,	231
first pleading on part of, in prosecution is indictment, form of.....	240	
no continuance granted to, on account of absence of wit- nesses, except.....	249	225
discharge of a defendant to become witness for.....	252	247
vote on call for convention to frame constitution to admit as State.....	354	
liable for costs of Territorial convicts.....	419	
TESTATOR—SEE EXECUTOR AND ADMINISTRATOR.		
TESTIMONY—SEE DEPOSITION, EVIDENCE, PROCEEDINGS TO PERPETUATE TESTIMONY.		
TEXAS CATTLE—		
what meant as, and introduction prohibited.....	404	1
introduction of, a misdemeanor, punishment.....	404	2
parties introducing, liable to damages to parties injured.	405	3
duties of sheriffs, constables and justices regarding.....	405	4

TEXAS CATTLE—(<i>Continued.</i>)		
procedure on complaint before justice.	405	5
appropriation of fines collected.	405	6
THREATS, THREATENING—		
injury to property, defendant may be arrested in action for	29	114
injury to property, ground for injunction.	38	152
of waste upon land claimed adversely under land laws, ground for injunction.	144	558
exhibition of dangerous weapon in, manner, punishment.	203	32
malicious, of injury to person or property, to extort mon- ey or control person against will, punishment.	206	41
officer of election using, to influence elector's vote, punish- ment.	206	41
use of, towards an elector to hinder or deter, penalty. . . .	221	102
TICKET—		
officer of election marking, to find out vote of elector, penalty	221	101
lottery, penalty for selling.	222	103
on proposition to call constitutional convention, how to be printed or written.	355	2
TIMBER—		
allowed tenant in possession till redemption expired. . . .	100	373
action of trespass for cutting or injury to.	143	536
malicious setting fire to, punishment.	206	43
lands, setting fire to, or suffering fire to pass own premi- ses, penalty.	213	68
law regulating measurement, (<i>see logs, lumber</i>).	391	
TIME—SEE LIMITATION.		
rule for computation of.	172	685
averments as to, in indictments.	241	187
of day, of presentation of mortgage, to be recorded by county auditor.	313	18
TITLE—		
of property, actions to try venue of.	12	48
to property on which distraint made, need not be averred as defense to action for distrained property.	25	99
to real estate not to be submitted to arbitration.	64	266
trial of, of property attached or levied upon.	90	348

TITLE—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
by commissioners to convey real estate.....	127	
in adverse claims under donation law, eldest patent con- clusive.....	132	
decree of partition not to affect, of what parties.....	135	
to property forfeited to Territory in informations.....	164	
 TOLL, TOLL GATES AND TOLL ROADS—SEE ROADS, LEASED FOR TOLL.		
 TOWN LOTS—		
holding of, as homestead.....	86	338
sale of, on execution.....	94	
assessment of, description, &c.....	181	
vacation of.....	409	
 TOWN PLATS—SEE VACATION.		
 TRANSCRIPT—		
of proceedings in changes of venue.....	14, 250	
of judgment, filed with county auditor.....	75, 76, 78, 81, 315	
of proceedings in suits of error.....	117, 118, 261	
of judgment against public corporation to be satisfied by treasurer out of funds.....	155	
of judgment of justice of peace, to become lien on real estate.....	174	695
of judgment of supreme court in criminal case, mandatory on officers.....	263	304
 TREASURER—SEE COUNTY TREASURER, TERRITORIAL TREAS- URER.		
of public corporations to satisfy judgment against, out of funds.....	155	
 TREES—		
actions of trespass for cutting or injuring.....	143	556
willful or malicious injury to, in public grounds.....	225	118
injury to, in a cemetery, penalty.....	227	125
 TRESPASS—SEE INJURY, WASTE.		
limitation of action for.....	8	28
for what action will lie, and treble damages awarded....	143	556
where casual or involuntary, or other circumstances justi- fied, single damages.....	143	537

TRESPASS—(<i>Continued.</i>)		<i>Page.</i>	<i>Sec.</i>
malicious, defined, punishment	212	63	
of hogs, act preventing	362		
TRIAL—			
<i>In civil actions—</i>			
place of (<i>see venue</i>)	12		
at what term, complaints shall be heard	15	60	
of issues, by whom and when	50		
continuance of, motion for	50	209	
empanneling of jury, trial of challenges	51, 52, 53, 54		
swearing of jury, and order of	54, 55, 56, 57		
by court, when allowed, and what	60		
by referees	61, 62		
by arbitrators	64		
new, motion for (<i>see new trial</i>)	67		
of rights of property, attached or levied upon	45, 89, 90		
<i>In criminal actions—</i>			
rights of accused to	198, 199		
party indicted shall have, or be admitted to bail	199	7	
for offenses committed in one county, consummated in another	230, 231		
of issues on indictment, selecting and swearing jury, &c.	251		
order of proceedings in	252, 253, 254		
new trial, motion for	255		
TRUSTEES—			
term defined, may sue without joining beneficiary	4	5	
set-off, when and how may be pleaded	121, 122		
liability of, for costs	125		
of corporations (<i>see corporations</i>)			
wife may apply for appointment of, for separate estate	320	8	
TURNPIKE—SEE ROADS.			
obstruction of, or injury of material, penalty	222	107	

U.

UNLAWFUL ASSEMBLY—

what are, and dispersing same	214
---	-----

UN SOUND MIND—	<i>Page.</i>	<i>Sec.</i>
persons of, incompetent as witnesses.....	103	386
UNWHOLESOME—SEE PROVISIONS.		
USE—SEE OCCUPATION.		
USURPATION—		
of office, &c., action for, by information.....	162	163
offense defined and punishment.....	219	90

V.

VACANCY—		
in board of county commissioners, how filled.....	303	3
in county offices, filled by county commissioners.....	308	28
in office of surveyor general of logs.....	393	11
VACATION OF TOWN PLATS—		
county or municipal authorities, power conferred on....	409	1
what may be, petition, notice, &c.....	409	1
order of, and conditions annexed.....	410	2
disposition of land, &c., vacated.....	410	3
street, alley, lot or common may be.....	410	4
of a town or addition thereto, by application of owner of land.....	411	5
VARIANCE—SEE AMENDMENT, PLEADING.		
must have misled, to be material.....	26	103
distinction between, and failure of proof.....	27	
acquittal on ground of, no bar to second indictment....	199	5
in indictments of forgery and other offenses charging in- tent to defraud.....	211, 231	
in offenses against property, what shall not be deemed...	231	
VEGETABLE PRODUCTS—		
malicious setting fire to, punishment.....	206	43
VENUE—		
<i>In civil actions—</i>		
when the situation of subject of the action, locates.....	12	48
when shall defend on, where cause of action arose.....	12	49

VENUE—(<i>Continued.</i>)	<i>Page.</i>	<i>Sec.</i>
in actions against corporations.....	13	50
when it shall depend on personal service of defendant...	13	51
when the plaintiff may designate in his complaint.....	13	51
<i>Change of—</i>		
when allowed by the court.....	13	52
no motion allowed till case at issue.....	14	53
where new county is created.....	14	54
duties of clerk in cases of.....	14	55
costs of.....	15	56
when order of, may be vacated.....	15	57
when shall be deemed complete, and jurisdiction.....	15	58
<i>Of criminal prosecutions—</i>		
in cases of kidnapping.....	204	39
when offense committed in two counties, jurisdiction in either.....	230	138
when on boundary line or within 100 rods, jurisdiction in either.....	230	139
property stolen in one county and brought to another, either county.....	230	140
mortal wound or poisoning in one county, death in another, either county.....	231	141
district and county convertible terms.....	231	147
change of.....	249	
 VERDICT—		
<i>In civil actions—</i>		
rendition of by jury, and correction of form.....	58	
to be in writing, filed and entered of day given.....	59	243
is general or special, definition of.....	59	244
in actions for specific personal property.....	59	245
in actions for money or specific real property, may be either general or special.....	59	246
court may order special, how rendered.....	59	246
special finding will control general.....	60	247
in actions where set-off pleaded.....	60,	122
assent to, by juror different from own conclusions, misconduct.....	67	278
what objections to, ground for new trial.....	67	278
in actions affecting real estate.....	129	492

VERDICT—(<i>Continued.</i>)	Page.	Sec.
<i>In criminal actions—</i>		
in offenses including degrees, what may be.....	253	
against one or more defendants, jointly indicted.....	253	
when jury may be directed to reconsider.....	254	255
when of acquittal for insanity.....	254	256
rendition of, form and judgment upon.....	254	
contrary to law and evidence, new trial.....	255	
VERIFICATION—SEE AFFIDAVIT, PLEADING.		
who may make, and of what to consist.....	23	89
by one of several parties, or by agent or attorney.....		<i>ibid</i>
when by agent or attorney, what must be stated.....		<i>ibid</i>
by corporation, or Territory, who may make.....		<i>ibid</i>
when may be admitted.....	23	90
for want of, pleading may be stricken out.....	27	109
of pleadings in actions by and against public corporations.....	154	603
of applications for <i>habeas corpus</i>	156	607
VESSEL—SEE BOATS AND VESSELS.		
VICIOUS CATTLE—		
act to provide against..	400	
VIEW—		
view may be ordered by court in trial of cause....	56, 252,	349
VIEWERS AND REVIEWERS—SEE ROADS.		
VOTE—SEE CORPORATIONS, ELECTIONS, ELECTOR, TICKET.		
W -		
WAGON—		
selling liquor out of, at meeting for worship.....	215	72
WARD—SEE GUARDIAN, LUNATIC, MINOR.		
WAREHOUSE—		
entering, to commit felony.....	207	46
false receipt of property, by warehouseman.....	210	58

WARRANT—SEE ARREST, ORDER, OFFICER, SEARCH WARRANT, SHERIFF.		
	<i>Page.</i>	<i>Sec.</i>
to produce person held in restraint to await action on <i>habeas corpus</i>	158,	159
for fugitives from justice.....	234,	235
to issue on indictment found, by whom served.....	244	
endorsement of bail, &c.....	245	205
defendant to be informed of authority of officer.....	245	205
powers of officer under.....	245	
death, execution of.....	259	
WASTE—		
limitation of action for....	8	28
tenant in possession, pending time for redemption of property sold on execution, restraint of, and what not deemed as.....	100	373
action for, who may maintain and judgment.....	143	
restraint of, in adverse claims under land laws.....	144	558
WEAPON—		
assault with deadly, and cowhiding armed with.....	203	
exhibiting deadly, in threatening manner.....	203	32
WEARING APPAREL—		
exemption of, from attachment and execution.....	87	343
WEIGHTS AND MEASURES—SEE SEALER OF WEIGHTS AND MEASURES.		
WHOREDOM—		
false charge of, against female actionable.....	173	689
WIDOW—SEE DOWER.		
action by, against party killing husband in duel.....	4	8
right of, to settle estate of deceased husband without administration.....	298,	299
WIFE—SEE HUSBAND AND WIFE, MARRIAGE CONTRACTS, MARRIED WOMAN, MARRIAGE.		
actions by or against, when husband to be joined.....	4	
when competent as a witness in actions where husband party.....	104	387
WILL—		
forgery or counterfeiting of.....	211	60

WINES—	<i>Page.</i>	<i>Sec.</i>
sale of, to Indians, penalty, evidence admissible.	228	133
WITNESSES—SEE ATTENDANCE, DEPOSITIONS, EVIDENCE, SUB-PENNA.		
<i>In civil actions—</i>		
continuance of trial for absence of.	50	209
persons of sound mind, suitable age and discretion, competent.	103	384
parties to action not to be excluded, interest affects credibility.	103	384
conviction of perjury until pardon or reversal, incompetent	103	385
who incompetent as.	103	386
who shall not be examined as.	104	387
manner of compelling attendance of.	104	
residing in Territory, depositions of.	108	
out of Territory, deposition of.	111	
<i>In criminal actions—</i>		
right of accused to meet face to face and produce.	198	
experts competent to prove forgery.	212	63
attendance of, how compelled	248, 249	
absence of, when Territory shall not continue.	249	225
rules of competency same as in civil cases.	249	226
physicians, surgeons, clergymen and priests not protected		
from testifying as to confessions.	249	226
Indians competent in what cases.	228, 249	
defendants liable for fees of his own.	265	315
WOOD AND WOODS—		
what may be used by tenant during time for redemption		
of property sold on execution.	100	373
malicious setting fire to, or permitting fire to pass.	212	68
WORDS—SEE CONSTRUCTION.		
WORSHIP—		
houses for, and property appurtenant, exempt from taxation.	177	4
disturbance of meetings for, penalty.	215	72
WRIT—SEE ARREST, ATTACHMENT, OFFICER, SHERIFF, WARRANT.		
WRIT OF ERROR—SEE ERROR.		
WRITING—SEE INSTRUMENT, PROMISE.		

INDEX

—TO—

PRIVATE AND LOCAL LAWS, ETC.

A.

AQUEDUCT—	<i>Page.</i>
act authorizing J. J. H. Van Bokkelen to build, in Port Townsend.....	501, 502

C.

CARSON, ISAAC—	
act for relief of.....	463, 464
CHEHALIS COUNTY—	
act relating to roads therein.....	479, 480
CLERKS OF LEGISLATURE—	
act providing pay for extra services.....	499
CLARKE COUNTY—	
act authorizing collection of a tax therein to pay indebt- edness.....	456, 457, 458

F.

FISHER, CHARLES WILLIAM—	
act changing name of.....	492
FISH—	
act relating to introduction of eastern shad, alewives and white fish into lakes Washington and Union.....	477, 478

G.

GOOD TEMPLARS—	<i>Page.</i>
act incorporating Jefferson lodge No. 12.....	488

H.

HOFFSTETTER, JOHN U.—	
act for relief of.....	467

I.

ISLAND COUNTY—	
act authorizing levy of special tax to build court house	469, 470

J.

JEFFERSON COUNTY—	
act authorizing levy of special school tax.....	464, 465
act authorizing commissioners to borrow money.....	496, 497

K.

KING COUNTY—	
act relating to licenses therein.....	475
KLICKITAT COUNTY—	
act legalizing certain acts of county and road commissioners.....	504, 505

L.

LEGISLATURE—	
act providing pay for extra services of clerks.....	499
LIBBY, S. B.—	
act for relief of.....	459

M.

MEMORIALS—	
asking grant of swamp and tide lands for school purposes and internal improvements.....	527
asking for the removal of Duncan rock.....	528

MEMORIALS—(*Continued.*)

	<i>Page.</i>
relative to buoying out of the bars and channels of Shoalwater bay	529
asking an appropriation to erect a custom house at Port Townsend	530
praying the re-establishment of military headquarters at fort Vancouver	531
relative to fortifications	535
asking appropriation for a wagon road from Bellingham Bay to Seattle	536
praying Congress to amend the general bankrupt law	537
for mail service from Port Angeles to Neeah Bay	539
asking an appropriation for clearing drift wood from Statukmhamish river	540
for mail service from Port Townsend to Coveland	541
relative to a naval arsenal and dry dock	542
relative to light houses	543
asking Congress to allow settlers on unsurveyed lands to apply their terms of residence previous to a survey, to the perfection of their homestead rights	544
to secretary of treasury as to pay of present Legislature	544
relative to annexation of British Columbia	545
relative to deferred claims	546
asking increase of mail service between Walla Walla and Lewiston	547
relative to mail service from Olympia to Kamilchie	548
relative to establishment of a land office at Walla Walla	549
relative to Northern Pacific Railroad	551
asking a grant of government buildings and grounds at fort Steilacoom	553
relative to an appropriation for a wagon road from Seattle to Umatilla	554
relative to the delivery of mails at Tacoma by steamer	556
praying a change in mail service between Colville and Walla Walla	557
asking establishment of mail route from Seattle to Umatilla	559

O.

OLYMPIA—

an act defining the bounds of	425
an act amendatory of the act incorporating the town of	426

OLYMPIA—(<i>Continued.</i>)	<i>Page.</i>
an act repealing sub-division 21, section 4, the act amendatory of the act incorporating the town of.....	456

P-

PORT TOWNSEND—	
act authorizing J. J. H. Van Bokkelen and associates to bring water into.....	501, 502
PORTER, AMANDA SIDORA—	
act changing name of.....	479
PACIFIC COUNTY—	
act authorizing application of road labor to removing ob- structions to navigation.....	492, 493
PIERCE COUNTY—	
act relating to county scrip.....	493, 494

R-

ROADS AND HIGHWAYS—	
act authorizing location of road from Boisfort prairie, in Lewis county, to the military road in Cowlitz county.....	410, 411
act authorizing location of road from Oysterville to Baker's bay, in Pacific county... .	479
act vacating part of road from Carson's ferry, on Puyallup river, to Clark's creek, and from Moore's ford to Carson's ferry	478
act in relation to roads in Chehalis county.....	479, 480
act to relocate road from Carson's ferry, on Puyallup river, to Clark's creek in Pierce county.....	486, 487
act to locate road from Yelm prairie, in Thurston county, to Tacoma, in Pierce county....	489, 490
act to locate road between points in Thurston and Lewis coun- ties, therein named.....	503, 504
act to locate road from McAllister's bridge to Snoqualmie prairie.....	506, 507
act relative to roads in Chehalis county.....	479, 480
act authorizing application of road labor in Pacific county to removal of obstructions to navigation.....	492, 493
RESOLUTIONS—	
relative to committee to wait upon Governor.....	511
relative to election of Territorial officers.....	511

RESOLUTIONS—(<i>Continued.</i>)	Page.
relative to committee on rules and orders.....	512
providing joint convention to elect Territorial officers.....	513
creating joint committee to visit Fort Steilacoom and Territorial penitentiary.....	513, 514
relative to introduction of new business.....	514
providing for publication and distribution of certain laws in pamphlet form.....	515
relative to San Juan Island.....	515, 516
relative to memory of Dr. Marcus Whitman.....	516, 517
creating joint select code committee.....	518
relative to compensation of Elwood Evans..	518, 519
for relief of Edwin Eells.....	519, 520
relative to Marcus Whitman.....	520
relative to Legislature taking a recess.....	521
relative to appropriation for government buildings for Washington Territory.....	521, 522
relative to pay of additional enrolling clerks.....	253

S.

SEATTLE—	
act incorporating city of.....	437
SHORT, HANNAH E.	
act releasing to Hannah E. Short, title of Territory to a certain tract of land in Clarke county, conveyed for a penitentiary site.....	500, 501
SHELTON, LEVI	
act for relief of.....	463
SNOHOMISH COUNTY—	
act relative to removal of county seat.....	485, 486
STROHMAIER, CHRISTIAN	
act to change name of.....	468, 469

T.

TEEKALET—	
act changing name to Port Gamble.....	472
THURSTON COUNTY—	
act authorizing county commissioners to borrow money to build court house.....	491

TURNER, J. O. *Page.*
 act for relief of.....467, 468

TUM WATER—

an act incorporating town of..... 481

V.

VANCOUVER—

an act amendatory of section 63 of chapter 7, of the act of incorporation.....459, 460
 act relating to liquor licenses therein.....497, 498

W.

WALLA WALLA COUNTY—

act to regulate permanent school fund therein..... 462
 act relative to sale of spirituous and malt liquors therein..... 472

WALLA WALLA CITY—

act empowering council to purchase a steam fire engine and levy
 a tax to pay for the same.....460, 461

WHARF—

act authorizing J. G. Clinger and others to construct a wharf at
 Port Townsend bay.....465, 466
 act authorizing J. J. H. Van Bokkelen and others to construct
 a wharf at head of Port Townsend bay.....495, 496

WHATCOM COUNTY—

act authorizing county commissioners to sell county property 484, 485

YAKIMA COUNTY—

act relating to change of county seat.....480, 481