LAWS

OF THE

TERRITORY OF IOWA,

ENACTED AT THE SESSION OF THE LEGISLATURE COMMENCING ON THE FIRST MONDAY OF NOVEMBER, A. D. 1839.

PUBLISHED BY AUTHORITY.

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I have compared the following pages with the enrolled bills deposited in the Secretary's office, and hereby certify that they contain true and correct copies of the acts and joint resolutions passed at the session of the legislature of Iowa, commencing on the first Monday of November, A. D. 1839. WM. J. A. BRADFORD,

FEB. 24, 1840. *Appointed to supervise the Printing of the Laws of Iowa.*

NOTE—This second volume of the Territorial Laws of Iowa has been printed in pursuance of the direction of the Board of Trustees of the Historical Department.

FROM
THE PRESS OF THE
IOWA PRINTING COMPANY,
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1902.

LAWS OF IOWA.

[Chap. 1.]

AN ACT to authorize Vinson H. Wamsley and Barnet Ristine to erect a dam across the Cedar fork of Skunk river, in the county of Henry, Iowa territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Vinson H. Wamsley and Barnet Ristine are hereby authorized to erect a dam across the Cedar fork of Skunk river, in the county of Henry, in said territory, on the northwest quarter of section twenty-one, township seventy-one north, range seven west, which dam shall not exceed six feet and a half high above low water mark: *Provided* the same shall not injure the mill of Lewis Watson on said stream. To erect dam.

SEC. 2. Any person who shall destroy or in any wise injure said dam, shall be deemed to have committed a trespass, and shall be liable accordingly, and any person who shall wilfully or maliciously destroy or injure said dam, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined treble the amount of damages the owner may have sustained, or be imprisoned, at the discretion of the court. Injury to dam a trespass. Wilful injury misdemeanor. Treble damages.

SEC. 3. Nothing herein contained shall authorize the individuals named in this act, their heirs or assigns, to enter upon and flow the lands of any person, without the consent of such person, and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity. Not to flow lands.

Approved November 25th, 1839.

[Chap. 2.]

AN ACT in relation to the safe custody of persons arrested for crimes and misdemeanors.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That any person arrested on a charge of any crime or misdemeanor, committed in any county of this territory, Person arrested may be transferred to another county.

who might legally be confined in the jail of said county, may, for safe custody, be transferred to the jail of any other county in the manner provided for in this act.

By whom to be made.

SEC. 2. Such transfer may be made by the direction of any judge of the supreme court, or of any justice of the peace of the county wherein the offence shall have been committed.

In what case.

SEC. 3. Before making the direction for such transfer, said judge or justice of the peace shall require satisfactory proof that the prisoner cannot be retained in safe custody in the county where the offence was committed.

Duty of sheriff

SEC. 4. Upon receiving such direction in writing, signed and sealed by the officer making the same, the sheriff shall forthwith transfer the person to the jail of the county specified in said direction, and shall leave with the jailer of that county a copy of the original mittimus, together with a copy of the directions aforesaid.

To be confined until.

SEC. 5. The prisoner shall then be safely retained in the jail to which he shall have been removed, in the same manner as though the offence had been committed in that county, until demanded by the sheriff of the proper county for trial, or until he shall have been otherwise lawfully discharged.

Sheriff may call aid.

SEC. 6. The sheriff of the proper county, in removing the prisoner to and from the jail as aforesaid, may call to his aid any necessary aid, or use any other needful precaution, the same as though he were within his own county; and should an escape happen,

And pursue.

he may pursue and retake the prisoner in any portion of this territory.

Expense paid by county in quo.

SEC. 7. The expenses of the transfer and confinement of the prisoner as aforesaid, shall be borne by the county wherein the offence was committed, and payments shall be made in cash; for which purpose, if there is no money in the treasury, the county commissioners shall direct county orders to be drawn and to be disposed of for the highest amount in cash.

SEC. 8. This act shall be in force from and after its passage.

Approved November 26, 1839.

[Chap. 3.]

AN ACT to authorize the Legislative Assembly to punish for contempt and to privilege the members from arrest.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That each house of the legislative assembly shall have authority to punish by fine and imprisonment every person not a member who shall be guilty of disrespect by any disorderly or contemptuous behavior in its presence, or who in any place where the legislative assembly is in session shall threaten harm to the body or estate of any of its members for any thing said or done in the assembly, or who shall assault or arrest any witness or other person going or returning by order of either house, or who shall rescue any person arrested by order of either house of the assembly: and a majority of two thirds of either house may expel a member of its own body: *Provided always*, That the Council shall have cognizance only of offences committed as aforesaid against the Council; and the House of Representatives shall have cognizance only of offences as aforesaid against the House of Representatives: *And provided*, That the fine shall not exceed two hundred dollars and the imprisonment shall not exceed forty-eight hours for any one offence.

Each house to punish disorderly behavior

And threats.

Assault on witness, or rescue.

Expel members.

Not to exceed.

SEC. 2. *And be it further enacted*, That the members of the Council and House of Representatives shall be privileged from arrest, in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either house.

Privilege from arrest.

And question.

SEC. 3. This act to take effect and be in full force from and after its passage.

[Presented to the governor on the 25th November, 1839, and having remained with the governor three days, (Sundays excepted) the legislative assembly being in session, this bill became a law November 28, 1839.]

[Chap. 4.]

AN ACT for the benefit of Settlers, &c. on the Half Breed Lands.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That any person who may have heretofore purchased or may

Value of improvements allowed to settlers.

hereafter purchase any part or parcel of that tract of land known as the half breed tract, situated in the county of Lee, and Territory of Iowa, and settled upon, and made any improvement upon said land so purchased, or who have made improvements, without settling, on any portion of said lands, by tenants or hands, under a deed of purchase, and by color of title, and who shall, from and after the passage of this act, be ousted by any person having a better title, such person so ousted and dispossessed shall be allowed the price and value of all the improvements made by him on such land, in the manner and form hereinafter provided.

SEC. 2. If any person who shall be ousted or dispossessed as in the first section mentioned, shall desire to obtain the value of his improvements from the person obtaining possession by virtue of better

Petition to be filed.

title, he may file in the clerk's office of the district court in the county of Lee, a petition setting forth the time when the improvements were made, under what color of title, and in what said improvements consist, the name of the person who has obtained possession, and in what manner said possession was awarded; also praying the court to appoint three disinterested commissioners, who shall not be residents on the said half breed tract, to go upon the premises to examine the improvements made by the said petitioner, appraise the real value of said improvements, and make a true report of the nature and value of said improvements.

Summons to answer petition.

SEC. 3. Upon the filing of said petition in the clerk's office aforesaid, it shall be the duty of the clerk to issue a summons to the person named in the petition as being in possession of the premises, &c. to answer said petition at the term of the court then next ensuing, or that the facts set forth in the petition will be taken as confessed against him, which said summons shall be served by the sheriff, as in other cases, who shall duly return said writ with his doings thereon.

Witnesses.

SEC. 4. That the petitioner may subpœna as many witnesses as may be deemed necessary to support his petition, and the respondent may also subpœna on his part as many witnesses as may be necessary to support his answer denying the material allegations in the petition.

Interlocutory judgment for value of improvements.

SEC. 5. After the hearing of the said petition, together with the answer, if any should be put in,

and the testimony of the witnesses in the case, the judge of the said district court, if he shall find that the material facts set forth in the petition are true, shall order interlocutory judgment to be entered against the respondent, for the value of the improvements specified in the petition, and the court, upon the entering up of such judgment, shall appoint three legal voters of the county of Lee, who do not reside on, and who are not interested in the half breed tract, to go upon the premises forthwith, and then and there to make a true and perfect inventory and appraisement of the value of all the improvements made by the petitioner, and report such inventory and appraisement to the court without delay, which said inventory and appraisement shall be sworn to as true, full and correct, according to the best of their knowledge and belief, and they, or a majority of them, shall also subscribe their names to the same. Appraisement.

SEC. 6. After the commissioners have made their report, as in the fifth section directed, the said court shall immediately order final judgment to be entered up against the respondent for the value of the improvements as reported by the commissioners aforesaid, together with judgment for costs in favor of the petitioner, and that execution shall issue against the respondent as in other civil cases, and be levied and returned in the same manner. Final judgment.

SEC. 7. If the petitioner fails to support or maintain the material allegations in his petition, and the answer of the respondent is found to be true by the court, then judgment shall be rendered in favor of the respondent for costs. If petitioner fail, respondent to have judgment.

SEC. 8. On return of the summons, as heretofore authorized by this act, that the respondent is not found within the county of Lee, the court, upon application of the petitioner, shall grant an order of publication against the respondent, which order shall contain the names of the parties, the time of filing the petition, and a brief statement of the contents, and that unless the respondent enter his appearance, and file his answer to the petition on the second day of the succeeding term of said court, that the allegations in said petition will be taken as confessed, and judgment entered accordingly, which order shall be published in some public newspaper in Lee county, if any, if not in one nearest to the said county of Lee, for five weeks successively. Order of notice.

Pay of commissioners.

SEC. 9. The commissioners appointed by the court for the purposes aforesaid, shall each receive the sum of three dollars per day while actually engaged in their duty, and two dollars for drawing up their inventory and appraisement and filing the same in court, which amount shall be taxed in the bill of costs against the respondent.

SEC. 10. No want of form shall, in any way, vitiate or retard any of the proceedings authorized by this act.

Approved December 6, 1839.

[Chap. 5.]

AN ACT for the relief of the Administrators of the Estate of the late Benjamin W. Clarke.

Administrators may purchase claims.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That James Grant and James Davenport, administrators of the estate of the late Benjamin W. Clarke, of Scott county, be and they are hereby authorized and empowered to purchase, for the benefit of the heirs at law of said Clarke, all claims upon the public lands which were held by the said Clarke, and pay for the same out of any moneys which they may receive as administrators of his estate, or which they may borrow for that purpose.

May borrow money.

SEC. 2. The said administrators are hereby authorized to borrow any sum of money not exceeding one thousand dollars, for any period not exceeding five years, at any rate of interest not exceeding twenty per cent, and to use the money so borrowed for the purpose of purchasing the claims aforesaid, and they may give as security for the payment of

And mortgage estate.

the money so borrowed, a mortgage on any of the estate purchased, or such personal security as they now have or hereafter may have belonging to the estate of the said Clarke, and of all their acts in virtue hereof, they shall make a return to the judge of probate.

Lands to be held in trust.

SEC. 3. The said lands, when purchased as aforesaid, shall be held by said administrators in trust to pay the debts of said Clarke, or to be divided among the heirs of said Clarke, as in other cases of persons dying intestate in this territory.

May lease property.

SEC. 4. The administrators are hereby authorized to lease the tavern house in the town of Buffalo, and

the materials belonging thereto, and the ferry privilege at Buffalo, on such terms as will procure the completion of said tavern house, or the said administrators may complete said tavern house out of any moneys which they may receive belonging to the said estate.

Same. SEC. 5. The said administrators, after paying the debts of said Clarke, shall have the power of leasing all or a part of said claims either by private contract or public auction for any term not exceeding three years; and for all services performed under this act they shall receive, by order of the judge of probate, a commission of not more than six per cent on the moneys received and paid out, and they shall also receive their necessary travelling expenses to and from the land office.

Compensation.

Not to affect dower. SEC. 6. Nothing in this act contained shall be construed to affect the right of dower of the widow of the deceased.

SEC. 7. This act to be in force from and after its passage.

Approved December 14, 1839.

[Chap. 6.]

AN ACT to regulate the institution of suits by foreign executors, administrators and guardians, within this territory.

Executor, or administrator to prosecute suits. SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That when any letters testamentary or of administration may have been or shall be granted on the estate of any deceased person who may have been a resident in any one of the United States or territories thereof, except this Territory, any person or persons to whom either of said letters may have been or shall be granted shall be enabled to prosecute suits in any court in this territory in the same manner as if such letters had been granted to such person or persons by any court in this territory.

To produce copy of letters. SEC. 2. That such person or persons shall, upon the trial of any suit in this territory instituted under such letters, produce a copy of the same authenticated by the certificate of the officer who may have granted the same, or his successor in office, under the official seal of his court, that such letters were granted in conformity with the laws of the state or territory where the same were granted. And such

letters, when so certified and produced, shall be conclusive evidence of the ability of such person to institute such suit.

Letters to be recorded.

SEC. 3. Any foreign executor or administrator may produce his letters testamentary or of administration to any court of probate in any county in this territory, wherein there is any estate belonging to the testate or intestate, and have the same recorded therein, and thereafter shall be as fully empowered to administer upon the estate of his testate or intestate within this territory, as if letters testamentary or of administration had been originally granted by some court of probate within this territory.

Empowered to administer.

When to take effect.

SEC. 4. This act to take effect from and after its passage.

Approved December 20, 1839.

[Chap. 7.]

AN ACT to provide for the organization of the county of Delaware, and to locate the seat of justice thereof.

County organized.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the county of Delaware shall be organized for county purposes, as other counties of this territory have heretofore been organized.

Seat of justice.

SEC. 2. The seat of justice of said county shall be located by three commissioners non-residents of said county, which said commissioners shall meet together on or before the first day of May next, eighteen hundred and forty, and forthwith proceed to examine into and determine upon the most eligible point for the county seat of said county, having reference, as far as practicable, to a central situation, and also to the convenience of the present and prospective population.

Commissioners to take oath.

SEC. 3. The said commissioners shall, before they enter upon the performance of their said duties, take and subscribe before some district judge or justice of the peace the following oath, to wit: "I

one of the commissioners appointed to locate the seat of justice in and for the county of Delaware, do hereby swear before Almighty God, the searcher of all hearts, that I will perform the duties imposed by said appointment honestly and faithfully according to the best of my understanding and abilities, and according to the law relative to locating said county seat. And I do further swear as

aforesaid, that I am not interested in said location in any manner whatever, present or in expectancy, but that in locating said county seat, I will be actuated only by a desire for the best interests of said county, without the slightest partiality towards any person or persons, and without any bias from fear, favor or recompense, or the hope of gain or advantage to myself in any respect whatsoever.

Return to be filed.

SEC. 4. So soon as convenient, not exceeding fifteen days after the location shall have been made, the said commissioners or a majority of them shall make out and return to the governor a full statement or report of the place selected, describing the same as fully as practicable, which report, together with the foregoing affidavits, shall be filed in the office of the secretary of the territory, to remain of public record.

To elect officers.

SEC. 5. The county shall, so soon as said report shall be filed, be considered as a separate county, and shall have all the privileges and be subject to all laws and provisions now in force or that may be hereafter in force in regard to the counties of this territory, and shall proceed hereafter to elect their county officers at the same time and in the same manner as in other organized counties.

First election.

SEC. 6. The first general election shall be held for the whole county at the houses of Wm. Eads, J. Schwartz and Morland, and thereafter the county shall be divided by the county commissioners elect into precincts at the first regular meeting of their board after said first general election, so as to suit the convenience of the inhabitants generally. And the judges of said election shall seal up and direct the returns of the same to the clerk of the commissioners' court of Du Buque county, and the said commissioners shall proceed to open and canvass the said returns and enter the same upon their records, and shall issue certificates notifying the persons having a majority of votes for the different offices.

Pay of commissioners.

SEC. 7. The commissioners appointed to locate the seat of justice as aforesaid, shall receive three dollars per diem for the time they shall be actually engaged in locating the same, not exceeding ten days, together with three dollars for every twenty miles travel in going and returning to and from said county.

Commissioners appointed.

SEC. 8. S. B. Umstead, of Clayton county, Shadrach Burliston, of Jackson county, and Paul Cain, of Du Buque county, shall [be] and they are hereby appointed commissioners to locate said county seat under the provisions of this act.

Approved December 20, 1839.

[Chap. 8.]

AN ACT to district the county of Henry into three county commissioners' districts.

Districts defined.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the said county shall be divided into three county commissioners' districts, as follows, to wit: That all that portion of the county of Henry that is included in range five, shall be known as district number one, and all that portion of said county that is included in range six shall be known as district number two, and that portion of said county which is included in range seven shall be known as district number three.

Mode of electing commissioners.

SEC. 2. *Be it further enacted*, That at the next general election there shall be elected from district number one, one county commissioner, and that thereafter annually there shall be elected from each district one county commissioner alternately, according to provision of the law regulating general elections.

Approved December 23, 1839.

[Chap. 9.]

AN ACT to authorize evidence by the oath of parties.

Party in suit witness for his antagonist.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That either party in any suit in any court within this territory, such suit being founded on contract, may cause the opposite party, or any person of such party, to be subpœnaed as a witness, in the same manner, and with like effect, as any other person. If the party after being personally subpœnaed, fail to attend the trial personally, and such failure be not accounted for, the court may allow the other party to be sworn and examined as a witness in all cases and with like effect as if the subpœnaed party had been personally present and had refused to testify.

Party witness for himself.

SEC. 2. If no evidence shall be given to establish any demand founded upon contract, or to establish any set off, or if the evidence given be insufficient for that purpose, the court may, upon the application of the party offering such demand or set off, order the opposite party, or any person of such party, to be sworn in relation thereto. If the party thus required refuse to testify, the court shall allow the party offering such demand or set off to be sworn and examined in relation to the same matter. After examination of either party, no further evidence shall be given in relation to such demand or set off. Opposite party to be sworn. If he refuse to testify, the other party his own witness. No further evidence.

Approved December 23, 1839.

[Chap. 10.]

AN ACT relative to Coroners and their duties.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be elected in each of the organized counties of this territory, at the time and place of holding the general election, a coroner who shall hold his office for two years and until his successor is elected and qualified. He shall, before exercising any of the duties of his office, take an oath faithfully to fulfil the duties of such office; and when called upon to exercise the duties of sheriff he shall execute such bond and security as the clerk of the district court may require. Election and term of office. Oath and bond.

SEC. 2. It shall be the duty of the coroner to execute all process in his county in all cases when just exception can be taken to the sheriff or his deputy, or when there is no sheriff. Duty when sheriff concerned.

SEC. 3. In all cases upon affidavits being made and filed in any court of record in this territory, of the partiality, prejudice, consanguinity or interest of the sheriff or of the deputy of the sheriff of any county when suit is about to be brought or shall have been commenced, it shall be the duty of the clerk to issue and direct original or other process in the suit that would regularly go to such sheriff or deputy, to the coroner, who shall execute the same and attend to the same throughout in the same manner as the sheriff could or ought to have done. Same.

SEC. 4. The partiality, prejudice, consanguinity or interest of the sheriff or deputy, shall not be cause for change of venue, but the coroner shall per- Same.

form the duties above described, or if there should be no coroner, some proper person to be appointed by the clerk shall supply the place of the sheriff in like manner as the coroner is hereby required to do.

Inquest on dead bodies.

SEC. 5. That coroners shall take inquest upon the view of the dead bodies of such persons only as shall be supposed to have come to their death by violence or undue means, and not when the death is believed to have been and evidently was occasioned by casualty.

To summon jury.

SEC. 6. That as soon as any coroner shall have notice of the dead body of any person supposed to have come to his death by violence or undue means found or lying within his county, he shall make his warrant to any constable of the county where such body is, requiring such constable forthwith to summon six good lawful men of the county, to appear before such coroner at the time and place expressed in such warrant, and the warrant may be issued with or without a seal, and in substance as follows:

TERRITORY OF IOWA, } ss.
County. }

To any constable of said county greeting: In the name of the United States of America, you are hereby required to summon immediately six good and lawful men of your county, to appear before me, one of the coroners of said county, at the dwelling house of (or describe the place where to meet,) then and there to inquire upon the view of the body of there lying dead, and by what means he came to his death. Hereof fail not.

Given under my hand the day of A. D. 18 .

Coroner.

Duty of constable,

SEC. 7. That the constable to whom such warrant shall be directed and delivered shall forthwith execute the same, and shall, at the time mentioned in the warrant, repair to the place where the dead body is, and make return thereof to the coroner, and of his doings thereon under his hand; and any constable who shall unnecessarily neglect or fail to execute or return such warrant shall forfeit the sum of ten dollars; and if any person summoned as a juror shall fail to appear without a reasonable excuse therefor he shall forfeit the sum of five dollars; which forfeitures may be recovered to the use of the county with costs of suit, by action of debt, or on the case, to be brought by the coroner.

and forfeiture.

Duty of jury,

and forfeiture.

SEC. 8. That when the jurors summoned appear the coroner shall call over their names, and then in view of the body he shall administer to them the following oath:

"You solemnly swear that you will diligently inquire, and true presentment make on behalf [of] the United States of America, when, and how, and by what means the person whose body here lies dead came to his death; and you shall return a true inquest thereof according to your knowledge and such evidence as shall be laid before you, so help you God." If the six jurors shall not all appear, the coroner may require the constable or any other person whom he shall appoint to return jurors from the bystanders to complete that number. Oath of jury.

SEC. 9. The coroner may issue subpœnas for witnesses returnable forthwith, or at such time and place as he shall therein direct. The persons served with such subpœnas shall be allowed the same fees, and their attendance may be enforced in the same manner by the coroner, and they shall be subject to the same penalties as if they had been served with a subpœna in behalf of the United States of America, to attend a justice's court. Witnesses.

SEC. 10. That an oath to the following effect shall be administered to the witnesses by the coroner: "You solemnly swear that the evidence you shall give to this inquest, concerning the death of the person here lying dead shall be the truth, the whole truth, and nothing but the truth, so help you God." Their oath.

SEC. 11. That the testimony of all witnesses examined before any inquest shall be reduced to writing by the coroner or some other person by his direction, and subscribed by the witnesses respectively giving it in. Testimony to be put in writing.

SEC. 12. That the jury, upon inspection of the dead body and after hearing the testimony and making all needful inquiries, shall draw up and deliver to the coroner their inquisition under their hands, in which they shall find and certify when, how and by what means the deceased person came to his death, and his name, if it was known, together with all the material circumstances attending his death; and if it shall appear that he was murdered the jurors shall further state who were guilty either as principal or assessory, if known, or were in any manner the cause of his death, which inquisition may be in substance, Verdict.

as follows: " ss. An inquisition taken at , in county, on the day of A. D. 18 , before one of the coroners of the said county of upon the view of the body of (or a person) there lying dead, by the oath of the jurors whose names are hereunto subscribed, who being sworn to inquire on behalf of the United States of America, when, how, and by what means the said came to his death, upon their oaths do say (then insert when, how and by what person, means, weapon, or instrument he was killed,) in testimony whereof the said coroner and jurors of the inquest have hereunto set their hands the day and year aforesaid."

Witnesses to recognize.

SEC. 13. That if the jury find that any murder, manslaughter, or assault has been committed on the deceased, the coroner shall bind over by recognizance such witnesses as he shall think proper to appear and testify at the next court to be held in the same county at which an indictment for such offence can be found; he shall return to the same court the inquisition, written evidence, all recognizances and examinations by him taken; and may commit to the jail of the county any witnesses who shall refuse to recognize in such manner as he shall direct.

Coroner to cause accused to be apprehended.

SEC. 14. That if any person charged by the inquest with having committed such offence shall not be in custody, the coroner shall have the same power as a justice of the peace, to issue process for his apprehension; and such warrant shall be made returnable before any justice of the peace, or other magistrate or court having cognizance of the case, who shall proceed therein in the same manner that is required of justices of the peace in like cases.

Burial.

SEC. 15. That when any coroner shall take an inquest upon the view of the dead body of a stranger, or being called for that purpose shall not think it necessary, on view of such body, that any inquest should be taken, he shall cause the body to be decently buried, and all expenses of the inquisition and burial shall be paid by the county in which such dead body shall be found.

Coroner absent, any magistrate to perform his duty.

SEC. 16. That in case of the absence of the coroner, any magistrate being notified of any dead body as before mentioned, shall be authorized and required to perform the duty of the coroner as pointed out in this act.

SEC. 17. That the coroner, as soon as the verdict of the jury shall have been rendered, shall take immediate measures to have the body buried, the expense attending the burial to be paid out of the deceased person's estate, if sufficient there be, if not by the county: *Provided, however,* That if the friends of the deceased shall request to have the body to bury at their own expense, the coroner shall deliver it to them. Body to be buried.

SEC. 18. It shall not be lawful for any person to bury or cause to be buried the body of any person whatsoever that may have come to its death by unlawful violence or other suspicious cause without first giving notice to the coroner of his county of such death, or in case the coroner is absent or cannot be had, to some justice of the peace. Every person so offending shall be liable to the sum of fifty dollars, to be recovered before any proper tribunal, one half to the use of the county, and the other half to the use of any person who will sue for the same. Bodies not to be buried without notice.

Approved December 23, 1839.

[Chap. 11.]

AN ACT to provide for the appointment of Notaries Public, and to prescribe their duties.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the governor of this territory by and with the advice and consent of the Council, may appoint and commission one or more notaries public in each organized county, who shall hold their office three years, unless sooner removed. Appointment.

SEC. 2. Each notary public, so soon as he receives his commission, shall repair to the office of the clerk of the district court of his proper county and give bond to the governor in the sum of five hundred dollars, with sufficient security to be approved of by such clerk, conditioned for the due and faithful performance of his duty as notary public, which bond shall be filed in the office of the clerk, and, if forfeited, be sued for in the name of the territory and for its use. Bond.

SEC. 3. It shall be the duty of each notary public whenever any bill of exchange, promissory note, or other written instrument shall be by him protested for non-acceptance or non-payment, to give notice Notice of protest to maker, &c.

thereof in writing to the maker and endorsers of any bill of exchange, and to the maker, and each security or indorser of any promissory note or written instrument immediately after such protest shall have been made.

To keep record.

SEC. 4. It shall be the duty of each notary public to keep a correct record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested, which record shall, at all times, be competent evidence to prove such notice in any trial before any court in this territory; and to all the attestations, protestations and other instruments of publication of the said notaries public, due faith shall be given.

Service of notice.

SEC. 5. It shall be the duty of the notary public, personally, to serve the notice upon the person protested against, provided said person reside within two miles of the office of such notary public; but if said person reside more than two miles from such office, then the said notice may be forwarded by the first mail or other safe conveyance.

Seal.

SEC. 6. Each notary public shall procure a seal which shall be called the "notarial seal," and he shall have full power and authority to administer oaths and take acknowledgments or proofs of deeds,

Powers.

mortgages, powers of attorney, and other instruments of writing, with or without the release and assignment of dower.

In case of death, &c.

SEC. 7. 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 clerk of the district court for the same county in which said notary public resided.

Penalty for neglect.

SEC. 8. 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 in the clerk's office, he shall forfeit a sum not exceeding five hundred dollars.

Same.

SEC. 9. If the executor or administrator of any deceased notary public, shall, for the space of three months after his acceptance of such appointment, neglect to deposit in the clerk's office the records and official papers of such deceased notary, which shall come into his hands, he shall forfeit a sum not exceeding five hundred dollars.

SEC. 10. The several clerks of the district court shall receive and safely keep all the records and official papers of any notary public which are in this act directed to be deposited in the office of said clerks. District clerks to receive records.

SEC. 11. Said clerks shall make and certify copies of any records and official papers of any notary public deposited with them, for which copies they shall be paid the same fees that such notary public would have been entitled to: and all copies certified by the said clerk shall have the same effect in law as if they had been certified by such notary public. And make copies.

SEC. 12. If any person shall knowingly destroy, deface, or conceal any records or official papers of any notary public, he shall forfeit a sum not exceeding one thousand dollars, and moreover be liable in damages to any party injured. Penalty for destroying records.

SEC. 13. When any forfeiture is incurred by this act, it may be recovered by action of debt in the name of the territory and for its use. Forfeitures, how recovered.

Approved December 24, 1839.

[Chap. 12.]

AN ACT to provide for the election of county treasurers and to define their duties.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be elected at the general election annually, in each county in this territory, a treasurer, who shall immediately on the receipt of a certificate notifying him of his election, take an oath faithfully to perform his trust and give bond, with security to the satisfaction of the board of county commissioners, payable to said board in their corporate name, conditioned for the faithful discharge of the duties of his office, that he will account for all moneys that may come into his hands as treasurer, that he will deliver unto his successor in office all books, papers, documents and other things which he may hold by virtue of his office, and that he will pay him the balance of all moneys due the county. And said treasurer shall hold his office for the term of one year and until his successor shall be elected and qualified. County treasurers to be elected. Oath and bond.

SEC. 2. It shall be the duty of the treasurer to receive all moneys due and accruing to the county, to pay and disburse the same on orders drawn by Duty.

the board of county commissioners of the proper county attested by the clerk, and not otherwise. The said treasurer shall keep a true and just account of all moneys received and disbursed, and hold and keep the same at all times ready for the inspection of the board, and shall at every regular term of said board furnish them with a statement thereof balanced to the first day of said term, showing all the moneys received and disbursed by him since his last settlement and the balance remaining in his hands, together with the arrearages of taxes in the hands of the collectors. He shall, moreover, once in every year, settle his accounts with the said board, and produce his vouchers, which being allowed, shall be cancelled by them, by writing the word "cancelled" on the face of such order, which shall be retained and filed by the clerk of said board.

Same.

SEC. 3. It shall moreover be the duty of said treasurer, as soon as he shall have received from the clerk of said board a statement of the amount of taxes put into the hands of the sheriff or collector of his county or any of his predecessors, and which shall not have been accounted for, forthwith to proceed to collect, in the name of the county commissioners, from said delinquent, his sureties, heirs, executors or administrators, the sum or sums in arrear and due from him or them to the county, and in like manner when such treasurer shall be furnished by the clerk with a statement of jury fees, fines and forfeitures received by any officer, he shall forthwith proceed to collect the same, and place the same when collected to the credit of the county.

County orders to be received.

SEC. 4. County orders, when properly attested, shall be entitled to preference as to payment according to the order of time in which they may be presented, and upon the receipt of money into the treasury, it shall be the duty of the treasurer to appropriate and set apart the same for the discharge of such county orders so presented: *Provided, however*, That the county treasurer is hereby required to receive of any collector all county orders which such collector may have received in payment of county tax, without regard to the priority of number of any such order or orders: *And provided*, That when two or more orders are presented at the same time, preference shall be given to the order of the oldest date.

SEC. 5. That the county treasurer shall have for his services one and a half per centum for all moneys received, and one and a half per centum for all moneys paid out for the county, excepting moneys arising from the sale of town lots at the county seats, in which case he shall receive no more than two per cent for both receiving and paying out the same. Pay.

SEC. 6. In case the treasurer chosen shall decline accepting the office, or after accepting, shall die, or resign, or remove out of the county within the year, or shall from any cause become incapable of discharging the duties of his office, the board of county commissioners shall appoint a suitable person, being a resident of the same county, to fill such vacancy; and the person appointed, being sworn to the faithful discharge of the trust and giving bond as before directed, shall be treasurer of said county for the remainder of the year, and until another shall be chosen and qualified in his stead. County commissioners to fill vacancy.

SEC. 7. That hereafter it shall be the duty of any person or persons who may intend to exhibit to public view or show any animal or animals, wax work or other figures, rope or wire dancers, feats of circus riding, or slight of hand for gain, to apply to the treasurer of the county where such exhibition is to be made, and pay the said treasurer not less than ten nor more than fifty dollars, at the discretion of the said treasurer, who shall receipt for the same, which receipt shall be forthwith filed with the clerk of the board of commissioners of the proper county, who is hereby required to make out his permit under the seal of the said county, for which said clerk shall be entitled to receive, as a fee, one dollar, to be paid by such applicant, and the said permit shall be a sufficient authority for such applicant to show or exhibit such animals, wax work, or other things during his stay in said county, provided that such stay shall not exceed one month, and further provided, that nothing in this act contained shall prevent any board of trustees of any incorporated town from taxing such exhibition agreeably to their corporate laws and ordinances passed in pursuance thereof. License of public shows.

SEC. 8. All county taxes arising from tavern licenses or otherwise, shall be paid in to the county treasury. Tavern licenses.

Violations to be prosecuted.

SEC. 9. All sheriffs, coroners, constables, clerks, county treasurers, collectors, assessors, justices of the peace and county commissioners, shall be required and it is hereby made their duty to cause to be prosecuted any person or persons who shall violate any of the provisions of this act.

Same.

SEC. 10. Any person who shall violate the provisions of the seventh section of this act, shall be prosecuted before any justice of the peace, and fined in any sum not less than twenty-five nor more than fifty dollars.

Treasurers to prosecute bonds.

SEC. 11. The treasurers of the several counties may, in their own names and official capacity, prosecute to final judgment and execution any suits upon bonds, notes, and other securities given to their predecessors in office, and any suits commenced by their predecessors in office, and pending at their removal therefrom; and they may also prosecute for any injuries done to the lands, buildings, or other property of their counties.

May appoint deputy.

SEC. 12. The treasurer in each county may appoint a deputy, for whose acts he shall be responsible, and who shall take an oath for the faithful performance of the duties of his office.

Approved December 24, 1839.

[Chap. 13.]

AN ACT to make valid in law the acts of John C. Mather, done and performed by him as county surveyor of the county of Henry, and Territory of Iowa.

Acts made valid.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That all and every official act of John C. Mather, done and performed by him in accordance with the law constituting the office of county surveyor, and defining his duties, by virtue of his appointment as county surveyor in and for the county of Henry aforesaid, during the time he has held the same and performed the duties thereof, be and the same are hereby declared to be good and valid in law, as if the said appointment had been properly the right of said county commissioners according to law: *Provided, however*, That nothing in this act shall be so construed as to permit said John C. Mather to hold said office longer than until his successor shall be elected and qualified according to law in such cases made and provided.

Approved December 30, 1839.

[Chap. 14.]

AN ACT relative to Landlords and Tenants.

Rent on demise paid to executors.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the executors or administrators of any tenant for life, who shall have demised any lands or tenements so held, and shall die on or before the day when any rent on such demise shall become payable, may recover,

First. If such tenant for life die on the day, the whole rent;

Second. If he die before the day, such proportion of the rent as shall have accrued before his death.

Lessee for life dying, rents may be recovered.

SEC. 2. Every person entitled to any rents dependent upon the life of any other may, notwithstanding the death of such other person, have the same remedy by action for the recovery of all arrears of such rent that are due and unpaid at the death of such other person, as he might have had if such other person was in full life.

Rents in right of wife deceased, may be recovered.

SEC. 3. Every person having in right of his wife any freehold estate in any rents, may, if such rent is due and unpaid at the time of the wife's death, have the same remedy by action for the recovery of such arrears as he might have had if the wife was in full life.

SEC. 4. Any person having any rent due upon any lease for life may have the same remedy by action for the recovery thereof, as if such lease were for years.

Executors, &c. to have remedy.

SEC. 5. The executors or administrators of any person to whom any rent shall have been due and unpaid at the time of the death of such person, may have the same remedy by action against the tenant, his executors or administrators for the recovery thereof that their testator or intestate might have had.

Tenant summoned to give notice.

SEC. 6. Every tenant on whom a summons in an action of right to recover the tenements held by him shall be served, shall forthwith give notice thereof to the person or the agent of the person of whom such tenant holds, under the penalty of forfeiting to such person the value of two years' rent of the premises occupied by him.

Tenant holding over, to pay double.

SEC. 7. If any tenant shall give notice in writing, of his intention to quit the premises held by him at a time specified in such notice, and shall not deliver

up the possession thereof at such time, such tenant, his executors or administrators shall, from thenceforward, pay to the landlord, his heirs or assigns, double the rent reserved during all the time such tenant shall so continue in possession.

How recovered.

SEC. 8. Such double rent shall be recovered in the same manner that the single rent is recoverable.

Under tenant holding over, to pay double.

SEC. 9. If any tenant for life or years, or if any other person who may have come into the possession of any lands or tenements, under, or by collusion with such tenant, shall wilfully hold over the same, after the termination of such term, and after demand made, and notice in writing given, requiring the possession thereof by the person entitled thereto, such person so holding over shall pay to the person so kept out of possession double the yearly value of the lands or tenements so detained, for all the time he shall keep the person entitled out of possession.

No relief in equity.

SEC. 10. There shall be no relief in equity against any recovery had at law, under the preceding section.

Attornment void unless.

SEC. 11. The attornment of a tenant to a stranger shall be void, and shall not in any wise affect the possession of his landlord, unless it is made,

First. With the consent of the landlord; or,

Second. Pursuant to, or in consequence of a judgment at law or a decree in equity; or,

Third. To a mortgagee after the mortgage has been forfeited.

Use and occupation.

SEC. 12. A landlord may recover in an action on the case, a reasonable satisfaction, for the use and occupation of any lands or tenements held by any person under an agreement not made by deed.

Parol demise evidence in suit for use and occupation.

SEC. 13. If a parol demise or other agreement not by deed, by which a certain rent is reserved appears in evidence on the trial of such action, the plaintiff shall not, on that account, be debarred from a recovery, but may make use thereof as evidence of the amount of damages to be recovered.

Landlord to have lien on crop.

SEC. 14. Every landlord shall have a lien upon the crop grown upon the demised premises in any year, for the rent that shall accrue for such year, and such lien shall continue for eight months after such rent shall become payable, and until the decision of any suit for such rent brought within that time.

And in towns, on furniture.

SEC. 15. In every surveyed or incorporated town, the landlord shall have a lien on such household furniture of the tenant as is not exempt from execu-

tion, for any rent that may be due from such tenant, for the rent of a house or house and lot, and shall continue for three months after such rent shall fall due, and until the decision of any suit that may be brought within that time for such rent.

When half year in arrear may bring action of right.

SEC. 16. Whenever a half year's rent or more is in arrear from a tenant, the landlord, if he has a subsisting right by law, to re-enter for the non-payment of such rent, may bring an action of right to recover the possession of the demised premises.

How served.

SEC. 17. If the summons, in such action, cannot be served in the ordinary mode provided by law, it may be served by affixing a copy of the declaration and summons on a conspicuous part of the demised premises, where it may be conveniently read.

To be instead of demand.

SEC. 18. The service of the summons in such action of right, shall be deemed and stand instead of a demand of the rent in arrear, and of a re-entry on the demised premises.

Judgment.

SEC. 19. If, upon the trial of such action, it is proved or upon judgment by default it appears to the court by affidavit, that the plaintiff had a right to commence such action according to the provisions of this act, he shall have judgment to recover the possession of the demised premises and costs.

Proceedings when to cease.

SEC. 20. If the defendant, before judgment is given in such action, either tenders to the landlord or brings into the court where the suit is pending all the rent then in arrear, and all costs, all further proceedings in the action shall cease.

After six months, no relief.

SEC. 21. If the rent and costs remain unpaid for six months after execution upon such judgment in an action of right is executed, and no bill for relief in equity is filed within that time, the lessee and his assigns, and all other persons deriving title under the lease from such lessee, shall be barred from all relief in law or equity, (except for error in the record or proceedings) and the landlord shall, from thenceforth, hold the demised premises discharged from the lease.

Mortgagee, when not affected.

SEC. 22. A mortgagee of such lease, not in possession of such demised premises, who, within six months after execution of any such judgment in an action of right is executed, shall pay all rent in arrear, and all costs, and the charges incurred by the landlord, and shall perform all the agreements which ought to be performed by the first lessee,

shall not be affected by the recovery in such action of right.

Approved December 30, 1839.

[Chap. 15.]

AN ACT to establish a seminary of learning at Parkhurst, in Scott county.

Persons incorporated.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be established at the town of Parkhurst, in Scott county, a seminary of learning, for the instruction of young persons of both sexes, in science and literature, to be called "The Union Academy, at Parkhurst," and that Robert Carlton, Ralph Letton, Sterling Parkhurst, Eleazar Parkhurst, Washington B. Woodward, William Hopson, and Laurel Summers, and their associates and successors are hereby declared a body politic and corporate in law by the name and style of the Union Academy, at Parkhurst.

Powers.

SEC. 2. And the corporation before named, shall have perpetual succession and power to acquire, possess, and retain and enjoy property, real, personal, and mixed, and the same to sell, grant, convey, rent, or otherwise dispose of, at pleasure, and they shall have power to contract and be contracted with, sue and be sued, pleaded and be impleaded, in all courts of justice, and they shall have and use a common seal, with power to alter it at pleasure.

Stock.

SEC. 3. That the stock of said academy shall consist of shares of ten dollars each, which shall be deemed personal property, and shall be transferable on the books of said corporation, in such manner as may be prescribed by the board of trustees:

Income not to exceed.

Provided, That the annual income of the said corporation, (not including tuition however,) shall not exceed the sum of two thousand dollars, and that

To be used only for.

its funds, privileges and immunities shall be used for no other purpose than that of education.

Trustees.

SEC. 4. The corporation concerns of said academy, shall be managed by a board of trustees, consisting of five members, three of whom shall constitute a quorum for the transaction of business; they shall be elected by the stockholders on the first Monday in April annually, and shall hold their offices for the term of one year, and until their successors are

duly elected. The election of trustees shall be by ballot, and each stockholder shall be entitled to one vote for every share owned by him, to the amount of ten shares, and then to one vote for every five shares over and above that amount. Any stockholder may vote in person or by proxy; said trustees shall elect one of their number to be president of their board, and they shall have power to fill vacancies in their own body. If any election shall not be made on the day designated by this act, such election may be held on any other day, provided a notice of the time and place of holding such election, signed by three of the stockholders, be affixed to the door of the most public house in Parkhurst, at least twenty days before said election. Votes.

SEC. 5. The board of trustees shall have power to appoint subordinate officers and agents, to make, ordain and establish such ordinances, rules, and regulations as they may deem necessary for the good government of said academy, its officers, teachers, and pupils, and for the management of the property and affairs of the said corporation to the best advantage: *Provided*, That they shall not contravene the laws of the United States or of this territory. Power of trustees.

SEC. 6. That all deeds and other instruments of conveyance shall be made by order of the trustees, sealed with the seal of the corporation, signed by the president, and be by him acknowledged, in his official capacity, in order to insure their validity. Deeds, what valid.

SEC. 7. This act to take effect and be in force from and after its passage.

Approved December 30, 1839.

[Chap. 16.]

AN ACT to incorporate the Iowa Flouring Mill and Manufacturing company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Samuel Dunham and such other persons as may associate with him, are hereby incorporated and to be known by the name of the "Iowa Flouring Mill and Manufacturing Company," with perpetual succession; and by that name shall be capable in law of purchasing, holding, selling, leasing and conveying estate, either real or personal, so far as the same may be necessary for the purposes hereinafter mentioned, and no farther; and in their corporate Corporate powers.

name may sue and be sued, may have a common seal, which they may alter or renew at pleasure, and shall have, enjoy and may exercise all the powers, rights and privileges which may appertain to corporate bodies for the purposes mentioned in this act: *Provided*, The real and personal estate of said corporation shall not exceed the value of forty thousand dollars.

To construct a dam.

SEC. 2. That said Samuel Dunham and his associates, their heirs and assigns be and they are hereby authorized to construct a wing dam running from the south bank of the Iowa river out into said stream a distance of not more than twelve rods, at the point near the west line of the southwest fractional quarter of section twenty-seven, in township seventy-three north, range two west, where the slough or bayou known and described as the "Iowa slough" leaves said river: *Provided* said dam do not injure the navigation of said river.

Injury thereto a misdemeanor.

SEC. 3. Any person who shall destroy or in any wise injure said dam, shall be deemed to have committed a trespass, and shall be liable accordingly; and any person who shall wilfully or maliciously destroy or injure said dam, shall be deemed guilty of a misdemeanor, and on conviction thereof shall

Fine.

be fined treble the amount of damages the owners may have sustained, at the discretion of the court.

To construct a dam and race on the slough.

SEC. 4. That said company shall have the power to use said slough or bayou, without interruption for the purpose of carrying on their mills; and at such point or points as to them may seem advisable, to construct a dam in said slough or bayou, and to dig or construct a race from said slough, by which to discharge the water of said slough into the Mississippi river at the most convenient point.

Not to flow other lands.

SEC. 5. Nothing herein contained shall authorize the individuals in this act, their heirs or assigns, to enter upon or flow the lands of any person, without the consent of such person; and they shall

To remove nuisances.

remove all such nuisances as may be occasioned by the erection of said dams, which may endanger the health of the citizens in its vicinity.

First meeting.

SEC. 6. That the said Samuel Dunham may, at any time within one year from the passage of this act, call a meeting of said company, by giving at least sixty days' notice in some newspaper printed within the territory, or by posting up written or

printed notices in three of the most public places in the county.

By-laws. SEC. 7. And said company, when so convened, may call one of their members to preside, and may proceed to enact such by-laws, rules and regulations, for the government of said company as a majority of them may deem right and proper: *Provided* said by-laws do not conflict with the laws of the United States or this territory.

Meetings. SEC. 8. All subsequent meetings shall be in such manner and at such time and place as a majority of said company shall direct.

Transfers to be recorded. SEC. 9. That all transfers of stock or of any interest distinct or undivided to any portion of the real property of said company, shall be made by deed duly executed and recorded in the office of recorder for the county in which such real property may lie.

Approved December 31, 1839.

[Chap. 17.]

AN ACT to relocate the seat of justice in and for the county of Cedar.

Commissioners appointed. SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Henry W. Wiggins, of Scott county, and J. G. McDonald, of Jackson county, and John Eagan, of Johnson county, be and they are hereby appointed commissioners to relocate and establish the seat of justice in and for the county of Cedar.

Oath. SEC. 2. The said commissioners shall, before they enter upon their duties as commissioners, take and subscribe before some district judge or justice of the peace, the following oath, to wit: "I,

, one of the commissioners appointed to locate the seat of justice in and for the county of Cedar, do hereby solemnly swear (or affirm) that I will perform the duties imposed on me by said appointment, honestly and faithfully according to the best of my abilities, and according to the law relative to locating said county seat; and I do further swear (or affirm) that I am not directly or indirectly interested in said location, but that in locating said county seat, I will be actuated only by a desire for the best interests of said county, without the slightest partiality towards any person or persons, and without bias from fear, favor, or recompense, or the

hope of any gain or advantage to myself in any respect whatsoever."

To determine most eligible point.

SEC. 3. The said commissioners or a majority of them, shall meet at the town of Rochester, on the second Monday in March next or as soon as possible thereafter, and shall forthwith proceed to examine into and determine upon the most eligible point for the county seat of said county; and if, upon examination, the point where the seat of justice is now located be deemed by said commissioners as convenient and eligible a location as can be found, then they shall relocate said seat of justice at that place, but if otherwise, they shall proceed to locate the same as near the geographical centre of said county as the most eligible situation can be found, combining the advantages of health, convenience of timber, and facility of obtaining water, together with the proper accommodation of the inhabitants.

And locate.

To name.

SEC. 4. So soon as said commissioners shall have determined upon the place where said seat of justice shall be located, it shall be the duty of said commissioners to name said seat of justice by such name as they may think proper, and forthwith to commit their proceedings to writing, and sign the same, and file them with the clerk of the district court of said county, whose duty it shall be to record the same in the record book, and the place thus selected shall be the seat of justice of said county.

To be filed and recorded.

Pay.

SEC. 5. Said commissioners shall receive three dollars per diem for the time they shall be actually engaged in the location of the said seat of justice, not exceeding ten days, and three dollars for every twenty miles travel going to and returning from said county seat, to be paid out of the treasury of the county of Cedar.

Vacancy to be filled.

SEC. 6. *Be it further enacted*, That in case of vacancy by death or otherwise in said board of commissioners it shall be the duty of the county commissioners in the county where such vacancy shall occur, to appoint some suitable person who shall be duly authorized to perform the duties of said commissioners, who shall be required to take the oath as provided in this act.

Approved December 31, 1839.

[Chap. 18.]

AN ACT to incorporate the Bloomington education society.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That Stephen Whicher, jr., Joseph Williams, John A. Parvin, and such others as may from time to time hold stock therein, be and they are hereby created a body politic and corporate by the name of the "Bloomington education society," by which name they shall have perpetual succession and power to acquire, hold and dispose of property real, personal or mixed, to sue and be sued, plead and be impleaded in all courts of justice, shall have and use a common seal, with power to alter the same at their pleasure. Incorporation. Name. Powers.

SEC. 2. The corporate concerns of said society, shall be managed by three directors, any two of whom shall be a quorum, who shall have power to make by-laws for the society not inconsistent with the laws of the land. In being sued a service of process upon any of the directors, shall be a valid service. The corporate powers hereby conferred may be adjudged forfeited by any future legislature on good cause shown. Directors. By-laws. Service in suits against.

SEC. 3. That said directors shall not hold property in stock, lands, or otherwise, over the amount of fifty thousand dollars, and shall in no wise or under any pretence use any banking privilege whatever. Property limited. Not to use banking privilege.

Approved December 31, 1839.

[Chap. 19.]

AN ACT to relocate the Seat of Justice of the County of Johnson.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the board of county commissioners in the county of Johnson are hereby authorized to re-locate and establish the seat of justice for the county of Johnson, being first sworn by any judge or justice of the peace thereof faithfully and impartially to re-locate and establish the seat of justice of said county, taking into consideration the future as well as the present population of said county. County commissioners to locate.

SEC. 2. Said board of commissioners shall, at or within ninety days after the next regular meeting of their said board, proceed to re-locate said seat of justice, and so soon as they have made a re-location, To be recorded.

they shall commit their proceedings therein to writing, and order the same to be spread upon their records by the clerk of the said board, whose duty it shall be to record the same, and the place selected shall be the seat of justice for said county.

Approved December 31, 1839.

[Chap. 20.]

AN ACT for the relief of the sheriff of Jackson county.

Further time to collect taxes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the sheriff of Jackson is hereby allowed until the fifteenth day of May, eighteen hundred and forty, to collect the taxes in said county for the year eighteen hundred and thirty-nine.

Jones and Linn.

SEC. 2. That the said sheriff of Jackson county is hereby authorized to collect from the citizens of the counties of Jones and Linn, the amount of taxes owing to the county of Jackson for the year eighteen hundred and thirty-eight.

Approved January 4, 1840.

[Chap. 21.]

AN ACT to authorize Avery Thomas to keep a ferry across the Mississippi river, opposite Cordova, Illinois.

Limits of ferry.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Avery Thomas, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at Pinneo's landing, in Scott county, opposite Cordova, in the state of Illinois, with the exclusive privilege to the same, for one mile above and one mile below said landing, for the term of twelve years: *Provided always,* That said ferry, when so established, shall be subject to the same regulations and restrictions as other ferries are or may be by law fixing the rate of toll and prescribing the manner in which licensed ferries shall be kept and attended to: *And provided further,* That said Thomas shall put or cause to be put in complete operation a good steam or horse ferry boat, within the term of four years from the passage of this act. And until the said boat shall be provided as aforesaid, the said Thomas shall keep at said ferry a good and sufficient flat and other necessary boats, with a sufficient number of hands to work the same for the

To keep boats.

transportation of all persons and their property across the said river, when passable, without delay.

Right in lands not affected.

SEC. 2. Nothing in this act shall be so construed as to interfere with the right that any individual may have to the lands on either side of said river.

When to take effect.

SEC. 3. This act shall take effect and be in force from and after the first day of April next.

Approved January 4, 1840.

[Chap. 22.]

AN ACT regulating Grocery License.

County commissioners to grant license.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That any person wishing to obtain a license to keep a grocery, shall apply to the board of county commissioners of the proper county, who shall issue their warrant directing the person so applying, to pay into the county treasury, a sum not exceeding one hundred nor less than twenty-five dollars, as the case may be, in the discretion of the board, and obtain the treasurer's receipt for the same, and upon the presentation of such receipt, the board shall grant to such applicant a license to keep a grocery in said county for the term of one year, by the said applicant executing a bond to the said board in the penalty of one hundred dollars, with one or more sufficient securities, conditioned that he will keep an orderly house, and that he will not permit any unlawful gaming or riotous conduct in or about his house; and upon a violation of the requisitions herein contained, the person so offending shall pay a fine of not less than ten nor more than fifty dollars, for the use of the county in which the offence was committed, to be recovered by law, as debts are recovered.

Bond.

Penalty.

License to include only one place.

SEC. 2. License granted to keep a grocery, shall not authorize the person obtaining such license to vend or sell spirituous or vinous liquors in more than one place or house at the same time.

What a grocery.

SEC. 3. A grocery shall be deemed to include any house or place where spirituous or vinous liquors are retailed by less quantities than one gallon.

Penalty.

SEC. 4. If any person shall sell or retail any spirituous or vinous liquors in less quantity or quantities than one gallon without first having obtained a license agreeably to this act, he shall, upon convic-

tion thereof, be fined in any sum not exceeding one hundred dollars nor less than fifty dollars, for the use of the county where the offence shall have been committed, to be recovered by motion, in any court of record having cognizance thereof.

Duties of county officers

SEC. 5. And it [is] hereby made the duty of all county officers, knowing of any violation of the foregoing regulations of this act, to make complaint thereof to the grand jury, at the next session of the district court after such violation, and of the clerk of the board of county commissioners or county treasurer to sue on the bond for any violation of its conditions: *Provided however*, That no provisions of this act shall be so construed as to interfere [with] or in any way abridge the powers and privileges granted to the cities and incorporated towns within this territory.

Not to restrict powers of cities.

Laws repealed.

SEC. 6. All laws now in force coming within the purview of this act are hereby repealed: *Provided*, That nothing contained in this act shall affect any licenses heretofore granted under the laws of this territory.

When to take effect.

SEC. 7. This act to take effect and be in force from and after the first day of June next.

Approved January 4, 1840.

[Chap. 23.]

AN ACT to provide for the appointment of a librarian, and for other purposes.

Appointment

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That a librarian shall be annually appointed on the nomination of the governor, by and with the advice and consent of the Council.

Bond.

SEC. 2. That said librarian shall give bond to the secretary of the territory, in the sum of five thousand dollars, for the faithful performance of his

Oath

duties; and he shall take an oath impartially and faithfully to discharge the duties of librarian, which, together with a certificate thereof, shall be indorsed on said bond.

Care of library.

SEC. 3. He shall have the custody, charge, safe keeping, management and direction of all books, papers, maps, charts, engravings, paintings, and all other things of what nature soever; properly belonging to the library, and shall take especial care that none of them be lost or injured.

To provide a room.

SEC. 4 He shall provide, at the seat of government, and convenient as possible to the house occupied by the legislative assembly, a proper room for the safe keeping of the territorial library, and all things belonging or appertaining thereto, which shall be entrusted to his care.

Persons to take books.

SEC. 5. No person shall be permitted to remove a book from the library, except the members of the legislative assembly, governor, and secretary of the territory, judges of the supreme court, United States attorney, marshal of the territory, delegate to congress from the territory, clerk and attorneys of the supreme court during its session, and officers of the legislature during its session.

Revised statutes.

SEC. 6. No person shall take more than one volume of revised statutes from the library at any one time, nor retain the same for a longer period than two days.

No person to keep books more than ten days.

SEC. 7. No person shall be allowed to keep any work belonging to the library in his possession for a longer period than ten days, under a penalty of twenty-five cents for each day he holds it over that time.

Receipt.

SEC. 8. No person shall be permitted to remove a book from the library without giving a receipt therefor to the librarian.

Penalty for injury, &c.

SEC. 9 If any person injure or fail to return any book, map, or chart, or other work, for more than three months, he shall forfeit and pay to the librarian, for the benefit of the library, three times the value thereof, or of the set to which it belongs, to be recovered in the name of the territory for the use of the library, in any court having jurisdiction thereof.

Other persons to read books.

SEC. 10. The persons privileged to remove books, &c., from the library may introduce citizens or strangers, into the library, who shall have the privilege, during all seasonable hours, to read any of the books therein not required for the use of such privileged persons.

Assistant librarian.

SEC. 11. The librarian shall have authority to appoint an assistant librarian, who may perform the duties assigned to the librarian, and for whose acts the librarian shall be personally responsible.

Hours when library shall be open.

SEC. 12. The library shall be kept open during the session of the legislature and supreme courts, from the hours of nine to twelve M. and from two to nine P. M. At all other times, on every Wednes-

day and Saturday afternoons, for four hours each. The hours to be selected and notice thereof posted on the outside of the door of the library room by the librarian.

Librarian to report.

SEC. 13. The librarian shall, at the commencement of every session of the legislative assembly, report a list of books or other property missing, if any, of the library, and an account of fines imposed and paid, and such other information in relation to the library as he may deem expedient.

Expenses to be paid.

SEC. 14. He shall, previous to the close of every session, report to the legislative assembly, a true account of all expenses incurred during the session, and since the adjournment of the next preceding session; for rent of room, fuel, candles, stationery, and other necessary incidental expenses, which shall be paid out of any moneys appropriated by congress to defray the expenses of the legislative assembly.

Pay.

SEC. 15. The librarian shall annually receive for his services, the sum of two hundred and ten dollars, payable quarterly, by the secretary of the territory, out of the fund appropriated by congress for the expenses of the legislative assembly.

Rules to be made.

SEC. 16. Such other rules, not inconsistent with this act, as may be necessary for the safe keeping and good management of the library, may be adopted by the governor and librarian, and kept, together with a catalogue of the books in the library for the inspection of those concerned.

Suits.

SEC. 17. The librarian shall carry this act into execution, and sue for all penalties, and for all injuries done to the library under this act, in the name of the territory, for the use of the library.

SEC. 18. This act to be in force from and after its passage.

Approved January 4, 1840.

[Chap. 24.]

AN ACT to provide for the support of Illegitimate Children.

Warrant to bring accused before justice.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That on complaint made to any justice of the peace in this territory, by any woman resident therein, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which, if born alive, may be a bastard, accusing any person of being the father of such a child, the justice shall take such accusation in

writing, and thereupon issue his warrant, directed to the sheriff or one of the constables of his county, commanding him forthwith to bring such accused person before such justice to answer to such complaint, and on return of such warrant, the justice, in presence of such accused person, shall proceed to examine the complainant on oath respecting her cause of complaint. And such accused person shall be allowed to ask by himself or his counsel, such complainant, under her oath or affirmation, any reasonable questions necessary to his justification, and such questions and answers, with every other part of the examination, shall be reduced to writing by the justice. And if, on such examination, such accused person shall satisfactorily appear to be the father of the child, he shall pay or cause to be paid to the woman so complaining, such sum or sums of money or other property as she may agree to receive in full satisfaction, and shall further enter into a bond with the board of county commissioners of the county in which such woman shall reside, and their successors in office, conditioned to save such county free from all charges towards the maintenance of said child. And in case such person shall so comply with the requisitions of this act, then the justice shall discharge such person, on his paying the costs of prosecution.

To make satisfaction.

And give bond.

SEC. 2. When any woman has a bastard, and neglects to bring suit for the maintenance of such child, or commences a suit and fails to prosecute to final judgment, the county commissioners interested in the support of such child, when sufficient security is not offered for the support of such child to save the county from expense, shall bring a suit, in behalf of such county, against him who is accused of being the father of such child, or may take up and prosecute a suit begun by the mother of the child.

Woman neglecting, county commissioners may bring suit.

SEC. 3. In case such accused person does not comply with the provisions contained in the first section of this act, the justice to whom such complaint was made shall bind such person in a recognizance to the next district court, with sufficient security, in a sum not less than one hundred dollars nor more than five hundred dollars, to answer such accusation and to abide the judgment of court therein; and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer such complaint.

Persons not complying to recognize.

Or be committed.

Jury.

Mother a witness.

SEC. 4. When such accused person shall plead not guilty to such charge before the court to which he is recognized, the court shall order the issue to be tried by a jury, and at the trial of such issue, the examination of such accused person before the justice shall be given in evidence, and the mother of such child shall be admitted as a competent witness and her credibility left with the jury: *Provided*, On the trial of the issue the jury shall, in behalf of the man accused take into consideration any want of credibility in the mother of the child, also any variation in her testimony before the justice and that before the jury, and also any other confession of her at any time, which does not agree with her testimony on any other plea or process made in behalf of such accused person.

Order for maintenance.

To give security.

Or be committed.

SEC. 5. In case the jury find the defendant guilty, or such accused person, before the trial, shall confess in court that the accusation is true, he shall stand charged with the maintenance of such child, in such sum or sums as the court may order and direct, with judgment of costs of prosecution, and moreover be liable to the suit of the complainant for damages, and the court shall require such person to give security to perform the aforesaid order. And in case the reputed father shall refuse or neglect to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the proper county, there to remain until he shall comply with the order of the court, or until such court shall, on sufficient cause shown, direct him to be discharged.

Recognizance to be renewed.

SEC. 6. If it shall happen, at the time of holding such court, that the woman be unable to attend, the court shall order the renewal of the bonds of recognizance that the accused person shall be forthcoming at the next court, at which the mother of the said child shall be able to attend, and the continuance of said bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

Accused not appearing, scire facias to issue.

SEC. 7. Whenever any recognizance which shall have been entered into by any person charged with being the father of an illegitimate child, as provided for by this act, shall be forfeited, by reason of the person not appearing to answer to said charge, it shall be the duty of the court to order a scire facias to

issue against the sureties in said recognizance, commanding them to show cause at the next term of the court why judgment shall not go against them for the amount of said recognizance.

When judgment against sureties.

SEC. 8. If, upon the return of said scire facias served, or two returns if not found, the said sureties shall fail to show cause why the same shall not be done, the court shall enter judgment against said securities, in the same way and manner as they would have done against the principal had he appeared and confessed himself to be the father of said child: *Provided*, That they shall in no case be made liable to pay more for the support of the said child than the amount of the penalty of said recognizance.

Order to be recorded.

SEC. 9. In all cases where the defendant shall be adjudged to be the father of the child, the order for its maintenance shall be entered, in the nature of judgment, upon the record, the different instalments becoming due at the time the court may direct. And whenever any of the instalments shall become due, and shall not be immediately paid, the same shall be collected by execution against the principal and securities as in other cases.

Execution.

Approved January 4, 1840.

[Chap. 25.]

AN ACT regulating marriages.

Who may be joined.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That male persons of the age of eighteen years, female persons of the age of fourteen years, not nearer of kin than first cousins, and not having a husband or wife living, may be joined in marriage: *Provided always*, That male persons under twenty-one years, female persons under the age of eighteen years, shall first obtain the consent of their fathers respectively, or in case of the death or incapacity of their fathers, then of their mothers or guardians.

By whom.

SEC. 2. That it shall be lawful for any ordained minister of the gospel of any religious society or congregation within this territory, who has or may hereafter obtain a license for that purpose as hereinafter provided, or for any justice of the peace in his county, or for the several religious societies agreeably to the rules and regulations of their respective churches, to join together all persons as husband and wife not prohibited by this act.

Minister to be licensed.

SEC. 3. That any minister of the gospel, upon producing to the clerk of the district court of any county in this territory, in which he officiates, credentials of his being a regular ordained minister of any religious society or congregation, shall be entitled to receive from said clerk, a license authorizing him to solemnize marriages within this territory, so long as he shall continue a regular minister in such society or congregation.

License to be produced and noted.

SEC. 4. That it shall be the duty of every minister who is now or shall hereafter be licensed to solemnize marriages as aforesaid, to produce to the clerk of the district court, in every county in which he shall solemnize any marriages, his license so obtained, and the said clerk shall thereupon enter the name of such minister upon record, as a minister of the gospel, duly authorized to solemnize marriages within this territory, and shall note the county from which said license issued, for which services no charge shall be made by such clerk.

Record to be evidence.

SEC. 5. That when the name of any such minister is so entered upon the record by the clerk aforesaid, such record, or the certificate thereof by the said clerk, under the seal of his office, shall be good evidence that the said minister was duly authorized to solemnize marriages.

Parties to obtain license.

SEC. 6. That previous to persons being joined in marriage, a license for the purpose, shall be obtained from the clerk of the district court, in the county where such female resides, agreeably to the provisions of this act: *Provided*, That the society called friends or quakers, may solemnize marriages in their public meetings without the production of such license.

Evidence of legality.

SEC. 7. That the clerk of the district court as aforesaid, may inquire of the party applying for marriage license as aforesaid, upon oath or affirmation relative to the legality of such contemplated marriage, and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license, and if any of the persons

And of consent of parties.

intending to marry shall be under age, the consent of the parents or guardian shall be personally given before the clerk, or certified under the hand of such parent or guardians, attested by two witnesses, one of which shall appear before the clerk and make

oath or affirmation that he saw the parent or guardian whose name is annexed to such certificate subscribe, or heard him or her acknowledge the same, and the clerk is hereby authorized to issue and sign such license, and affix thereto his seal of office. The clerk shall be entitled to receive, as his fee for administering the oath or affirmation aforesaid, and granting license, recording the certificate of marriage and filing all the necessary papers, the sum of one dollar and twenty-five cents; and if any clerk shall, in any other manner, issue or sign any marriage license, he shall forfeit and pay a sum not exceeding five hundred dollars, to and for the use of the party aggrieved. Fee.

SEC. 8. That a certificate of every marriage hereafter solemnized, under the hand of the justice, minister, or the clerk or keeper of the records of the societies mentioned in this act, specifying, Certificate of marriage to be recorded.

First. The christian names and surnames, ages, and places of residence of the parties married;

Second. The time and place of such marriage shall be transmitted to the clerk of the district court of the county where such marriage was solemnized, within three months thereafter, and be recorded by such clerk in a book to be kept by him for that purpose.

SEC. 9. Every justice, minister, or clerk, or keeper of records, in section eight mentioned, failing to transmit such certificate to the clerk of the district court of the county in due time, shall forfeit and pay fifty dollars, to and for the use of the county; and if such clerk shall neglect to record the same, he shall forfeit and pay fifty dollars, to and for the use of the county. Penalties.

SEC. 10. That the record of a marriage made and kept as before prescribed by the clerk of the district court, or a copy thereof duly certified, shall be received in all courts and places as presumptive evidence of the fact of such marriage. Record to be presumptive evidence.

SEC. 11. That if any justice or minister by this act authorized to join persons in marriage, shall solemnize the same contrary to the true intent and meaning of this act, the person so offending shall, upon conviction thereof, forfeit and pay any sum not exceeding five hundred dollars, to and for the use of the county where such offence was committed, and if any person not legally authorized shall attempt to solemnize the marriage contract, such person Penalty for solemnizing marriage contrary to this act.

shall, upon conviction thereof, forfeit and pay five hundred dollars, to and for the use of the county where such offence was committed.

Forfeitures, how recovered.

SEC. 12. That any fine or forfeiture arising under the provisions of this act to the county, in consequence of any breach of this act, shall be recovered by action of debt, or by indictment, with costs of suit, in any court of record having cognizance of the same.

Marriage of white and negro void.

SEC. 13. All marriages of white persons with negroes or mulattoes are declared to be illegal and void.

Repeal.

SEC. 14. That all laws now in force in this territory, not embraced in the statutes of Iowa on the subject of marriages, be and the same are hereby repealed. This act to take effect and be in force from and after the first day of March next.

When to take effect.

Approved January 6, 1840.

[Chap. 26.]

AN ACT for the limitations of suits on penal statutes and criminal prosecutions.

Actions by informers to be commenced in one year.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That all actions, suits, bills or informations which shall hereafter be had, sued, or commenced for any forfeiture on any penal statute made or to be made, the benefit whereof is or shall be by the said statute in whole or in part to the person who shall inform and prosecute in his behalf, shall be had, brought; sued or commenced by any person who may lawfully pursue the same as aforesaid, within one year from the commission of the offences, and not afterwards, and in default of such pursuit, then the same shall be had, brought, or prosecuted by the territory at any time within two years from the commission of all such offences, and not afterwards, and any indictment, complaint, or information for any offence against such statute aforesaid, shall hereafter be made and prosecuted within two years limited as aforesaid, and not afterwards.

Or by territory in two years.

Criminal prosecutions to be within two years, except.

SEC. 2. That all prosecutions for offences except treason, murder, arson, burglary, kidnapping, horse-stealing, and forgery, shall be instituted within two years next after the offence charged may have been committed and not after. *Provided*, That if the per-

son charged, or against whom such prosecution may be instituted, shall not have been an inhabitant or usually a resident of this territory, within and during the said term of two years, said prosecution may be instituted any time within two years next after such person may have become an inhabitant or usually resident of this territory: *And further provided*, That all prosecutions that shall be hereafter commenced for offences, except treason, murder, arson, burglary, kidnapping, horse-stealing, and forgery, committed before the organization of this territory, to wit: before the fourth day of July, in the year eighteen hundred and thirty-eight, shall fail and be utterly null and void.

Approved January 7, 1840.

[Chap. 27.]

AN ACT to encourage the destruction of wolves.

Reward.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the board of commissioners of the several counties in this territory, be and they are hereby authorized and empowered, at their discretion, to offer a reward of not less than twenty-five cents nor over one dollar, to any person who shall kill any wolf within their respective counties, not exceeding six months old; and the sum of not less than fifty cents nor more than three dollars for every wolf over that age. And the commissioners aforesaid may renew or withdraw the offer of the above bounties from time to time, as in their discretion they may deem expedient, by publishing notices thereof in at least three public places within their respective counties.

To produce scalp.

SEC 2. Any person claiming the benefit of this act, shall produce before some justice of the peace for the county where such wolf was killed, the scalp, with the ears thereon, and the justice shall administer to such person the following oath, to wit:

Oath.

"You do solemnly swear that the scalp now produced by you was taken from a wolf killed by you in this county; that you did not bring the same into this county from any other place, and that you believe that said wolf was more (or less as the case may be) than six months old, and that said wolf was killed on or about" (here state the time when.)

Justice to grant certificate.

Said justice shall thereupon grant to said person a

certificate, stating the name of the killer, the age of the wolf, and the time when killed; and said justice shall receive, for his services above mentioned, twelve and one-half cents. And it shall be the duty of said justice to destroy the scalp upon granting such certificate.

County commissioners to order payment.

SEC. 3. When any certificate granted under the provisions of this act, is presented to the board of county commissioners of the county where the certificate was issued; said board of commissioners shall order that the person presenting said certificate be paid out of the county treasury, the sum to which he is entitled under the provisions of the first section of this act.

Approved January 7, 1840.

[Chap. 28.]

AN ACT to regulate Conveyances.

Person having use to be deemed in lawful seizin.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That when any person becomes seized of any real estate to the use, confidence or trust of any other person, civil, or natural, the person who has such use, confidence or trust in fee simple, for term of life, or of years, or otherwise, or in remainder or reversion, shall be deemed forthwith in lawful seizin, estate and possession of the same real estate, remainder or reversion in such like estates, and after the same quality, manner, form and condition as he is in the use, confidence or trust.

Heirs not necessary to fee simple.

SEC. 2. The term "heirs" or other words of inheritance shall not be necessary to create or convey an estate in fee simple; and every conveyance of any real estate hereafter executed shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the term of the grant.

Subsequent estate to pass.

SEC. 3. If any person shall convey any real estate by a conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance, have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal estate had been in the grantor at the time of the conveyance.

Claimant not in possession may sell.

SEC. 4. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with like effect as if he was in the actual possession thereof.

Undivided interest a tenancy in common.

SEC. 5. Every interest in real estate granted or devised to two or more persons, (other than to executors and trustees as such) shall be a tenancy in common, unless expressly declared in such grant or devise to be in joint tenancy.

Effect of grant, bargain and sell.

SEC. 6. The words "grant, bargain and sell," in all conveyances in which any estate of inheritance in fee simple is limited, shall, unless restrained by express terms contained in such conveyance be construed to be the following express covenants on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns:

First. That the grantor was, at the time of the execution of such conveyance, seized of an indefeasible estate in fee simple in the real estate thereby granted;

Second. That such real estate was, at the time of the execution of such conveyance, free from incumbrance done or suffered by the grantor, or any person claiming under him;

Third. For further assurance of such real estate to be made by the grantor and his heirs to the grantee, his heirs and assigns, and may be sued upon in the same manner as if such covenants were expressly inserted in the conveyance;

Fourth. Every instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, shall be acknowledged or proved and certified in the manner herein prescribed.

Proof or acknowledgment.

SEC. 7. The proof or acknowledgment of every such instrument shall be taken by some one of the following courts or officers:

First. If acknowledged or proved within this territory, by some court having a seal, or some judge, justice or clerk thereof, or some justice of the peace or notary public of the county in which the real estate conveyed or effected is situated;

Second. If acknowledged or proved without this territory, and within the United States, by any court of the United States, or of any state or territory, having a seal, or the clerk of any such court;

Third. If acknowledged or proved without the United States, by any court of any state, kingdom or empire, having a seal, or the mayor of any city, having an official seal.

Certificate.

SEC. 8. Every court or officer that shall take the proof or acknowledgment of any such instrument in writing, or the relinquishment of the dower of a married woman on any conveyance of the real estate of her husband, shall grant a certificate thereof, and cause such certificate to be endorsed on such instrument or conveyance.

How tested.

SEC. 9. Such certificate shall be,

First. When granted by a court, under the seal of the court;

Second. When granted by the clerk of a court, under the hand of the clerk and seal of the court of which he is clerk;

Third. When granted by an officer who has a seal of office, under the hand and official seal of such officer;

Fourth. When granted by an officer who has no seal of office, under the hand of such officer.

Grantor to be personally known, or

SEC. 10. No acknowledgment of any instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, shall be taken, unless the person offering to make such acknowledgment shall be personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such instrument as a party thereto, or shall be proved to be such by at least one credible witness.

Requisites of certificate.

SEC. 11. The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by at least one witness, whose name shall be inserted in the certificate.

Execution how proved.

SEC. 12. The proof of the execution of any instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, shall be,

First. By the testimony of a subscribing witness; or,

Second. When all the subscribing witnesses are dead or cannot be had, by evidence of the hand

writing of the party, and of at least one subscribing witness, given by at least two credible witnesses to each signature.

Witness to be known, or

SEC. 13. No proof by a subscribing witness shall be taken, unless such witness shall be personally known to at least one judge of the court, or to the officer taking the proof, to be the person whose name is subscribed to the instrument as a witness thereto, or shall be proved to be such by at least two credible witnesses.

No certificate unless.

SEC. 14. No certificate of such proof shall be granted unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party, is the person who executed the same, that such person executed the instrument, and that such witness subscribed his name thereto as a witness thereof.

What to set forth.

SEC. 15. The certificate of such proof shall set forth the following matters:

First. The fact that such subscribing witness was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to such instrument as a witness thereto, or was proved to be such by at least one witness, whose name shall be inserted in the certificate;

Second. The proof given by such witness of the execution of such instrument and of the facts that the person whose name is subscribed to such instrument as a party thereto, is the person who executed the same, and that such witness subscribed his name to such instrument as a witness thereof.

Proof by hand writing when allowed.

SEC. 16. No proof, by evidence of the hand writing of the party and of a subscribing witness shall be taken, unless the court or officer taking the same shall be satisfied that all the subscribing witnesses to such instrument are dead, or cannot be had to prove the execution thereof.

No certificate unless.

SEC. 17. No certificate of any such proof shall be granted, unless at least two credible witnesses shall state, on oath, that they personally knew the person whose name is subscribed thereto as a party, well know his signature, stating their means of knowledge, and believe the name of the person subscribed thereto as a party was subscribed by such person, nor unless at least two credible witnesses shall, in like manner, state that they personally knew the

person whose name is subscribed to such instrument as a witness, well know his signature, stating their means of knowledge, and believe the name subscribed thereto as a witness was thereto subscribed by such person.

What to set forth.

SEC. 18. The certificate of such proof shall set forth the names of the witnesses examined, the fact that such witnesses were sworn and the evidence required by the last preceding section to be by them given.

Subpœna.

SEC. 19. Upon the application of any grantee in any instrument in writing required by this act to be recorded, or of any person claiming under such grantee, verified by the oath of the applicant, that any witness to such instrument residing in the county where such application is made, refuses to appear and testify, touching the execution thereof, and that such instrument cannot be proved without his evidence, any court or officer authorized to take the proof of the instrument may issue a subpœna requiring such witness to appear before such court or officer and testify, touching the execution thereof.

Dower how relinquished.

SEC. 20. A married woman may relinquish her dower in any of the real estate of her husband, by any conveyance thereof executed by herself and husband, and acknowledged and certified in the manner hereinafter prescribed.

Same.

SEC. 21. Such relinquishment shall be taken before some court or officer authorized by this act, to take the proof or acknowledgment of instruments in writing, conveying real estate or affecting the same.

Person to be personally known, or

SEC. 22. No such relinquishment shall be taken, unless such married woman shall be personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by at least one credible witness, nor unless she shall be made acquainted with the contents of such conveyance, and shall acknowledge, on an examination apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her husband.

Certificate.

SEC. 23. The certificate of such relinquishment shall set forth that such married woman was per-

sonally known to at least one judge of the court or to the officer taking the same to be the person whose name is subscribed to such conveyance, or was proved to be such by at least one witness, whose name shall be inserted in the certificate, that she was made acquainted with the contents of such conveyance, and acknowledged, on an examination apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned, freely and without compulsion or undue influence of her husband.

Feme covert.

SEC. 24. A married woman may convey any of her real estate by any conveyance thereof executed by herself and husband, and acknowledged by such married woman, and certified in the manner hereinafter prescribed by some court authorized by this act to take and certify such acknowledgment.

Effect of covenants.

SEC. 25. No covenant expressed or implied in any such conveyance, shall bind such married woman or her heirs, except so far as may be necessary effectually to convey from such married woman and her heirs all her right and interest expressed to be conveyed in such conveyance.

Acknowledgment.

SEC. 26. Any court or person authorized by this act to take the proof or acknowledgment of any instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, may take and certify the acknowledgment of a married woman to any such conveyance of her real estate.

To be personally known, or

SEC. 27. No such acknowledgment shall be taken unless such married woman shall be personally known to at least one judge of the court taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by at least one credible witness, nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on an examination apart from her husband, that she executed the same freely and without compulsion or undue influence of her husband.

Certificate.

SEC. 28. The certificate of such acknowledgment shall set forth that such married woman was personally known to at least one judge of the court granting the same to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by at least one witness, (whose name shall be inserted in the certificate,) and that

she was made acquainted with the contents of such conveyance and acknowledged, on an examination apart from her husband, that she executed the same freely and without compulsion or undue influence of her husband.

Deeds to be recorded.

SEC. 29. Every instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, proved or acknowledged, and certified in the manner above prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated.

Filing to be notice.

SEC. 30. Every such instrument in writing, certified and acknowledged in the manner herein above prescribed, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and all subsequent purchasers and mortgagees shall be deemed in law and equity to purchase with notice.

Not valid until.

SEC. 31. No such instrument in writing shall be valid, except between the parties thereto and such as have actual notice thereof, until the same shall be deposited with the recorder for record.

Letters of attorney.

SEC. 32. Every letter of attorney, or other instrument in writing containing a power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another any instrument in writing that conveys any real estate or whereby any real estate may be affected in law or equity, shall be acknowledged or proved, and certified and recorded as other instruments in writing conveying or affecting real estate are required to be acknowledged, or proved, and certified and recorded.

Revocation.

SEC. 33. No such letter of attorney or other instrument certified and recorded in the manner prescribed in the preceding section shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

Deeds may be evidence.

SEC. 34. Every instrument in writing conveying or affecting real estate which shall be acknowledged or proved, and certified as hereinbefore prescribed, may, together with the certificate of acknowledgment, proof or relinquishment, be read in evidence without further proof.

Deed lost record may be proof.

SEC. 35. Where any such instrument is acknowledged, or proved and certified and recorded in the manner hereinbefore prescribed, and it shall be shown to the court that such instrument is lost, or not within the power of the party wishing to use the same, the record thereof or a transcript of such record, certified by the recorder, under the seal of his office, may be read in evidence without further proof.

Not conclusive.

SEC. 36. Neither the certificate of the acknowledgment or of the proof of any such instrument in writing, nor the record, or transcript of the record of such instrument shall be conclusive, but the same may be rebutted.

Incompetent witness.

SEC. 37. If the party contesting the proof of any such instrument shall make it appear that such proof was taken upon the oath of an incompetent witness, neither such instrument nor the record thereof shall be received in evidence until established by other competent proof.

Real estate what to include.

SEC. 38. The term "real estate," as used in this act, shall be construed as co-extensive in meaning with lands, tenements, and hereditaments, and as embracing all chattles real.

Not to extend to wills.

SEC. 39. This act shall not be so construed as to embrace within its provisions last wills and testaments. This act to take effect from and after the first day of June next.

Approved January 4, 1840.

[This act was accidentally omitted in the order of its date.]

[Chap. 29.]

AN ACT to incorporate the Philadelphia mill and manufacturing company.

Persons incorporated.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Hugh W. Sample, and such other persons as may associate with him, are hereby incorporated and to be known by the name of "The Philadelphia mill and manufacturing company."

To construct dam.

SEC. 2. That said Hugh W. Sample and his associates, their heirs and assigns, be and they are hereby authorized to construct a dam across the Des Moines river, opposite or within twenty chains of the town of Philadelphia, in Van Buren county, which dam shall not exceed three feet in height above

common low water mark, and shall contain a convenient lock, not less than one hundred and thirty feet in length and thirty-five feet in width, for the passage of steam, keel, and flat boats, rafts and other water crafts, provided said crafts will bear two tons burthen.

To pass all water craft.

SEC. 3. It shall be the duty of the persons authorized in the preceding section of this act, to build said dam, at all times to keep the lock in the same in good repair, and they shall at all reasonable times on the arrival of any boat or other water craft as before specified, pass the same through free from toll, without any unnecessary delay, and any person who shall be unnecessarily detained, shall be entitled to recover of said owners double the amount of damages they shall prove to have sustained by reason of such detention.

Injury to dam a trespass.

SEC. 4. Any person who shall destroy or in any wise injure either said dam or lock, shall be deemed to have committed a trespass, and shall be liable accordingly, and any person who shall wilfully or maliciously destroy or injure said lock or dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owners may have sustained, or be imprisoned at the discretion of the court having jurisdiction of the same.

Wilful injury a misdemeanor.

Not to flow lands.

SEC. 5. Nothing herein contained shall authorize the persons named in this act, their heirs or assigns, to enter upon or flow the lands of any person without the consent of such person, and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the citizens of the vicinity.

SEC. 6. The legislature of this territory or state, may at any time hereafter, alter or amend this act, so as to provide for the navigation of the said river.

Charter when to expire.

SEC. 7. This act shall cease and determine at the expiration of fifty years from its date, unless a future legislature having control of the same should otherwise determine: *And provided further*, That said dam and lock shall be completed within the term of six years from and after its passage.

Meeting.

SEC. 8. The said Hugh W. Sample may, at any time within one year from the passage of this act, call a meeting of said company by giving personal notice to each individual, or by posting up written

or printed notices in five of the most public places in said county, at least one month previous to said meeting; and said company, when so convened, may call one of their members to preside, and may proceed to enact such by-laws, rules and regulations for the government of said company as a majority of them may deem right and proper: *Provided*, Said by-laws do not conflict with the laws of the United States or of this territory.

Future meeting.

SEC. 9. All subsequent meetings shall be held in such manner and at such time and place as a majority of said company shall direct. This act to take effect and be in force from and after its passage.

Approved January 7, 1840.

[Chap. 30.]

AN ACT to amend an act entitled "An act to organize the county of Linn and establish the Seat of Justice thereof."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the county treasurer of the county of Linn be and he hereby is instructed to pay to Benjamin Nye of Muscatine county, and Richard Knott of Cedar county, the sums due them under the sixth section of an act entitled "An act to organize the county of Linn and establish the seat of justice thereof," approved January 15, 1839.

Approved January 7, 1840.

[Chap. 31.]

AN ACT to authorize Elijah Buel to keep a Ferry.

Limits of ferry.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Elijah Buel of the town of Lyons, Clinton county, his heirs and assigns, are hereby authorized to establish and keep a ferry across the Mississippi river, at the town of Lyons, in Clinton county, within the following limits, commencing at the middle of said town on the river, and extending from that point up and down said river one mile each way; and that said Buel, his heirs and assigns have the exclusive privilege of ferrying within said limits for the term of ten years from the taking effect hereof.

To procure boats.

SEC. 2. That within two years from the first day of June, eighteen hundred and forty, the said Buel,

his heirs and assigns, shall cause to be procured a good and sufficient horse or steam ferry boat, to be kept at said ferry for the transportation of all passengers and property safely across said river without delay. And until said boat is procured, said Buel shall keep at said ferry good and necessary boats and a sufficient number of hands to work the same.

Subject to general law.

SEC. 3. That said ferry shall be subject to any general law fixing the rates of toll and prescribing the manner in which licensed ferries shall be kept and regulated: *Provided*, That nothing in this act shall be so construed as to interfere with the right that any individual may have to the lands on either side of said river.

Approved January 8, 1840.

[Chap. 32.]

AN ACT to regulate ferries in certain cases.

When charters forfeited towns to keep ferry.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That hereafter, when any charter that shall have been granted or that may hereafter be granted to any person to keep a ferry across the Mississippi river, at any incorporated city or town in this territory, shall, by reason of nonuser or misuser of such franchise, be, by a competent tribunal declared forfeited, that, to prevent a public inconvenience, it shall be competent for the corporation of such city or town to take charge of such ferry, to provide suitable water crafts, and keep the ferry in a proper manner until another charter can be obtained from the legislative assembly.

Privileges, &c.

SEC. 2. That any such corporation, during the time they shall have such ferry in their charge, shall be entitled to like privileges and liable in like manner for the faithful keeping thereof as the person was to whom such charter had been granted. And such corporation may charge and receive like rates of ferriage.

County commissioners to license ferries.

SEC. 3. That the several boards of county commissioners are hereby empowered to grant licenses for keeping ferries on said Mississippi river, at such places as are not provided for by charter in like manner and under like regulations provided in this act and the "Act to regulate ferries," approved December twentieth, eighteen hundred and thirty-eight.

SEC. 4. That no license shall be granted to keep a ferry on said Mississippi river, within two miles of any other licensed or chartered ferry.

SEC. 5. That in all cases in this territory, if the board of county commissioners shall, at any time, grant a license to a person who has not before kept the ferry, the said grantee shall purchase the boats of the previous keeper at the appraisal of three disinterested persons appointed by said board, if such appraisers shall adjudge said boats to be good and sufficient for the use of said ferry. New licentiate to purchase boats of former proprietors.

Approved January 8, 1840.

[Chap. 33.]

AN ACT to authorize the arrest and detention of fugitives from justice from other states and territories of the United States.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That justices of the peace shall have power to issue process for the apprehension of any person charged, in any state or territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found within this territory. Process.

SEC. 2. The proceedings before the justice shall be in all respects similar to proceedings prescribed by the statute for arresting and committing persons accused of committing offences within this territory. Requisites.

SEC. 3. If, from the examination before the justice, it shall satisfactorily appear that such person has committed a criminal offence, and is a fugitive from justice, such magistrate, by warrant reciting the accusation, shall commit such fugitive from justice to the common jail, there to be detained for such time, to be specified in said warrant, as the said justice shall deem reasonable, to enable such fugitive to be arrested by virtue of the warrant of the executive of this territory according to the act of congress, upon the requisition of the executive authority of the state or territory in which such fugitive committed such offence, unless such person shall give bail as in this act is provided for, or until he shall he discharged according to law. To commit fugitive.

SEC. 4. The person thus arrested may give bail in such sum as by the justice shall be deemed proper, conditioned that he will appear before such jus- Bail.

tice at such time as to the said justice shall seem reasonable, and will deliver himself to be arrested upon the warrant of the executive of this territory.

District attorney to be notified.

SEC. 5. The justice before whom such person shall have been examined and committed, shall cause written notice to be given to the district attorney of the district in which such justice resides, of the name of such person and the cause of his arrest. The said district attorney shall, immediately thereafter, cause notice to be given to the governor of the state or territory having jurisdiction of the offence so charged to have been committed by such person, to the end that a demand, in pursuance of the act of congress, may be made for the arrest and surrender of said person.

To notify governor of state in quo.

Discharged, unless.

SEC. 6. The person thus arrested, detained or bailed, shall be discharged from such detention or bail, unless at or before the expiration of the time designated in the warrant of commitment, or in the condition of the bail bond, he shall be demanded or arrested by such warrant of the executive of the territory.

Justice to return,

SEC. 7. It shall be the duty of the justice to make return to the next district court of the county, of his proceedings in the premises. It shall be the duty of the said district court to inquire into the cause of the arrest and detention of such person, and if such person is in custody, or the time for his arrest as designated in the condition of the bail bond has not elapsed, the said district court, in its discretion, may discharge the said person from detention, or may order the said bail bond to be cancelled, or may continue his detention for a period beyond the time specified in the warrant of commitment, or may order new bail to be given, conditioned for the surrender of said person at a time shorter or longer than the time designated in the bail bond taken by the said justice, and if said person is in custody may take bail, conditioned for his appearance before said court, to be surrendered at such time as to said court may seem reasonable and proper.

court to inquire.

May discharge or prolong detention.

SEC. 8. This act to take effect from and after its passage.

Approved January 9, 1840.

[Chap. 34.]

AN ACT to amend "An act to incorporate the Iowa mutual fire insurance company."

Affairs how managed.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the affairs of said company shall be managed by a board of thirteen directors, and that the first election shall be held on the fourth Saturday in October, in the year eighteen hundred and forty.

Directors.

SEC. 2. The first directors shall consist of Jesse B. Webber, Hanson E. Dickinson, Nehemiah Chase, A. C. Dodge, Enos Lowe, Arthur Bridgman, Charles J. Starr, William H. Starr, George W. Kelley, Charles Mason, Joseph T. Fales, S. C. Hastings and Philip Viele.

May delegate powers.

SEC. 3. The board of directors may at any time delegate to committees of their own members, such portions of their powers and duties as they may deem proper.

SEC. 4. This act to take effect and be in force from and after its passage.

Approved January 9, 1840.

[Chap. 35.]

AN ACT to enable the citizens of Des Moines county to establish the seat of justice for said county.

Election.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be an election held in the several precincts within said county, on the first Monday of March next, at which said election each and every qualified voter in said county shall have the right to vote. That said election shall be conducted in all respects agreeably to the law regulating general elections, and the poll books returned to the office of the clerk of the board of county commissioners, and by him opened in the same manner that the poll books of the general elections are opened and canvassed and the result thereof proclaimed.

Votes how to be given.

SEC. 2. That the votes shall be confined to two points only, that is to say, the centre, or Burlington, and those voting at said election shall vote by ballot. Those in favor of the centre will write or print on their ticket the word "centre," and those in favor of Burlington shall write or print on their ticket the

word "Burlington," and if a majority shall be in favor of the centre, then it shall be the duty of the county commissioners to proceed to make selection of a suitable sight at or as near the centre as a good situation can be had, on which the seat of justice shall be located, but should the majority be in favor of Burlington, then and in that case Burlington shall be the seat of justice for said county.

Elector not to vote out of precinct.

SEC. 3. That no elector shall vote out of his precinct in casting his vote for the establishment of the county seat of Des Moines county.

SEC. 4. This act to take effect and be in force from and after its passage.

Approved January 9, 1840.

[Chap. 36.]

AN ACT to locate and establish a territorial road from Fairfield to Wapello, &c.

Commissioners appointed.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That George Miller, Lewis F. Temple, of the county of Henry, and David Cowan, of the county of Jefferson, be and they are hereby appointed commissioners to view and locate a territorial road from Fairfield, in Jefferson county, to Jefferson, in Henry county, thence to the territorial road running from Mount Pleasant to Wapello, in Louisa county, on the nearest and best route.

Route.

Oath.

SEC. 2. Sa'd commissioners shall, before they proceed to the discharge of their duty, take an oath faithfully and impartially to discharge their duties according to law, and the provisions of this act. And they shall meet in the town of Fairfield, on the second Monday in May, eighteen hundred and forty, to discharge the duty assigned them, and if they shall fail to meet at said time, it shall be the duty of the sheriff of Jefferson county, at the suggestion of any one of the commissioners, to appoint another day of meeting and said notice may be sent by mail or otherwise.

Approved January 10, 1840.

[Chap. 37.]

AN ACT to provide for the organization of townships.

Notice to be given.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the board of county commissioners of any county within this territory, may hereafter, when they shall deem it expedient, previous to any general election in this territory, give at least fifty days' notice in the usual manner of advertising elections in this territory, that the question will be taken by ballot at such election, to ascertain whether a majority of the electors of the county are in favor of the adoption of a township organization by said county.

Votes how given.

SEC. 2. It shall be the duty of the judges of such election to provide a separate ballot box to receive the votes upon the aforesaid question. The votes in favor of such organization shall be written thus, "organization," those to the contrary, thus, "no organization."

Return.

SEC. 3. It shall also be the duty of the judges to make a certified return of the number of votes for and against such organization to the clerk of the board of county commissioners of such county, in the manner that is prescribed in the law with regard to general elections; and it shall be the duty of said clerk to present said return to the said board of county commissioners at their next meeting.

Commissioners to organize.

SEC. 4. Should it appear to the said board of county commissioners that a majority of the votes given at said election upon the question of township organization, were in favor of such organization, they shall proceed to organize the county into townships according to the provisions of this act.

Extent, &c. how determined.

SEC. 5. They shall divide the county into townships, of such shape and size as the convenience and interests of such county would seem to demand, confer upon each township such name as the inhabitants may prefer, and appoint the place within each township where the first meeting of the electors shall be holden. The clerk of the said board shall record the time when each township was set off, its name, and a particular description of its boundaries.

Voters to choose a chairman and judges.

SEC. 6. On the first Monday of April annually thereafter, the electors of each township shall assemble at some place within the township at the hour of ten A. M., and when eight or more electors shall have assembled, they shall elect from their number by ballot, a chairman, whose duty it shall be to preside over the meeting, and to direct any constable present to remove or arrest any disorderly persons, and, if necessary, to confine them until the close of the meeting. And it is hereby made the duty of any such constable to obey such orders. Said electors shall then proceed to elect in the same manner, two persons, having the qualifications of electors, as judges of the election, who shall take an oath or affirmation faithfully to discharge the duties of their office.

First meeting.

SEC. 7. The first meeting of the electors of any township shall be held at the place appointed by the board of county commissioners. But all future meetings shall be held at such place as the trustees of the township may direct.

Officers to be chosen.

SEC. 8. That after the election of a chairman and judges in manner aforesaid, the electors shall proceed to the election of one township clerk, three trustees, two overseers of the poor, two fence viewers, a sufficient number of supervisors of highways, two constables and one township treasurer, which several officers shall continue in office until their successors shall be chosen and qualified, and shall, on their respective appointments, take an oath or affirmation faithfully and impartially to discharge the duties of their respective offices.

Duty of clerk.

SEC. 9. That it shall be the duty of the township clerk to keep fair and accurate records of all the public transactions of the township meetings, to make out, within two days after the election of township officers, a list of all those of whom by law oaths are required, stating the offices to which they are respectively chosen, and the same deliver to a constable of the township, requiring such constable forthwith to summon such officers to appear before a justice of the peace or before such clerk within ten days, to take such oaths or affirmations as may be by law required, which oaths or affirmations the said clerk is authorized to administer, and of which he shall make a record; and in case any township officer shall take the oath of office before any justice of the peace, such justice shall file a certificate

thereof with the clerk of the township, who shall make a record of the same.

To record marks.

SEC. 10. That it shall be the further duty of the township clerk to record in a book to be provided by him for that purpose, all private roads and cartways by the trustees established, together with the ear marks of all cattle, sheep, and hogs, and such other marks and brands as any person may wish to have recorded in the said township, but he shall not record the same mark to two different persons. And the said clerk shall be entitled to receive of the person employing him as aforesaid, for such entry of marks or brands, the sum of twenty-five cents, and shall deliver a certified copy of such entry to the owner, if required, and he shall be entitled to receive for recording private roads and cartways, for every sheet of one hundred words, ten cents, payable by the person at whose request the said record is to be made.

Fees.

Trustees to district townships.

SEC. 11. That it shall be the duty of the trustees, within twenty days after each annual township meeting, to divide their respective townships into districts, allotting to each supervisor one district, and it shall be the further duty of the said trustees to settle the accounts of the supervisors of highways and overseers of the poor, and to examine and settle all accounts and demands against the township; for which purpose the said trustees, supervisors, overseers of the poor, and township clerk shall meet on the first Monday of March annually, at the place of holding the township meetings; and it shall be the duty of the township clerk to make an entry and true statement of all accounts allowed and adjusted by the trustees, in a book to be provided for that purpose; and for every demand against the township, allowed by the trustees, the creditor shall be entitled to receive from the said trustees an order on the township treasurer for the full amount thereof on demand.

To settle accounts.

Taxes.

SEC. 12. That each and every township, whenever and so often as the major part of the whole number of electors in said township shall deem it expedient, shall have power and authority to lay a tax: *Provided*, That such articles only shall be subject to taxation as are made liable by the laws for assessing and collecting county revenue, and that the amount of the tax so laid shall not exceed what might be laid on the same articles for county purposes; and

it shall be the duty of the township clerk to make out from the county assessment roll for the township, an assessment of the tax voted by the township, a duplicate whereof he shall deliver, within twenty days, to such constable of the township as the trustees shall direct, and the other within the like time to the township treasurer, and the constable receiving such tax to collect shall, before he commences the collection thereof, give bond with two sufficient sureties to the township treasurer, conditioned to collect and pay over to the said treasurer or his successor in office, the amount of said tax within four months, and in case the said constable shall neglect and refuse to collect and pay over the whole amount of such tax within the time specified in said bond, it shall be the duty of the township treasurer, after giving ten days written notice to said constable and his sureties, to proceed in a summary way by motion before the district court and recover the amount due from such constable, with twenty per cent. damages thereon for such neglect or refusal, and shall have execution therefor against said constable and his sureties. And the constable collecting the township tax shall receive like compensation as the county collector receives for like services.

Meetings to be notified.

SEC. 13. That at least twenty days before the annual township meeting, the trustees shall issue their warrant to a constable of the township directing him to notify the electors of such township to assemble at the time and place appointed for their annual meeting, and said warrants shall enumerate the officers to be chosen at such meeting, and on the application of two or more freeholders of the township for that purpose, said trustees shall insert in said warrant such other business, matter or thing as may be proposed to be submitted to said township meeting; and no tax shall be voted at such township meeting unless notice thereof shall have been given in the said warrant; and the constable who shall receive such warrant, shall warn the electors of such township by setting up copies of said warrant in three of the most public places in each township, at least fifteen days before the meeting of such electors.

Refusing to serve, penalty

SEC. 14. That any person chosen to any office under this act, and not exempted by law, who shall neglect or refuse to serve in such office, shall for-

feit and pay, to and for the use of the township, the sum of three dollars, to be recovered before any justice of the peace; and it is hereby made the duty of the township treasurer to sue for the same, and for all fines and forfeitures accruing under this act, for neglect or misconduct in office of any township officer: *Provided*, That no person chosen to any office by this law created shall be obliged to serve in such office two years successively.

Forfeitures how expended.

SEC. 15. That all forfeitures under this law, shall be expended and laid out on the highways within the township, and it shall be the duty of the trustees to apportion the same among the supervisors of the highways of the said townships, and the township treasurer may retain three per cent of all moneys paid into the township treasury for collecting or receiving and paying over the same to the order of the trustees.

In case of vacancy,

SEC. 16. That when by reason of non-acceptance, death or removal of any person chosen to an office in any township at the annual meeting as aforesaid, or in any case where there is a vacancy, the trustees shall fill such vacancy; and the person thus chosen shall take the same oaths, and be liable to the same penalties as though he had been chosen at the annual meetings; and in case there should not, at any annual meeting under this act, be a sufficient number of electors assembled for the choice of a chairman as is hereinbefore provided, between the hours of ten o'clock in the morning and four in the afternoon, so that no township officers can be chosen by the electors, it shall then be the duty of the trustees to appoint all township officers in this law enumerated; and the township officers thus appointed shall take the same oaths and be liable to the same penalties as though they had been elected at the annual meeting.

or non-election.

Books to be transmitted

SEC. 17. That it shall be the duty of all township officers to deliver over to their successors in office under this act, all books and papers relating to their respective offices.

Lines may be altered.

SEC. 18. That whenever and so often as the board of commissioners of any county, may deem it conducive to the public convenience to divide or alter the boundary lines of any township, they shall be and they are hereby authorized to alter the boundaries or to divide the township in the most convenient

manner: *Provided*, That nothing herein shall be construed to empower the boards of commissioners to divide any township in such manner as to reduce the same below the size hereinafter prescribed, and that the trustees of each and every township in this territory, shall have power to determine on the place of holding elections within this township, and shall give public notice thereof, as is provided in case of township meetings.

Extent of townships.

SEC. 19. That no township in this territory shall be less than six miles square, unless it includes an incorporated town.

How to be set off.

SEC. 20. That any township desirous of being set off as aforesaid, shall, for that purpose, apply to the board of commissioners of the proper county, and on satisfying the board that they are entitled by law to be set off, it shall be the duty of the board to direct their clerk to record the boundaries of said township in a book to be provided for that purpose, and give said township such name as the board of commissioners shall think proper: *Provided*, That no two townships in any one county in this territory, shall be set off and incorporated by the same name.

Application for roads and cartways.

SEC. 21. That all applications for laying out any cart way or township road shall be by petition to the board of trustees, signed by at least six freeholders of the township residing in the vicinity where said road is to be laid out; and the said petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road; and one or more of the signers to said petition shall enter into bonds with sufficient security payable to the treasurer of said township, for the use of said township, conditioned for the payment of all costs and expenses arising from the view and survey of said road, unless the same shall be established a cartway or township road.

Notice.

SEC. 22. That previous to any petition being presented for such cart way or road, notice thereof shall be given by posting up three written notices at three public places in the township, one of which shall be at the place of holding the elections, at least fifteen days before the sitting of the board at which said petition shall be presented, and the petition being presented, and the board being satisfied that notice has been given as aforesaid, they shall appoint three disinterested freeholders of the township as shall take the oath and file the bond required in the

viewers of said road, and a surveyor, if necessary, to survey the same, and shall issue an order directing said viewers, after they have been duly sworn, to proceed on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view and lay out said road, or if a surveyor be appointed, then to lay out and survey said road, and make report to the board aforesaid, at their next meeting, and if no remonstrance, which remonstrance shall have at least seven signers, shall be filed with said board or presented on the day at which said viewers make their report, and the said viewers shall report in favor of establishing said road, then and in that case the same shall be recorded in the records of said township as a cart way or township road, and the said trustees shall issue their order to the supervisors of the proper districts to open the same. Viewers appointed.

SEC. 23. That if any person or persons through whose land any such cart way or township road may be laid out shall feel injured thereby, and make application to the said trustees at their first session after the view of said cart way or road, it shall be the duty of said trustees to appoint three disinterested freeholders of said township, whose duty it shall be to proceed, after being first duly sworn or affirmed to view that part of said cartway or road through the premises of the said complainant and assess the damages of the said complainant, if any, and make report in writing, to said board; and if said viewers shall report that the advantage of said road or cartway are not equivalent to the damage occasioned thereby to the premises of the complainant, and shall therein report the amount of damage, the petitioner shall be required to pay the damages so assessed, and until he does so, the said trustees shall refuse to establish said road or cartway. And all the expenses of the viewers and surveyors, if any, both of the first and second view, shall be paid by said petitioners, and if they shall neglect or refuse to do so, it is hereby made the duty of the said treasurer to commence suit on said bond before some proper court, and prosecute the same to final judgment and execution. Damages to be paid by petitioner.

SEC. 24. That the trustees may require of the township officers such bonds to the township as they shall think proper: *Provided,* That the constables shall take the oath and file the bond required in the Bonds.

"act for electing constables and defining their duties," approved January twenty-fourth, in the year eighteen hundred and thirty-nine.

Trustees to be judges of elections.

SEC. 25. That the trustees, by virtue of their office, shall be the judges of the general election for their township, and shall conform to the requirements in that respect, of the "act regulating general elections"

Clerks exempt from labor on roads.

SEC. 26. That the clerks appointed by them to serve at the general election, shall receive from them a certificate of their services, which shall be evidence that they are hereby exempted from one day's labor on the roads, which shall be a full compensation for their services.

Town officers exempt from road tax, except.

SEC. 27. That any person holding a township office, except the office of constable or justice of the peace, shall, in full remuneration for his services in such office, be exempt from all road tax or labor upon roads during his continuance in such office: *Provided*, That any township officer may receive such further compensation as the majority of all the electors of such township may allow.

Approved January 10, 1840.

[Chap. 38.]

AN ACT for the benefit of the sheriff of Des Moines county.

Allowed further time.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the sheriff of Des Moines county be and he is hereby allowed until the first Monday in April, eighteen hundred and forty, to make a full and final settlement with the board of county commissioners of the said county of Des Moines, as collector of the county revenue for the year eighteen hundred and thirty-nine: *Provided, however*, That said sheriff shall be required, on the first Monday in January next, to make a full exhibition of all his doings as such collector.

SEC. 2. *And be it further enacted*, That the said sheriff shall pay over all moneys collected by him on or before the second Saturday of January, eighteen hundred and forty, and from and after that time, the sheriff shall settle with the county commissioners every year hereafter on the first Monday in April, in Des Moines county.

SEC. 3. This act to take effect from and after its passage.

Approved January 11, 1840.

[Chap. 39.]

AN ACT to organize the county of Clinton and establish the seat of justice thereof.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the county of Clinton be and the same is hereby organized from and after the first day of March next, and the inhabitants of said county be entitled to all the rights and privileges to which by law the inhabitants of other organized counties of this territory are entitled, and the said county shall be a part of the third judicial district, and the district courts shall be held at the seat of justice of said county, on the first Mondays of May and October in each year. District courts.

SEC. 2. That there shall be an election held on the first Monday in April next, for the purpose of electing three county commissioners and all other county officers that are elective in other organized counties of this territory. Election.

SEC. 3. That it shall be the duty of the sheriff of said county to cause written notices to be put up at three of the most public places in each of the precincts in said county of Clinton, at least ten days previous to said election, stating the time, place and officers to be elected. The house of Lyman Evans shall be the place of voting for a new election precinct in said county. How notified.

SEC. 4. That the officers elected as aforesaid, shall hold their offices until the next general election in this territory, and until their successors are duly elected and qualified. Tenure.

SEC. 5. That the county seat of said county is hereby established at the town of Camanche. County seat

SEC. 6. That it shall be the duty of the county commissioners of Scott county, at the next April term, to select twenty-three persons in said Clinton county for grand jurors, and twenty-four persons in said county as petit jurors. An attested copy of the names so selected shall be delivered by the clerk of said commissioners within three days after the selection, to the clerk of the district court of Scott county, who shall thereupon issue and deliver to the sheriff of Clinton county proper venires, commanding him to summon the persons so selected to appear before the district court of Clinton county, Jurors how selected.

at or before the hour of eleven A. M. of the first day of the term thereof, to serve as grand jurors or petit jurors, (as the case may be.) Said venires shall be served as in other cases.

Election how conducted.

SEC. 7. That the election authorized by this act, shall be conducted as provided by law in other cases of county elections; and the returns of said election shall be made within six days after the election, to the sheriff of said county. And said sheriff, after receiving the returns, shall, in presence of two justices of the peace, canvass the returns, and issue certificates to the persons elected.

Approved January 11, 1840.

[Chap. 40.]

AN ACT to make valid in law the deed of Si-si-sa-man, a minor to John H. Knapp, deceased.

Whereas, Si-si-sa-man, a half breed of the Sac and Fox tribe or nation of Indians, being a minor, has, with permission of his natural guardian, by a deed of conveyance bearing date the sixth day of December, one thousand eight hundred and thirty-nine, and recorded in the register of deeds office, at Burlington, conveyed to John H. Knapp, since deceased, all his right, title and interest in the half breed reservation lying, being between the Rivers Mississippi and Des Moines, and a line running due east from the northwest corner of the state of Missouri, and the said deed, on account of the minority of said Si-si-saman, not being valid, now, therefore,

Deed valid.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the said deed be and the same is hereby made and declared to be, to all intents and purposes, as valid and binding in law and equity, as if the said minor Si-si-sa-man, was of full age at the time of sealing and delivery thereof, and that hereafter no plea shall be set up in any court of this territory, that the said deed is not legal because the said Si-si-saman was not of full age at the time of making the same.

[Presented to the governor on the 9th January, 1840, and having remained with the governor three days (Sundays excepted,) the legislative assembly being in session, this bill became a law January 13, 1840.]

[Chap. 41.]

AN ACT to incorporate the Bloomington insurance company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be established in the town of Bloomington, in Muscatine county, an insurance company to be known by the name and style of the Bloomington insurance company, and by that name are hereby declared a body corporate and politic, to have perpetual succession, and be capable in law to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts of law and equity, with power to acquire, hold and possess, occupy and enjoy the same, to sell, convey and dispose of all such real estate as shall be necessary and convenient for the transaction of its business, or which may be conveyed to said company for the security or in payment of any debt or debts which may become due and owing to the same, or in satisfaction of any judgment of a court in law, or any order or decree of a court of equity in their favor, and to make and use a common seal and the same to alter or renew at pleasure, and generally to do and perform all things consistent with the objects of such an institution. And they shall have the same privileges of other individuals allowed by the statutes of Iowa. Incorporation. Powers.

SEC. 2. The capital stock of said company shall be fifty thousand dollars, divided into shares of twenty-five dollars each. Capital stock.

SEC. 3. At the time of subscribing there shall be paid on each share the sum of five dollars. The balance shall be subject to the call of the directors, and the directors shall have power at any time for good cause, to require reasonable security to secure the payment of arrears due on his or her stock, as the same may be called for. How paid in.

SEC. 4. That as soon as all the shares are subscribed for and the first instalment paid thereon, the company shall be competent to transact all kinds of business for which it is intended.

SEC. 5. That the affairs of said company shall be managed by nine directors, a majority of whom shall be a quorum, who shall be chosen from the stockholders, as follows: There shall be a meeting of the stockholders pursuant to a notice of the com- Affairs how managed.

missioners hereinafter named, within sixty days after all the stock shall have been taken, at which meeting all the stockholders present shall proceed by ballot to elect a board of directors who shall continue in office until their successors are chosen, at which election, as well as all other elections thereafter to be holden, each stockholder shall have a vote for each share of stock he may hold not exceeding five shares, and one vote for every three shares over five.

Shares how represented.

Election of officers.

SEC. 6. That there shall be an election of directors holden on the first Monday of June, in each and every year next after the organization of the company; and the directors, at their first meeting after their election, shall choose by ballot from among themselves, a president to serve until the next election. In case of death or inability of the president, they shall fill the vacancy by ballot, as before, and in case of a vacancy in the board of directors it shall be filled by the directors from the stockholders.

Vacancies.

SEC. 7. That if they shall fail to hold an election on the first Monday in June, the directors shall appoint a day thereafter, *Provided* They shall give at least two weeks notice, by advertising in some paper in the town of Bloomington, or three written notices in the most public places in Muscatine county.

Subjects of insurance.

SEC. 8. That the corporation hereby created shall have power and lawful authority to insure all kinds of property against loss or damage by fire or other casualty, to make all kinds of insurances against loss on goods and merchandize in the course of transportation, whether on land or water, to make all kinds of insurances on life or lives, to cause themselves to be insured against any loss or risk which they may incur in the course of their business, and generally to do and perform all other matters and things connected with and proper to promote those objects.

Dividends.

SEC. 9. That the president and directors shall declare such dividends of profits of the business of said company as shall not in any wise impair the capital stock, which dividends shall be declared half yearly, and shall be paid to the stockholders at any time after ten days from the declaration of such dividend.

Losses to be paid in sixty days.

SEC. 10. That any house, building, or other property insured by this company, which shall be destroyed by fire, the directors, in such case, shall order the money insured thereon to be paid in sixty days after due notice is given of the loss, in such manner that shall be required or specified in the policy or the conditions annexed thereto.

Officers. Salaries. By-laws.

SEC. 11. That the president and directors shall have power to appoint such officers under them as shall be necessary to transact the business of said company, and to prescribe the duties of such officers, and may allow them such salaries as they shall judge reasonable, to ordain such by-laws, ordinances, and regulations as shall appear to them requisite for regulating and conducting the concerns of said company, consistent with the constitution of the United States and laws of Iowa territory, and they shall keep full, fair, and accurate entries of all transactions, which shall at all times be open to the inspection of the stockholders.

Stock how transferred.

SEC. 12. That the stock of this company may be assigned and transferred on the books of the company by any stockholder or his attorney duly constituted.

Policies how attested.

SEC. 13. That all policies or contracts of insurance, or other contracts made by the company or their authorized agents, shall be signed by the president and attested by the board of directors; and any contract thus attested which may afterward be filled up by any agent of the company duly authorized, shall be obligatory and binding on said company.

Office to be at Bloomington.

SEC. 14. That the president and directors shall transact all the business of said company in the town of Bloomington, Muscatine county; but shall have power to appoint agents at other places to make surveys of property, to fill up and deliver policies executed as aforesaid.

Books to be opened.

SEC. 15. John H. Richmond, Henry Reece, John W. Brady, Edward E. Fay, Robert C. Kinney, Adam Ogilvie, Hezekiah Musgrove, James G. Morrow, and Irad C. Day, or any four of them are hereby appointed commissioners to open books for subscription of stock and to superintend the business of the stockholders, until a board of directors shall have been chosen, which books shall be opened in the town of Bloomington, on or before the first of April, in the year eighteen hundred and forty-one,

and to be kept open for twenty days, or until all the shares are taken.

This a public act.

SEC. 16. That this act shall be taken and received in all courts of justice and by all officers as a public act, and all copies printed under the authority of the Council and House of Representatives of this territory, shall be admitted as good evidence thereof.

May be repealed.

SEC. 17. Nothing in this act contained shall be construed to prevent any future legislature from altering or repealing this charter for any misconduct, breach of faith or misuse whatever.

Duration.

SEC. 18. That this act shall continue and be in full force for the term of twenty years from the passage thereof.

Approved January 13, 1840.

[Chap. 42.]

AN ACT for the relief of certain carriers.

Lien.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That hereafter, when any person or persons, upon requestor by agreement, shall carry any goods or freight from any one point in this territory to another by land or water, for any commander or captain of any steamboat or other vessel, it shall be lawful for said carrier or carriers to retain the possession of said goods until payment or tender of payment is made according to the contract made in such case either by said commander or his agent.

No action sustained until payment.

SEC. 2. That no action of replevin, trover and conversion, or trespass, shall be commenced or sustained by any person against said carrier for said goods until after payment or tender thereof is made as aforesaid.

Lien to continue thirty days only.

SEC. 3. That said carrier or carriers shall not retain possession of said goods more than thirty days without commencing a suit for his pay, which may be done by the ordinary suit of attachment before the proper tribunal in the county in which such person may live. Said carrier shall keep said goods from being spoiled by exposure.

Act not to effect existing right.

SEC. 4. That this act shall not be so construed as to take away the right of any person to proceed by attachment against any boat or vessel as is now provided by law: *Provided*, That when any person has commenced suit one way, it shall be a bar to the

other until the one first commenced is duly discontinued.

SEC. 5. This act to take effect from and after its passage.

Approved January 13, 1840.

[Chap. 43.]

AN ACT to incorporate the Tuscarora Steam Mill company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Jacob Beeler, Jeremiah McCollister, George Honnell and O. T. L. Martin, and their associates, be and they are hereby declared a body corporate and politic, under the name of the Tuscarora steam mill company, and by that name shall have succession, and shall have all corporate powers, sue and be sued, and use a common seal. Incorporation, and powers.

SEC. 2. The capital stock of said corporation shall be eight thousand dollars, to be increased at will, by a majority of the stockholders, to fifty thousand dollars. Capital stock.

SEC. 3. Said capital stock shall be divided into shares of fifty dollars each. Shares.

SEC. 4. Said corporation may purchase, hold and convey any estate, personal, real or mixed, for their own benefit: *Provided* such estate does not exceed in value the capital stock paid in. To hold estate.

SEC. 5. The corporation shall have power to erect mills, warehouses and other necessary buildings and improvements on lands purchased and owned by said company, and to erect and establish all kinds of machinery. And erect mills.

SEC. 6. The before mentioned persons are hereby appointed commissioners, and are hereby required to open books at the house of Jeremiah McCollister, on the first day of May, one thousand eight hundred and forty, for receiving subscriptions to the capital stock of said company, and to keep the same open until the whole amount shall be subscribed. To open books.

SEC. 7. The said commissioners are authorized, at their option, to receive subscriptions to said stock to be paid in labor for the benefit of said company, which labor shall be appraised by said commissioners, and the value thereof credited to the persons subscribing for said shares. Stock how paid.

SEC. 8. Said corporation shall have lien on such shares, for any balance due thereon. Lien.

SEC. 9. One dollar shall be paid in on each share at the time of subscribing.

Officers. SEC. 10. Said company shall, on the first day of June annually, choose a president, secretary, and treasurer, and such other officers as the company may think proper.

By-laws. SEC. 11. The company shall have power to make all proper and needful by-laws, and cause their treasurer to enter into bonds upon such conditions and in such manner as the company by their by-laws shall direct. And said company shall have power to transact their business by any agent who shall enter into bonds upon similar conditions.

Approved January 13, 1840.

[Chap. 44.]

AN ACT for the relief of Van Buren county.

Arrest of sheriff of Clark county to be paid by territory. SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the county commissioners of Van Buren county shall have the power to draw from the territorial treasury any sum of money sufficient to defray all lawful expense that has accrued in taking the sheriff of Clark county, Missouri, and conveying him to the town of Bloomington, Muscatine county, in this territory, and said sum shall be paid by the treasurer of this territory, out of any money in the territorial treasury not otherwise appropriated, as soon as the accounts of such expenses shall be audited by the auditor of public accounts: *Provided, however*, That such sum of money shall not exceed an amount that is usual for services of like character.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved January 13, 1840.

[Chap. 45.]

AN ACT to amend the "Act providing for the appointment of justices of the peace, &c., approved January 21, 1839.

Two justices to be elected in each township. SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That hereafter in every township organized by law in any county in this territory, there shall be elected two justices of the peace at the first township election in like manner as township officers.

SEC. 2. The one having the highest number of votes shall hold his office two years, and the one having the next highest number shall hold his office one year. If the two highest have an equal number of votes the elder one shall have the priority. Term of office.

SEC. 3. At every annual township election after said first election, there shall be elected in each of said townships one justice of the peace, who shall hold his office two years, and until his successor is elected and qualified. At each subsequent election one justice to be chosen.

SEC. 4. That hereafter in every county which is not divided into organized townships, there shall be elected in each election precinct at the next general election, two justices of the peace, to be voted for only by the qualified voters residing in the precinct, one to hold his office two years, the other one year, the priority to be determined as in section second: *Prvoided*, That four may be elected in the Burlington precinct, and in Du Buque precinct, and three in the Farmington precinct, and four in the Fort Madison precinct, and three in the West Point precinct, and three in the Keosauqua precinct and three in the Bloomington precinct, and three in the Iowa city precinct. Two justices in each precinct. Exceptions.

SEC. 5. At every annual general election after the election mentioned in section four, one justice of the peace shall be elected in each election precinct, who shall hold his office two years, and until his successor is elected and qualified. At subsequent elections one.

SEC. 6. That returns of election of such justices in such election precincts, shall be made to the clerk of the board of county commissioners, and certificates of election issued, as in other cases. Returns.

SEC. 7. That in such counties as are mentioned in section four, where the boundaries of the election precincts are not already established or known, the board of county commissioners are hereby required (in order to carry out the purposes of this act) to establish and make known such boundaries in such manner as they shall deem proper, at a regular or special session of their board prior to the next general election. County commissioners to define election precincts.

SEC. 8. That when any one of the last mentioned counties is divided into organized townships and justices elected as provided in section first, the justices therein who may have been previously elected under section four, shall hold their offices When county is divided.

only till the expiration of the two years for which they were elected.

Commissions to expire.

SEC. 9. That at the end of thirty days next succeeding the day of election of justices of the peace in any township or precinct in any county under the provisions of this act, the offices of justices of the peace in such township or precinct held by virtue of a commission from the governor, shall be deemed expired and at an end.

Unfinished business of deceased justice.

SEC. 10. That every justice of the peace who shall lawfully receive the record and documents of a neighboring justice by reason of the death, resignation or removal of such justice, shall proceed to close up any unfinished business so placed in his hands in like manner as the person from whom such papers and records were received, was required by law to do.

On death of justice papers to go.

SEC. 11. In case of the death of any justice of the peace, his legal representatives within twenty days after the issuing of letters testamentary or of administration, shall hand over the records and all papers relating thereto of his testator or intestate to some neighboring justice of the peace of the township or precinct where the deceased lived and executed his office.

Penalty.

SEC. 12. Every person whose duty it is to comply with the requisition of the next preceding section or the twelfth section of the first article of the act to which this act is amendatory, shall forfeit and pay to the county treasurer, for every three months' neglect to comply, fifteen dollars to be recovered with costs of suit.

Certiorari.

SEC. 13. That the party, or any one of a party, aggrieved in any case of trial or judgment before a justice of the peace either by jury or otherwise, may take the same to the district court of the proper county by writ of certiorari, to be issued from said court by the clerk thereof upon the applicant giving bond with sureties approved by said clerk, within thirty days after such trial or judgment, conditioned to prosecute the same to judgment without delay, and that the party obtaining said writ will pay the debt and costs of both courts, if the judgment of the justice be affirmed or judgment be against him on trial de novo, and in all such cases the court shall examine, hear, try, and determine the same anew without regarding any error, defect or other imperfection in the proceedings of the

justice. And whenever the judgment shall be affirmed or shall be rendered on trial de novo against the plaintiff in error the judgment shall be rendered as well against the sureties as principal plaintiffs in error.

Pay of jurors.

SEC. 14. That jurors in trials before justices of the peace, shall each receive fifty cents per day, or twenty-five cents for half a day, to be charged in the bill of costs.

Stay of execution.

SEC. 15. That a stay of execution of two months, may be had on all judgments before justices of twenty-five dollars, as in other cases.

Repeal.

SEC. 16. That the twenty-fourth section of the eleventh article of the act to which this is amendatory, is hereby repealed, and the following enacted as a substitute, to wit: "In default of such bond, the same proceedings shall be had thereon as in cases of debt where bonds have been given to stay executions according to law, in such cases made and provided."

Execution with attachment served on garnishee.

SEC. 17. That any person having obtained a judgment, before any court of record or justice of the peace within this territory, against any defendant, the plaintiff upon filing an affidavit setting forth that the deponent verily believes that the defendant has not in his possession, within the knowledge of such affiant, any visible property or effects sufficient to satisfy said judgment and costs, and that the said affiant believes that the defendant in the judgment has property debts, rights or credits, (as the case may be stating the particulars of the case) in the hands of A. B. (naming him,) an execution upon any such judgment may issue, containing an attachment clause, which shall be served upon any such garnishee, requiring him to appear at the return of such execution and answer to interrogatories, touching his indebtedness to the said defendant in execution at or subsequent to the time of the service of such attachment.

Judgment against garnishee.

SEC. 18. That if any such garnishee shall be found to be indebted to the defendant in any such execution, a judgment shall be rendered against any such garnishee for the amount for which he admits himself to be indebted in his said answers, or so much thereof as will satisfy any such execution, with costs of suit and of the attachment, and any such judgment against the garnishee shall bind all such property, effects, rights and credits in the hands of such

garnishee and the payment of the amount of the judgment by such garnishee, shall operate as a conclusive bar to the right of any such defendant in execution to recover the amount paid under this process against any such garnishee.

Approved January 14, 1840.

[Chap. 46.]

AN ACT for the relief of certain territorial officers.

Acts made valid.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the acts of any county officer of any county within this territory, except the counties of Du Buque and Henry, who shall not have taken the oath of office according to the letter of the law as prescribed by the statute of this territory, to be taken by such officer previous to entering upon the duties of his office; but who, after his election or appointment, as the case may be, shall, (acting in the good faith) have taken an oath before the proper officer, and in all other respects complied with the requisitions of the law in such case provided, shall be considered valid in any court of law or equity within this territory, in the same manner as if such officer had taken the oath according to the strict letter of the law in such case made and provided, and any such officer is hereby declared a legal officer, entitled and required to fulfil and perform all the duties of his office.

To be valid when.

SEC. 2. That any county officer who shall, acting in good faith and owing to the absence of necessary information on the subject have filed his bond or affidavit with an officer not authorized by law to receive the same, shall be considered and he is hereby declared a legal officer so soon as he shall have filed his bond or affidavit with the officer authorized by law to receive the same, and his past acts in such office are hereby declared as valid and legal as if such bond or affidavit had been filed before the officer authorized by law to receive the same.

Approved January 14, 1840.

[Chap. 47.]

AN ACT to establish a seminary of learning at or near Antwerp, in Cedar county.

Incorporation.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there

shall be established at or near the town of Antwerp, in Cedar county, a seminary of learning for the instruction of young persons, of both sexes, in science and literature, to be called the "Antwerp Academy," and that James W. Tallman, Jehu Kenworthy, Asbury O. Warfield, H. G. Whitlock, Harman Van Antwerp, John G. Foy, John W. Wilkinson, Christian Halderman, John Biaylock, Henry Hardman, and Daniel Hare, and their associates and successors, are hereby declared a body politic and corporate in law, by the name and style of the "Antwerp Academy."

Powers.

SEC. 2. And the corporation before named shall have perpetual succession, and power, to possess, retain and enjoy property, real and personal, and shall have power to sell, grant, and convey, rent, or otherwise dispose of at pleasure all such property as above described, and they shall have power to contract and be contracted with, sue and be sued, plead and be impleaded, in all courts of justice, and they shall have and use a common seal, with power to alter it at pleasure.

Shares.

SEC. 3. That the stock of said academy shall consist of shares of ten dollars each, which shall be deemed personal property, and shall be transferable on the books of said corporation in such manner as shall be prescribed by the board of trustees of said corporation: *Provided*, That the annual income of said corporation, not including tuition, shall not exceed three thousand dollars, and that its funds, privileges, and immunities shall be used for no other purpose than that of education.

Trustees.

SEC. 4. The corporate concerns of said academy shall be managed by a board of trustees, consisting of eleven members, six of whom shall constitute a quorum for the transaction of business. They shall be elected by the stockholders on the first Monday in May annually, and shall hold their offices for the term of one year and until their successors are duly elected. The election of trustees shall be by ballot, and each stockholder shall be entitled to one vote for every share owned by him to the amount of ten shares, and then one vote for every five shares over and above that amount. Any stockholder may vote in person or by proxy. Said trustees shall elect one of their members to be president of their board, and they shall have power to fill vacancies in their own body. If any election shall not be made on the day designated by this act, such election may be held on

Elections.

any other day: *Provided* a notice of the time and place of holding such election, signed by three of the stockholders, be affixed to the door of the most public house in Antwerp, at least twenty days before said election.

Power of trustees.

SEC. 5. The board of trustees shall have power to appoint subordinate officers and agents, to make, ordain and establish such ordinances, rules and regulations as they may deem necessary for the good government of said academy, its officers, teachers and pupils, and for the management of the property and affairs of said corporation to the best advantage: *Provided*, That they shall not contravene the laws of the United States or this territory.

Deed how valid.

SEC. 6. That all deeds and other instruments of conveyance shall be made by the order of the trustees, sealed with the seal of the corporation, signed by the president, and be by him acknowledged in his official capacity, in order to insure their validity.

SEC. 7. This act to take effect and be in force from and after its passage.

Approved January 14, 1840.

[Chap. 48.]

AN ACT to re-locate the county seat of Clayton county.

Commissioners.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That D. F. Blythe, of Du Buque county, J. L. Kirkpatrick, of Jackson county, and Franlin Moffit, of Delaware county, be and they are hereby appointed commissioners to re-locate the county seat of Clayton county, whose duty it shall be to meet (or a majority of them) at the town of Prairie Laporte, in said county, on the first Monday of May next, and proceed forthwith to locate a suitable place for the seat of justice of said county, having reference to the geographical centre, convenience, and welfare of said county.

Oath.

SEC. 2. The commissioners aforesaid shall, before they enter upon their duties as commissioners, take and subscribe, before some district judge or justice of the peace, the following oath, to wit: "We, the commissioners to re-locate the seat of justice in and for the county of Clayton, do hereby solemnly swear (or affirm as the case may be) that we will perform the duties imposed on us by said appoint-

ment, honestly and faithfully, and according to the best of our abilities, and according to the law relative to the locating said county seat; and we do further swear (or affirm) that we are not, directly or indirectly, interested in said location, but that in locating said county seat we will be actuated only by a desire for the best interest of said county, without the slightest partiality towards any person or persons, and without bias from fear, favor, or recompense, or the hope of any gain or advantage to ourselves in any respect whatever."

To name location.

SEC. 3. So soon as said commissioners shall have determined upon the place where said seat of justice shall be located, it shall be the duty of said commissioners to name said seat of justice by such name as they may think proper, and shall forthwith commit their proceedings to writing, and sign the same, and file them with the clerk of the district court of said county, whose duty it shall be to record the same in the record book.

Compensation

SEC. 4. Said commissioners shall receive three dollars per diem for the time they shall be actually engaged in the location of said seat of justice, not exceeding ten days, and three dollars for every twenty-five miles going to and returning from said county seat, to be paid out of the treasury of Clayton county.

Vacancies.

SEC. 5. *Be it further enacted*, That in case of vacancy by death or otherwise in said board of commissioners, it shall be the duty of the county commissioners in the county where such vacancy shall occur to appoint some suitable person to fill said vacancy.

To be seat of justice.

SEC. 6. The site selected as aforesaid, shall be the seat of justice for Clayton county, from and after the first day of September next, *Provided*, That a majority of the qualified voters of said county shall decide in favor of the same, as is hereinafter provided.

Provided.

SEC. 7. That at the next August election the lawful voters of said county may vote for county seat, as follows: Those who are in favor of Prair e Laporte shall insert at the foot of their tickets for members of the Council, &c., "Prairie Laporte," and those who are in favor of the location made by the commissioners aforesaid, shall insert as aforesaid, the name given to said location by said commissioners; and the place having a majority of the legal

votes of said county shall be the county seat of Clayton county.

SEC. 8. That in case the county seat is removed from Prairie Laporte, the district court for the county of Clayton shall be held at that place until a court house is provided at the new county seat.

Approved January 14, 1840.

[Chap. 49.]

AN ACT amendatory to "An act for assessing and collecting county revenue," approved January 24, 1839.

Repeal.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That so much of the act to which this is amendatory as renders improvements upon real estate subject to taxation, be and the same is hereby repealed, and it shall be the duty of the county assessor to assess any real estate by him assessed at the actual value, which such real estate would bear without the improvements thereupon.

Tax how levied.

SEC. 2. That no tax on real estate for the year eighteen hundred and thirty-nine, omitted in the assessment for that year, shall be levied in the year eighteen hundred forty, on any land purchased from the United States previous to that period.

Poll tax.

SEC. 3. That the county commissioners, should they deem it necessary, may annually, at their regular session in July, or so soon thereafter as the assessment roll is filed, levy a poll tax not exceeding one dollar nor less than fifty cents on every qualified voter in the county under fifty years of age. That part of the second section of the act to which this is amendatory which relates to this subject, is hereby repealed.

Repeal.

SEC. 4. That so much of the same act as prohibits merchants and store keepers having a license to sell goods, from selling clocks upon their own premises without a special license for that purpose, be and the same is hereby repealed.

Exempt.

SEC. 5. That the following property is hereby declared exempt from taxation, viz: the stock in trade of any merchant or store keeper trading under a license from the county commissioners of the proper county, school lands, or property of any kind belonging or appertaining to schools, sheep, the

property of all literary or scientific institutions, together with public buildings and other property belonging to the territory.

Time may be extended.

SEC. 6. That the county commissioners of any county are hereby empowered to extend the time of the county collector of such county for making his returns, (as prescribed in the fourteenth section of the act aforesaid,) to such period as they may deem requisite, and the said collector is hereby authorized to proceed to collect taxes and make sales during the time of such extension, in the same manner as is prescribed in the act aforesaid, the day of such sales to be appointed by the board of county commissioners, at such times as they may think proper, conforming in all other respects with the provisions of the act aforesaid.

Repeal.

SEC. 7. That that part of the same act which makes it the duty of the sheriff or collector to make his returns to the board of county commissioners, on the first Monday in January annually, is hereby repealed: *Provided*, That it shall be the duty of said sheriff or collector to pay over to the county treasurer the sums collected for taxes as fast as he shall receive the same.

May swear persons.

SEC. 8. That when any assessor in any county in this territory now elected or appointed, or who may be hereafter elected or appointed under the provisions of the act to which this act is amendatory, has good reason to believe that any person is disposed to equivocate or unwilling to render a true account of his or her property subject to taxation, such assessor is hereby empowered, at his discretion, to swear such person to give a true account of the quality and quantity of such property, according to the best of his or her knowledge and belief. And should any person, when so required, refuse to testify as aforesaid, such assessor shall ascertain the taxable property of such person from the best information to be derived from other sources; and the person so refusing to testify shall pay such assessor the sum of five dollars, for his extra trouble, which may be recovered as other debts.

May appoint deputy.

SEC. 9. That whenever any assessor elected or appointed as aforesaid, shall deem it necessary, he may appoint a deputy assessor to be approved of by the board of county commissioners, who shall take an oath before the clerk of such board for the faith-

ful discharge of his duties, and for whose acts the assessor shall be personally responsible.

Acts repealed.

SEC. 10. That all parts of the act to which this is amendatory, contradictory to this act are hereby repealed.

Approved January 14, 1840.

[Chap. 50.]

AN ACT to incorporate the Bloomington mill and manufacturing company.

Persons incorporated.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Charles A. Warfield, Joseph Williams, Adam Oglevie, Robert C. Kinney, Edward E. Fay, John W. Brady, John H. Richmond, Thomas Johnson, Lewis M'Kee, James G. Morrow, William St. John, Matthew Matthews, and Henry Reese, and their associates, be and they are hereby declared a body politic and corporate, under the name of the "Bloomington mill and manufac uring company," and by that name shall have succession, and shall have all corporate powers, sue and be sued, and use a common seal.

Powers.

Capital.

SEC. 2. The capital stock of said corporation shall be ten thousand dollars, to be increased at will, by a majority of the stockholders, to one hundred thousand dollars.

Shares.

SEC. 3. Said capital stock shall be divided into shares of fifty dollars each.

May hold estate.

SEC. 4. Said corporation may purchase, hold and convey any estate, personal or real, for their own benefit: *Provided* Such estate does not exceed in value the capital stock paid in.

May build dam.

SEC. 5. Said corporation are hereby authorized to construct a dam across the Muscatine slough, within the limits of township seventy-six, range two west, which dam shall be so constructed that when completed, it will form a good and sufficient bridge for crossing the said slough, and shall be a free bridge for the use of the public.

Erect mills, &c.

SEC. 6. The corporation shall have power to erect mills, warehouses, and other necessary buildings and improvements on lands owned by said company, and to erect and establish all kinds of machinery.

Books to be opened.

SEC. 7. The before mentioned persons are hereby appointed commissioners, and a majority of them may, on the first Monday of May next (or on any

day within six months thereafter, by giving previous notice in some newspaper printed within this territory, for three weeks successively,) open books in the town of Bloomington for receiving subscriptions to the capital stock of said company, and shall keep the same open until the whole amount is subscribed.

Officers.

SEC. 8. Said company shall, on the first Monday in June annually, choose a president, secretary, and treasurer, and such other officers as the company may think proper.

By-laws.

SEC. 9. The company shall have the power to make all proper and necessary laws consistent with the laws of this territory, and may transact their business by agent.

SEC. 10. This act may be altered or amended by any future legislature.

Approved January 14, 1840.

[Chap. 51.]

AN ACT establishing certain territorial roads therein named.

Iowa City to Prairie Du Chien.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That William H. Moreing and Wm. Smith of Du Buque county, and Frederick Andros of Clayton county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Iowa city by the way of the seat of justice of Linn county, the seat of justice of Delaware county, and the mouth of Elk creek, in Clayton, county to the Mississippi river opposite Prairie du Chien. Said commissioners shall meet at Iowa city, on the first Monday in June eighteen hundred and forty, or at such time thereafter duing the year as said commissioners shall agree.

Iowa City.

SEC. 2. *And be it further enacted,* That John Lorton, of Des Moines county, John O'Laughlin, of Louisa county, and Luke Douglass, of Johnson county, be and [they] are hereby appointed commissioners to lay out and establish a territorial road from Iowa city, in Johnson county, by way of Sturgis' ferry and the Virginia grove, in Louisa county, to intersect the territorial road running from Farmington to Du Buque. Said commissioners shall meet at Iowa city, on the first Monday in June, eighteen hundred and forty, or at such time thereafter during the year as they shall agree.

Parkhurst to Cedar county.

SEC. 3. *And be it further enacted*, That Martin W. Smith and Joseph Turner of Scott county, and Robert Walker of Johnson county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Parkhurst in Scott county, by the Hickory grove to the county seat of Cedar county. Said commissioners to meet at Parkhurst, on the first Monday in May next, or at such subsequent day during the year as they shall agree.

Rockingham to Iowa City.

SEC. 4. *And be it further enacted*, That Willard Barrows, of Scott county, William St. John, of Muscatine county, and Luke Douglass, of Johnson county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Rockingham in Scott county, by Centre grove and Moscow, in Muscatine county, to Iowa city, in Johnson county. Said commissioners shall meet at Rockingham, on the first Monday in May next, eighteen hundred and forty, or at such time thereafter during the year as they shall agree.

Camanche to Iowa City.

SEC. 5. *And be it further enacted*, That William Massey, of Johnson county, Samuel Doolittle, of Clinton county, and Richard Knott, of Cedar county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Camanche, in Clinton county, by the seat of justice of Cedar county, to Iowa city, in Johnson county. Said commissioners shall meet at Camanche, on the first Monday in June, eighteen hundred and forty, or at such time thereafter during the year as they shall agree.

Du Buque to Delaware co.

SEC. 6. *And be it further enacted*, That Antoine Loir, Charles Blake, and Henry Tegarden, be and they are hereby appointed commissioners to lay out and establish a territorial road, on the nearest and best route, from Du Buque to the seat of justice of Delaware county. Said commissioners shall meet at the town of Du Buque, on the first Monday in June, eighteen hundred and forty, or at such time thereafter during the year as they shall agree.

Laporte to Wabesipinica

SEC. 7. *And be it further enacted*, That Joseph D. Quigley, of Clayton county, Lucius Kebbey, of Delaware county, and Daniel Varval, of Jones county, be and they are hereby appointed commissioners to lay out and establish a territorial road from the town of Prairie Laporte to Millville, in the county of Clayton, from thence the nearest and best way to inter-

sect the United States road at or near the bridge on the Wabesipinica. Said commissioners shall meet at Prairie Laporte, on the first Monday of June, eighteen hundred and forty, or at such time thereafter during the year as they shall agree.

Wapello to Moscow.

SEC. 8. *And be it further enacted*, That Robert Gray, of Louisa county, George Storms and John Wilson, senr., of Muscatine county, be and they are hereby appointed commissioners to locate and establish a territorial road from Wapello, in Louisa county, by the head of Indian Creek grove to Moscow, in Muscatine county. Said commissioners shall meet at Wapello, on the first Monday of May, eighteen hundred and forty, or at such time thereafter during the year as they shall agree.

Trenton to Washington county.

SEC. 9. *And be it further enacted*, That Shadrach Scott and James G. Greene, of Henry county, and John Jackson, of Washington county, be and they are hereby appointed commissioners to locate and establish a territorial road from Trenton, in Henry county, to the seat of justice of Washington county. Said commissioners shall meet at Mount Pleasant, on the first Monday in May, eighteen hundred and forty, or at such time thereafter during the year as they shall agree.

Washington to Des Moines county.

SEC. 10. *And be it further enacted*, That Samuel Blair, of Washington county, James Bridges, of Des Moines county, and John Lee, of Henry county, be and [they] are hereby appointed commissioners to lay out and establish a territorial road, commencing at Washington, the seat of justice of Washington county, to Ritchie's mill, from thence, on the nearest and best ground to intersect the territorial road leading from Burlington to Mt. Pleasant, at or near John Sleeth's, in Des Moines county. Said commissioners shall meet at Washington on the first Monday in June, eighteen hundred and forty, or at such time thereafter during the year as they shall agree.

Keosauqua to Jefferson co.

SEC. 11. *And be it further enacted*, That John Ralston and Hugh W. Sample, of Van Buren county, and Samuel Moor, of Jefferson county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Keosauqua, to the seat of justice of Jefferson county, making Philadelphia and Rising Sun, points on said road. Said commissioners shall meet at Keosauqua, on the sec-

ond Monday in April, or such time thereafter during the year as they shall agree.

Washington county.

SEC. 12. *And be it further enacted*, That J. P. Teeples, of Washington county, Andrew Kennedy, of Jefferson county, and Thomas Summerlin, of Van Buren county, be and they are hereby appointed commissioners to lay out and establish a territorial road, commencing in Washington county, north of English river, at the most suitable point of intersection with the national road leading from Iowa city to Mount Pleasant, and thence on the most suitable route to Washington, the seat of justice of Washington county; thence to Fairfield, the seat of justice of Jefferson county; thence to Portland, in Van Buren county; thence, to the southern boundary of the territory, in the direction to the town of Sand Hill, in Missouri. Said commissioners shall meet at Iowa city, on the first Monday in July next, or at such subsequent day during the year as they shall agree.

Mt. Pleasant to Indian Agency.

SEC. 13. *And be it further enacted*, That Joseph Jeffries, of Henry county, and George W. Tray, and John W. Sullivan, of Jefferson county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Mount Pleasant to Rome, in Henry county; thence to Fairfield, in Jefferson county; thence to the Indian agency. Said commissioners shall meet at Mount Pleasant, on the second Monday in May next, or at such subsequent day during the year as they shall agree.

Princeton.

SEC. 14. *And be it further enacted*, That Haswell H. Pinnec, John C. Quinn and Jacob Heller, be and they are hereby appointed commissioners to lay out and establish a territorial road, commencing at Princeton, in Scott county, from thence to Point Pleasant, in said county, and thence in a direction to Iowa city by Allen's grove till it intersects the road leading from Camanche to Iowa city. Said commissioners shall meet at Princeton, on the second Monday in June, eighteen hundred and forty, or at such subsequent day during the year as they shall agree.

Bloomington to Linn co.

SEC. 15. *And be it further enacted*, That Jonathan Pettibone and Wm. Leverick, of the county of Muscatine, and John Finch, of Cedar county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Bloomington by Mud creek bridge, in section two, of township seventy-eight north, of range two west, to the county

seat of Linn county. Said commissioners shall meet at Bloomington on the first Monday of May next, or at such subsequent day as they shall agree.

Fort Madison to Fairfield.

SEC. 16. *And be it further enacted*, That Hawkins Taylor, of the county of Lee, Peter Boyer, of the county of Henry, and J. D. Stark, of the county of Jefferson, be and they are hereby appointed commissioners to review, mark, lay out and establish a territorial road, commencing at Fort Madison, thence to West Point, in Lee county; thence to Salem, in Henry county; thence to Fairfield, in Jefferson county. Said commissioners or a majority of them to meet at West Point, on or before the first Monday in May next, or on such other day as they may agree, and proceed to the duties required of them by this act: *Provided, however*, That if there shall be a territorial road already established from Fort Madison to West Point, then in that case said commissioners shall commence at West Point and proceed as above directed.

Bloomington to Iowa City.

SEC. 17. *And be it further enacted*, That Courtland Lawson and Robert Stuart, of Muscatine county, and Samuel H. McCrary, of Johnson county, are hereby appointed commissioners to lay out and establish a territorial road from Bloomington to Iowa city. Said commissioners shall meet at Bloomington on the second Monday in April next, or at such subsequent day during the year as they shall agree.

Davenport to Du Buque.

SEC. 18. *And be it further enacted*, That John Foley, of Du Buque county, Abner Beard, of Clinton county, and James McIntosh, of Scott county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Davenport via Queen's ferry, in Point Pleasant, Richfield, in section fifteen, township eighty-four, of range three east, to Du Buque. Said commissioners shall meet at the town of Davenport on the first day of May next, or at such subsequent day during the year as they shall agree, and proceed to the discharge of their duties.

Belleview to Buffalo fork.

SEC. 19. *And be it further enacted*, That Zophar Perkins, John Francis, of Jackson county, and Daniel Varvell, of Jones county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Belleview to intersect the national road leading from Du Buque to Iowa city, at or near the mouth of the Buffalo fork of the

Wabesipinica river. The said commissioners or any two of them shall meet at the town of Belleview, on the first Monday in May, eighteen hundred and forty, or as soon thereafter as they may agree on, and proceed to the discharge of their duties.

Wyoming to Moscow.

SEC. 20. *And be it further enacted,* That George Bumgardner, John Sherfey, and S. V. Wimple, of Muscatine county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Wyoming to Moscow, in Muscatine county. Said commissioners shall meet at Wyoming on the second Monday of May, or at any time thereafter during the year that they may agree upon, to discharge their duties.

Davenport to Moscow.

SEC. 21. That James Grant, Rodolphus Bennett, and L. S. Colton, of Scott county, are hereby appointed commissioners to lay out and establish a territorial road on the bluff from Davenport towards Moscow, north of the line separating townships seventy-seven and seventy-eight north, to intersect the territorial road to be laid out under this act from Rockingham to Iowa city. Said commissioners shall meet at Davenport to commence the discharge of their duties, at any time during the year which they may agree upon.

Oath.

SEC. 22. That each and every commissioner appointed under the provisions of this law, shall, before he enters on the duties required of him, take and subscribe, before some justice of the peace or other officer authorized to administer oaths, the following affidavit, "I do solemnly swear (or affirm, as the case may be,) that I will faithfully and impartially, without prejudice or favor, perform the duties of commissioner to lay out and establish a road from

Compensation.

SEC. 23. That each of the several commissioners named in the foregoing sections, together with each of the surveyors, chain carriers, and markers, employed by them, shall receive for their services each day they may be necessarily employed in discharge of the duties enjoined by this act, the following sums, to wit: commissioners, one dollar and fifty cents; surveyors, two dollars and fifty cents; and chain carriers and markers, one dollar and twenty cents, which several sums shall be paid according to the provisions of "An act for laying out and opening territorial roads."

SEC. 24. *And be it further enacted*, That should any of the commissioners named in the different sections of this act, die, refuse to serve, or remove out of their respective counties, the county commissioners of the county where such vacancies shall happen, shall fill the same: *Provided, however*, That any two of them shall have power to discharge the duties herein required. Vacancies. Two may act.

SEC. 25. That the time for locating and establishing several territorial roads authorized by the last session of this legislative assembly, is hereby extended one year from the taking effect of this act. And the commissioners whose powers and duties are hereby revived, may meet at such place and time to commence the discharge of their duties as they may agree upon. Time extended

SEC. 26. That vacancies existing or that may occur among such commissioners, may be filled in the manner provided in this act. Vacancies in former boards

SEC. 27. That the second, fourth, tenth, and twelfth sections of an act establishing certain territorial roads, approved January twenty-fifth, eighteen hundred and thirty-nine, are hereby repealed, and English Buel, of Clinton county, is hereby appointed commissioner in the place of James Kirkpatrick, in section thirteen of said act; and that the seat of justice of Cedar county shall be a point in lieu of Rochester, in section third of said act.

Approved January 14, 1840.

[Chap. 52.] Town limits.

AN ACT to incorporate the town of Salem, in Henry county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That all that part or tract of land in township seventy north, of range seven west of the fifth principal meridian, in the county of Henry, as is comprised within the limits of the original town plat of the town of Salem, together with all additions that may hereafter be made and recorded thereto, be and the same is hereby constituted a town corporate, and shall be known by the name or title of the town of Salem. Election.

SEC. 2. It shall be lawful for the inhabitants of said town having the qualification of electors, to meet at some convenient place in said town of Salem, on the first Monday of April, and annually Officers.

thereafter, then and there proceed by plurality of votes to elect by ballot a president, recorder and three trustees, who shall hold their offices one year, and until their successors are elected and qualified; and any three of them shall be a board for the transaction of business, but a less number may adjourn from time to time: *Provided*, That if an election of a president, recorder and trustee should not be held on the day set for that purpose the said corporation shall not, for that cause be dissolved, but it shall be lawful to hold such election at any time thereafter by public notice being given in the manner hereinafter prescribed.

Elections, how conducted.

SEC. 3. At the first election to be held under this act, there shall be chosen by the electors present two judges and a clerk of said election, who shall each take an oath or affirmation faithfully to discharge the duties required of them by this act; and at all subsequent elections the trustees or any two of them shall be judges, and the recorder clerk of the elections; and at all elections to be held under this act the polls shall be opened between the hours of nine and ten o'clock in the forenoon, and close at five o'clock in the afternoon of said day, and at the close of the polls the votes shall be counted and a true statement thereof proclaimed to the electors present by one of the judges, and the clerk shall make a true record thereof, and within five days after such election the clerk shall give notice to the persons elected of their election, and it shall be the duty of said town council, at each annual election, to give at least five days' notice thereof, by posting up notices at three of the most public places in said town.

Record of meetings.

SEC. 4. It shall be the duty of the president to preside at all meetings of the town council, and it shall be the duty of the recorder to attend all such meetings and keep a fair and accurate record of all their proceedings, and the said recorder is authorized, under his hand and seal, to appoint some competent person as his deputy, who, in his absence, shall do and perform all the duties enjoined upon said recorder, and for whose acts said recorder shall be liable.

Incorporation.

SEC. 5. The president, recorder and trustees of said town shall be a body corporate and politic, with perpetual succession, to be known and distinguished by the name of the president and trustees

of the town of Salem, and shall be capable in law in their corporate name to acquire property real and personal for the use of said town, sell and convey the same, may have a common seal, which they may alter at pleasure, may sue and be sued, defend and be defended, in any court of competent jurisdiction; and when any suit shall be commenced against said corporation, the first process shall be by summons, which shall be served by an attested copy to be left with the recorder, not less than five nor more than ten days before the return day thereof. Corporate powers.

SEC. 6. The officers elected by virtue of this act, shall each take an oath or affirmation to support the constitution of the United States and the organic law of this territory (or the constitution of this state as the case may be,) and also faithfully to discharge the duties of his office. Oath.

SEC. 7. The president and trustees shall have power to ordain and establish by-laws, rules and regulations for the government of said town, and the same to alter, repeal or re-ordain at pleasure, and to provide in said by-laws for the election of a treasurer, two assessors, a town marshal, and other subordinate officers which may be necessary for the good government and well being of the town, to prescribe their duties, declare their qualifications, and determine the periods of their appointments, and the fees they shall be entitled to receive for their services, and require of them to take an oath or affirmation faithfully and impartially to discharge the duties of their respective offices, and may require of them such security for the performance of the duties of their respective offices as shall be thought necessary. Said president and trustees shall also have power to affix to the violation of the by-laws and ordinances of the corporation such reasonable fines and penalties as they may deem proper, and to provide for the disposition of such fines and penalties: *Provided also*, That no by-laws or ordinances of said corporation shall have any effect until the same shall have been published three weeks successively in a newspaper printed in said county, or by written notices posted up in three of the most public places in said town: *Provided*, Nothing contained in this section shall be incompatible with the laws of the United States or the laws of this territory. Municipal powers.

Statement of receipts.

SEC. 8. The president and trustees shall, at the expiration of each six months, cause to be made out and published a correct statement of the receipts and expenditures of the preceding six months.

Taxes.

SEC. 9. The electors of said town, in legal meetings assembled, shall have power by vote to direct the levy of taxes on all real and personal estate within the limits of said corporation, not exceeding one-half per centum upon said real and personal estate in any one year, to regulate and improve the lanes and alleys and to determine the width of sidewalks: *Provided*, That no property shall be taken from any individual until such individual shall be paid therefor, the value thereof to be ascertained by twelve disinterested freeholders to be summoned by the marshal for that purpose. They shall have the power to remove all nuisance and obstructions from the streets and commons and all other places of said town, and to provide for the removal of the same.

Licenses.

SEC. 10. The president and trustees shall be authorized to grant all licenses for the retailing of ardent spirits within the limits of the corporation; and the proceeds of such licenses shall be appropriated for the benefit of said corporation: *Provided, however*, That the power hereby granted shall not be so construed as to conflict with the general laws of this territory or of the future state of Iowa, regulating taverns and licenses for retailing ardent spirits.

Streets.

SEC. 11. The streets, lanes and alleys of said town shall constitute one road district, including the several roads leading from said town for the distance of two miles from the corporation limits, and the electors of said town shall, at their annual meeting, elect an overseer of the same, and in case of death, removal or other inability of said overseer or other officers of the corporation, the president and trustees shall have power to fill such vacancies.

Meetings, how called.

SEC. 12. All meetings for the purposes contemplated in the preceding section of this act, shall be called by the president, or in case of his absence, by the senior trustee, by posting up written notices in three of the most public places in said town, at least three days previous to holding such meeting. Said notices shall specify the time and place of holding said meeting, and the purposes for which said meeting is called.

Compensation.

SEC. 13. The recorder shall receive such fees for his services as the by-laws and ordinances of said corporation shall prescribe; but the president and trustees shall receive no compensation unless the same should be considered necessary and right by the inhabitants in legal meeting assembled.

Taxes.

SEC. 14. For the purpose of enabling the president and trustees to carry into effect the provisions of this act, they are hereby authorized annually to lay a tax on all real and personal estate within the bounds of the corporation, as the same has been or may be appraised: *Provided* Such tax shall in no case exceed the sum for the same year voted for and directed according to the provisions of the ninth section of this act: *And provided,* That the said tax shall not exceed in any one year one-half per centum of the aggregate amount of real and personal estate within the limits of said town, and the said president and trustees shall, between the first Mondays of May and June in each year, determine the amount of tax to be assessed and collected within the current year.

How collected.

SEC. 15. It shall be the duty of the president and trustees to make out a duplicate of taxes charging each individual therein the amount of tax in proportion to the real and personal estate of such individual within such town, which duplicate shall be signed by the president and recorder, and delivered to the marshal or such person as shall be appointed collector, whose duty it shall be to collect the same within such time and in such manner as the by-laws shall direct.

Collector may sell estate.

SEC. 16. The said collector shall have power to sell personal estate, and for want thereof to sell real estate for the non-payment of taxes within said town, but no real estate shall be sold by reason of the non-payment of such tax or taxes, unless the assessment of such tax shall have been duly notified in some public newspaper printed at the seat of government of this territory, and also at Salem, if any be printed there, once each week for at least six weeks, the last publication whereof shall be at least six weeks before the day when said taxes are payable, nor unless the intended sale thereof be duly notified by publication in like manner, nor unless such assessment and proceedings thereon be regular, and in all things conformable to the provisions of this act; and moreover, all such real estate so sold

may be redeemed in the same manner, and within the same period of time, as is or may be provided by law in case of real estate sold for any county taxes.

SEC. 17. This act may be altered, amended, or repealed, by any future legislature of this territory or state.

Approved January 14, 1840.

[Chap. 53.]

AN ACT to provide for an extra session of the Legislative Assembly.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That, for the purpose of apportioning the members of the council and house of representatives equally among the several counties of this territory, there shall be a special session of the legislative assembly, to commence on the second Monday in July next.

General election, when held.

SEC. 2. That the general election for this territory for the year eighteen hundred and forty, be held on the first Monday in October, but ever after on the first Monday of August, as provided for in the act regulating general elections.

[Presented to the governor on the 11th January, 1840, and having remained with the governor three days (Sundays excepted) the legislative assembly being in session, this bill became a law January 15, 1840.]

[Chap. 54.]

AN ACT to prevent Frauds.

Parol leases to have effect of leases at will only.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That all leases, estates, interest of freehold or term of years, or any uncertain interest of freehold or term of years, or any uncertain interest of in or out of any messuages, lands, tenements or hereditaments, made or created by livery and seizin only or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration

for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding.

Except.

SEC. 2. Except, nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term, shall amount unto two-third parts, at least, of what the rent of the premises is really worth.

No lease to be assigned, but by deed.

SEC. 3. And moreover, that no leases, estates or interest of freehold, or of term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall at any time be assigned or granted, unless it be by deed or note in writing, signed by the party so assigning or granting the same, or their agents thereunto lawfully authorized by writing, or by act or operation of law.

Agreements to be in writing.

SEC. 4. No action shall be brought whereby to charge any executor or administrator, or upon any special promise, to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of any other person, or charge any person upon any agreement in consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any agreement which is not to be performed within one year from the making thereof, unless the agreement upon which such action shall be brought, or some note or memorandum thereof shall be in writing, and signed by the party to be charged thereby, or some person by him thereunto lawfully authorized.

Declarations of trusts void unless in writing.

SEC. 5. All declarations or creations of trust or confidence of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party, who by law may be entitled to declare such trust or confidence, or by his last will in writing, or else the same shall be utterly void and of none effect: *Provided always*, That when any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise, or result by the implication or construction of law, or be transferred or extinguished by any act or operation of law, then and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this act had never been passed, anything herein contained to the contrary notwithstanding.

Judgment lien on real estate.

SEC. 6. Judgments in the district and supreme courts of this territory, shall have the operation of and shall be liens upon the real estate of the person or persons against whom such judgments may be rendered, from the day of the rendition thereof, in the county within which such judgments may be rendered; and it shall be the duty of the clerks of such courts, when applied to by any person interested in any judgment rendered by any of the courts aforesaid, to make out and deliver to such applicant an attested copy of the record of such judgment, authenticated by the seal of such court, which attested copy may be by such person filed in the office of any clerk of the district court within this territory; and when so filed, the said clerk in whose office the same may be filed, shall record the same among the records of the court of which he is clerk, and enter the same on the judgment docket; and

To be recorded.

such attested copy, when so filed, recorded and entered as aforesaid, shall operate as a lien upon the estate of the person or persons against whom such judgment may have been rendered, situate in the county in which the same may have been so filed as aforesaid, recorded and entered in the same manner and to the same legal extent that the same would have done had such judgment been originally rendered in the district court of such county: which lien shall operate from the day of filing, recording and entering such copy as aforesaid. But no execution shall ever issue upon such attested copy, although the record thereof shall have the same force and effect in every other point of view, as any other record of such court might or could have.

Contracts over thirty dollars to be in writing

SEC. 7. No contract for the sale of any goods, wares or merchandize, for the price of thirty dollars or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

Contracts for sale of personal property to be in writing.

SEC. 8. That from and after the passage of this act, no bill of sale or other conveyance of personal property, where the vendor shall retain the actual possession of the property so conveyed, shall be good and valid in law to pass any right to such prop-

erty against existing creditors or subsequent purchasers, without notice, unless the bill of sale or other instrument of writing conveying the same be acknowledged before some justice of the peace for the county where the same is executed and recorded, within ten days, in the office of the recorder of deeds for the county where the holder of the property resides.

SEC. 9. *And be it enacted*, That the recorders of deeds in the several counties in this territory be and they are hereby required to record all such conveyances of personal property in a separate book to be kept by them for this purpose; and for the recording of any such conveyances of personal property, the recorders shall receive the same fees for every one hundred words as they are entitled to receive for recording other deeds. And recorded.

Approved January 16, 1840.

[Chap. 55.]

AN ACT to amend "An act relative to mechanics' liens, and for other purposes," approved December seventeenth, in the year eighteen hundred and thirty-eight.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That upon filing the bill or petition or account provided for in the act to which this is amendatory, the clerk of the district court of the proper county, or justice of the peace, shall issue a summons against the debtor in the usual form, with an endorsement signed by said clerk, justice, or plaintiff, or his attorney, stating the nature of the action. Summons to issue.

SEC. 2. That said writ shall be served in like manner as a summons in an ordinary suit upon the person therein named, if to be found in the county, if not to be found, then by fixing a copy of the writ and endorsement upon some conspicuous place upon the building or other property to which the lien attaches. How served.

SEC. 3. That upon return of service and failure of the defendant to appear, the court or justice of the peace shall render judgment according to the justice and equity of the case; but if the defendant shall appear, he may plead and make defence, as in personal actions for the recovery of debts. Defendant may plead.

SEC. 4. This act to be in force from and after its passage.

Approved January 16, 1840.

[Chap. 56.]

AN ACT to provide for the election of delegate to Congress, judges of probate, sheriffs, county recorders, county surveyors, and to amend "An act regulating general elections in this territory."

Delegate to Congress.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the delegate to congress from this territory, shall be elected at the general election, in the year eighteen hundred and forty, whose term of service shall commence from the twenty-seventh day of October, in the same year; and a delegate to congress shall be elected at the general election in the year eighteen hundred and forty-one, and every two years thereafter.

Judge of probate.

SEC. 2. That one judge of probate shall be elected at the general election in the year eighteen hundred and forty, in each organized county, who shall hold his office three years, and until his successor is elected and qualified.

Repeal.

SEC. 3. That the fifth section of an "Act for establishing courts of probate," approved January seventeen eighteen hundred and thirty-nine, and so much of said act as requires the appointment by the governor of judges of probate is hereby repealed.

Sheriff.

SEC. 4. That in each organized county there shall be elected one sheriff at the general election in the year eighteen hundred and forty, who shall hold his office two years and until his successor is elected and qualified.

Certificate.

SEC. 5. That a certificate of election shall be issued to the person elected sheriff, in like manner as to other county officers, and the oaths required to be taken by him shall be endorsed on the back of said certificate.

Repeal.

SEC. 6. That so much of the first section of "An act for the appointment and duties of sheriffs," approved January twenty-one, eighteen hundred and thirty-nine, as requires them to be appointed and commissioned by the governor, is hereby repealed; and every sheriff shall, within thirty days after

Bond.

receiving his certificate of election, enter into bonds, &c. as required in section second of said act; and in section fourteen of said act, the words "appointed

Amendments.

and commissioned," shall read "elected and qualified," after the next general election; and in section fifteen of said act, the words "commissioned" and "appointed," shall read "elected."

County recorder.

SEC. 7. That one county recorder shall be elected at the general election, in the year eighteen hundred and forty, in each organized county, who shall hold his office two years. The bonds of such recorders shall be approved by the boards of county commissioners, if in session, if not, by any two of the board.

Repeal.

SEC. 8. That so much of "An act defining the duties of county surveyors," approved December twenty-fifth, eighteen hundred and thirty-eight, as requires the governor to commission county surveyors, is hereby repealed.

County surveyor.

SEC. 9. That every two years one county surveyor shall be elected in each organized county, at the general election, in like manner as other county officers, and their oaths of office shall be endorsed on the back of their certificates of election by the person administering the same.

County surveyors now in office.

SEC. 10. That all county surveyors elected at the last general election and qualified by taking the oath of office required by the act mentioned in section eight of this act, shall hold their offices until the general election in the year eighteen hundred and forty-one, and until their successors are elected and qualified: *Provided,* Those who have not received or shall not receive a commission required in said act, shall nevertheless be deemed as holding their office by a lawful tenure.

Notice of elections.

SEC. 11. That the third section of "An act regulating general elections," approved January twenty-five, eighteen hundred and thirty-nine, be so amended as to require the clerks of the several boards of county commissioners at least fifty days previous to any general election, and twenty days previous to any special election to make out and deliver to the sheriff three written notices thereof for each election precinct.

Vacancies.

SEC. 12. That when any vacancy occurs in any county office by death, resignation, removal or other disqualification, the county commissioners shall order their clerk to issue the written notices for a special election to fill such vacancy required by the next preceding section; and the person elected to fill such vacancy shall hold his office until the end of the term which his predecessor would have held had he continued in office: *Provided,* That no order need be made for such election, if no

inconvenience to the people will arise by waiting till the next succeeding general election.

Approved January 16, 1840.

[Chap. 57.]

AN ACT to provide for the compensation of the printers, members and officers of the legislative assembly, and for other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the following sums are hereby appropriated out of any moneys in the hands of the Secretary of the Territory, for the following purposes, to wit:

SEC. 2. For the pay and mileage of the members of the House of Representatives, the sum of six thousand four hundred and sixty-two dollars and seventy-five cents.

SEC. 3. For the pay of the officers of the House of Representatives, the sum of two thousand nine hundred and twenty-five dollars.

SEC. 4. For the pay and mileage of the members of the Council, the sum of four thousand six hundred and fifty-four dollars, eighty cents.

SEC. 5. For the pay of the officers of the Council, the sum of three thousand five hundred and twenty-five dollars.

SEC. 6. To William J. A. Bradford, for supervising the printing of the laws, the sum of three hundred dollars.

SEC. 7. To Samuel Wilson, for articles purchased by him for the use of the legislative assembly the sum of five dollars and fifty cents.

SEC. 8. To Levi Hagar, for taking care of furniture the sum of seventy-five dollars; for putting the house in order at the beginning of the present session, and for ten boxes to the late Secretary, the sum of forty dollars.

SEC. 9. To Bridgeman and Partridge, for two setts of chairs, the sum of forty dollars; for brushes, brooms, curtains, knives, &c., the further sum of sixty nine dollars.

SEC. 10. To Charles Weston, for services as librarian, &c., the sum of one hundred dollars; to Charles Weston, for services rendered as fiscal agent, two hundred and fifty dollars; to Charles Weston, for making and forwarding copies of memorials and resolutions passed at the last session of the legislature, one hundred dollars.

SEC. 11. To J. B. Hollingsworth, for desk locks, &c., the sum of five dollars.

SEC. 12. To Henry Moore, for carpenter work, the sum of twelve dollars.

SEC. 13. To John S. David, for rent for library room from first May eighteen hundred and thirty-nine, to tenth May eighteen hundred and forty, one hundred and forty dollars; for painting book cases for the library, the sum of three dollars.

SEC. 14. To James G. Edwards, for incidental printing, the sum of two thousand five hundred and five dollars.

SEC. 15. For papers, the sum of six hundred and fifty dollars.

SEC. 16. For printing the journals of the House of Representatives, the sum of one thousand dollars; for journal of the Council, eight hundred dollars.

SEC. 17. To the joint committee which attended the remains of the honorable W. B. Conway to Davenport, the sum of one hundred dollars.

SEC. 18. To the trustees of the Methodist church for rent of the same during the present session, six hundred dollars; and for expenses incurred for mason work, carpenter work, and other services in preparing the church for the reception and use of the legislative assembly, two hundred and fifty dollars.

SEC. 19. To E. Evans, for lumber for two desks, the sum of twenty-five dollars; for furnishing lumber and making two book cases for the library, the sum of fifty dollars; for one case table, the sum of fifteen dollars.

SEC. 20. To Morgan Reno, for articles furnished the library room and services rendered, the sum of forty-four dollars.

SEC. 21. To T. S. Parvin, for stationery, the sum of eleven hundred and thirty-seven dollars.

SEC. 22. To Charles Nealley, for candles, &c., the sum of eighty-one dollars and fifty cents.

SEC. 23. To Dolan and Ladd, for stoves, pipes, &c., the sum of sixty-one dollars and thirty-seven cents.

SEC. 24. To Chase and Kimball, for wood, knives, &c., the sum of forty-seven dollars twenty-five cents.

SEC. 25. To Robert Mack, for furniture, the sum [of] ninety-six dollars and seventy-five cents.

SEC. 26. To M. H. Wolcott, for furniture for library, the sum of thirty-six dollars.

SEC. 27. To the Secretary of the Territory, for distributing the laws of the present session, the sum of three hundred dollars.

SEC. 28. To the Governor of the Territory, for money advanced for transportation of books belonging to the library, thirty-one dollars and fifty-seven cents.

SEC. 29. To J. W. Springer, for plastering around stove pipes, one dollar and fifty cents.

SEC. 30. To P. D. Smith, for one load of saw dust, one dollar and fifty cents.

SEC. 31. To John G. McDonald, for extra services and stationery, fifteen dollars.

SEC. 32. To Jesse Williams, for twenty-six maps, at three dollars each, seventy-eight dollars.

SEC. 33. To John H. McKenny, for printing daily journal of the proceedings of the House of Representatives, eleven hundred and sixty-six dollars and eighty-two cents; for printing bills for the House of Representatives, furnishing newspapers, printing reports, messages, blanks, &c., two thousand one hundred and forty-nine dollars and eight cents; for printing, folding, collating and stitching journals of the House of Representatives of the session of eighteen hundred and thirty-eight and nine, in pamphlet form, twelve hundred and sixty five dollars.

SEC. 34. To Horad Davis, for cutting wood for the House of Representatives, thirty dollars.

SEC. 35. To Webber and Remey, one hundred and forty-five dollars and fifteen cents, for stationery, &c.

SEC. 36. To the chief clerk of the House of Representatives, for transcribing, indexing and superintending the printing of the journal of the House, three hundred dollars, and for distributing the same to the clerks of the several boards of county commissioners in the territory, the sum of two hundred dollars.

SEC. 37. To George W. Hight, for furnishing wood for the legislative assembly, two hundred and thirty-five dollars.

SEC. 38. To Enos Lowe, P. M. for postage of letters, papers, documents, &c. during the present session, five hundred and sixty-seven dollars and seventy-four cents.

SEC. 39. For extra pay to the president of Council and speaker of House of Representatives, four hundred and fifty dollars.

SEC. 40. To Jesse Williams, for copying and forwarding memorials, resolutions, &c. the present session, the sum of two hundred and fifty dollars.

SEC. 41. To the secretary of the Council, two hundred dollars for transcribing, indexing and superintending the printing the journal of the Council, and for distributing the same to the clerks of the several boards of county commissioners in the territory, the sum of one hundred and fifty dollars.

Approved January 16, 1840.

[Chap. 58.]

AN ACT to authorize Robert E. Mott to keep a Ferry across the Des Moines river at the Round Mound in Lee county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Robert E. Mott, his heirs and assigns, be and they are hereby authorized to keep a ferry across the Des Moines river, at the Round Mound in Lee county, and for one mile above and one mile below said Mound, and that said Mott have the exclusive privilege of ferrying within said limits for the term of ten years. Limits.

SEC. 2. That said ferry, when so established, shall be subject to the same regulations and under the same restrictions as other ferries are or may hereafter be by the laws of this territory fixing the rate of toll and prescribing the manner in which licensed ferries shall be kept and regulated. Subject to regulation.

Approved January 16, 1840.

[Chap. 59.]

AN ACT for the relief of the Poor.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the board of county commissioners of the several counties of this territory, shall be and they are hereby vested with entire and exclusive superintendence of the poor in their respective counties. County commissioners overseers of poor.

SEC. 2. Every poor person who shall be unable to earn a livelihood, in consequence of bodily infirmity, idiocy, lunacy or other unavoidable cause, shall be supported by the father, mother, or children of such poor person, if they, or either of them, be of sufficient ability, and every person who shall fail or refuse to support his or her father, mother or child, when directed by the board of commissioners Poor to be supported by friends.

of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county commissioners, for the use of the poor of their county, the sum of fifteen dollars per month, to be recovered in the name of the county commissioners, for the use of the poor as aforesaid, before any justice of the peace or any court having jurisdiction.

Having no relative, to receive relief.

SEC. 3. When any such poor person shall not have any such relative in any county in this territory, as are named in the preceding sections, or such relative shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require out of the county treasury; and the county commissioners may either make contracts for the necessary maintenance of the poor, or appoints uc h agents as they may deem necessary, to oversee and provide for the same.

Minors may be bound apprentices.

SEC. 4. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the relations aforesaid are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects be to the tenor and effect as required in the act concerning apprentices.

Persons becoming sick.

SEC. 5. When non-resident, or any other person not coming within the definition of a pauper, shall fall sick, in any county of this territory, not having money or property to pay for his board, nursing and medical aid, it shall be the duty of the county commissioners, on complaint being made, to give or order to be given such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said commissioners shall give or order to be given to such person, a decent burial; and the said commissioners shall make such allowance for board, nursing, medical aid or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

Who entitled to relief.

SEC. 6. When application is made by any pauper to the board of commissioners of any county in this territory for relief, it shall be necessary for said commissioners to require of said pauper satisfactory

evidence that he has been a resident of said county for twelve months immediately preceding the day upon which such application is made.

Others to be notified to depart.

SEC. 7. When, on application made by any pauper to the board of commissioners as aforesaid, it shall appear to the satisfaction of said board, that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section of this act, he shall be entitled to all the relief provided by this act; but if on the contrary it shall appear to the satisfaction of said board that said pauper has not been a resident of said county agreeably to the provisions of the sixth section of this act, they shall proceed to remove from their county, at the expense of said county, such pauper, to the county where said pauper may have had his residence, or may, if they think best, issue a notice directed to some constable of the county, which notice the said constable shall serve forthwith on said pauper requiring him to depart said county forthwith; and after so serving said notice by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the clerk of the board of commissioners issuing the same, noting the time and manner of serving the same thereon.

SEC. 8. After service of such notice as aforesaid, no pauper shall be entitled to relief from such county, any law or custom to the contrary notwithstanding.

Work houses.

SEC. 9. The board of county commissioners of any county in this territory, may, if they think proper, cause to be built or provided in their respective counties, work-houses for the accommodation and employment of such paupers, as may from time to time become a county charge; and said work-house and paupers shall be under such rules and regulations as said boards of commissioners may deem proper and just.

Penalty for importing paupers.

SEC. 10. If any person shall bring and leave any pauper in any county in this territory, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars, for every such offence, to be sued for and recovered by and for the use of such county by action of debt, before any court having jurisdiction of the same.

Approved January 16, 1840.

[Chap. 60.]

AN ACT for the relief of certain administrators.

Henley's administrators to sell estate.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That W. A. Richardson, of the county of Schuyler, and state of Illinois, administrator of the estate of the late Benjamin V. Henley, of the same county and state, is hereby authorized to dispose at public auction of all the estate real, situate in the town of Fort Madison, in this territory, belonging to the estate of the aforesaid Henley, deceased.

Clarke's administrators to sell.

SEC. 2. That the administrators of the estate of the late B. W. Clarke, of Scott county, in this territory, are hereby authorized to sell any portion, not exceeding one half, of the estate of the said Clarke, deceased, and to invest the proceeds of the same in good securities, at an annual interest not exceeding twenty per cent.

Approved January 16, 1840.

[Chap. 61.]

AN ACT to authorize John Troxell to erect a dam across Big Cedar, in Jefferson county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That John Troxell, his heirs or assigns, are hereby authorized to erect and keep a dam across Big Cedar, at a point where the said Troxell has commenced building a mill on said creek, in the county of Jefferson.

Wilful injury misdemeanor.

SEC. 2. Any person who shall destroy or in any wise injure said dam, shall be deemed to have committed a trespass and shall be liable accordingly, and any person who shall wilfully or maliciously destroy or injure said dam, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined treble the amount of damages the owner may have sustained, or be imprisoned at the discretion of the court.

Not to flow lands.

SEC. 3. Nothing herein contained shall authorize the individual named in this act, his heirs or assigns, to enter upon and flow the lands of any person without the consent of such person, and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity of said mill.

Approved January 16, 1840.

[Chap. 62.]

AN ACT to authorize Joseph Clinkenbeard to erect a dam across Big Cedar, in Jefferson county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Joseph Clinkenbeard, his heirs or assigns, are hereby authorized to erect and keep a dam across Big Cedar, at a point where the said Clinkenbeard has commenced building a mill on said creek, in the county of Jefferson.

Wilful injury misdemeanor.

SEC. 2. Any person who shall destroy or in any wise injure said dam, shall be deemed to have committed a trespass, and shall be liable accordingly, and any person who shall wilfully or maliciously destroy or injure said dam, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined treble the amount of damages the owner may have sustained, or be imprisoned at the discretion of the court.

Not to flow lands.

SEC. 3. Nothing herein contained shall authorize the individual named in this act, his heirs or assigns, to enter upon and flow the lands of any person without the consent of such persons, and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity of said mill.

Approved January 16, 1840.

[Chap. 63.]

AN ACT to establish a territorial road from Bloomington by Point Comfort, to the western line of Washington county.

Commissioners.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That A. H. Haskell and Cyrus Cox, of Washington county, and James Edgington, of Muscatine county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Bloomington, in Muscatine county, by point Comfort, two miles south of the mouth of English river, to the western line of Washington county, north of English river.

Route.

SEC. 2. Said commissioners shall meet at the town of Bloomington, on the first Monday of July, eighteen hundred and forty, or at such time during the year eighteen hundred and forty, as the said commissioners shall agree.

Approved January 16, 1840.

[Chap. 64.]

AN ACT relative to the authentication of statutes without the approval of the Governor, and for other purposes.

Bills returned form of authentication.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That when a bill that has passed both houses of the legislative assembly, shall be returned by the governor without his signature, and with his objections thereto, and upon reconsideration shall pass both houses by a majority of two-thirds, it shall be authenticated as having become a law by a certificate endorsed thereon or attached thereto, in the following form: "This bill having been returned by the governor with his objections thereto, and after reconsideration having passed both houses by a majority of two thirds, it has become a law this ——— day of ———," which being signed by the president of the Council and speaker of the House of Representatives shall be deemed a sufficient authentication thereof, and the bill shall again be presented to the governor, to be by him deposited with the laws in the office of the Secretary of the Territory.

Bills not returned authentication.

SEC. 2. That every bill which has passed both houses of the legislative assembly, and shall not be returned by the governor within three days, having thereby become a law shall be authenticated by the governor causing the fact to be certified thereon by the Secretary of the territory, in the following form: "This bill having remained with the governor three days, (Sundays excepted) and the legislative assembly being in session, it has become a law this ——— day of ——— , J. C., Secretary of Iowa Territory."

Printed laws of other states evidence.

SEC. 3. The printed statute books of the several states and territories of the United States, purporting to be printed under the authority of such state or territory, shall be evidence of the legislative acts of such state or territory.

Copies of printed statutes evidence.

SEC. 4. That copies of any act, law or resolution, contained in the printed statute books of the United States, or any state or territory thereof, purporting to be printed by authority, and which are now or may hereafter be deposited in the office of the Secretary of this territory, or the territorial library, certified under the hand of said Secretary (or in his absence, by the governor,) and the seal of the territory shall be admitted as evidence in any court of law or equity.

SEC. 5. That the Secretary shall be entitled to demand and receive for copies so furnished, and attaching the seal thereto, twenty-five cents, for every folio of one hundred words, which, if required, must be paid in advance. Fees.

Approved January 16, 1840.

[Chap. 65.]

AN ACT to authorize William Warner to erect a dam across Big Cedar, in Henry county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That William Warner, his heirs and assigns are hereby authorized to erect and keep a dam across Big Cedar, in Henry county, on the northwest quarter of section number nine, in township number seventy north, range seven west, which dam shall not be so constructed as to back water on any mill which may have been commenced or built previous to the passage of this act. To build dam.

SEC. 2. Any person who shall destroy or in any wise injure said dam, shall be deemed to have committed a trespass, and shall be liable accordingly, and any person who shall wilfully or maliciously destroy or injure said dam shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined treble the amount of damages the owner may have sustained, or be imprisoned at the discretion of the court. Wilful injury a misdemeanor.

SEC. 3. Nothing herein contained shall authorize the individual named in this act, his heirs or assigns, to enter upon and flow the lands of any person without the consent of such person, and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity of said mill.

Approved January 16, 1840.

[Chap. 66.]

AN ACT to provide for the annual organization of the Council and House of Representatives of the Territory of Iowa.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the Secretary of the Council in office on the last day of any session of the legislature, shall remain in office until

the organization of the Council of the succeeding annual session.

Secretary to file certificate and make roll.

SEC. 2. That it shall be the duty of the secretary to receive and file all certificates of election issued for members of the Council from the offices of the clerks of the board of county commissioners of the several counties in this territory, and make a roll of the members who, from such certificates, appear to have been elected members of said Council.

Call to order.

SEC. 3. That the secretary, or if he should not be present, then some member or other person appointed by the members present, shall, at 12 o'clock meridian, on the day appointed for the meeting of the legislature, call the members so enrolled to order; the members shall then proceed to elect a president for the time being.

Committee of elections.

SEC. 4. That the Council, when so organized, shall appoint a committee of elections by ballot or viva voce, as a majority present shall determine, to consist of five members, who shall forthwith proceed to examine the credentials of members and all contested elections, (if any,) and report the same to the Council.

Election of officers.

SEC. 5. That after the decision of all cases of contested elections, the Council shall proceed to elect a president, secretary, and other officers to continue during the session.

SEC. 6 That the chief clerk of the House of Representatives in office on the last day of any session of the legislature, shall remain in office until the organization of the House of Representatives of the succeeding annual session.

Clerk to file certificates and make roll

SEC. 7. That it shall be the duty of the chief clerk to receive and file all certificates of election issued for members of the House of Representatives from the offices of the clerks of the board of county commissioners of the several counties in this territory, and make a roll of the members who, from such certificates, appear to have been elected members of said House of Representatives.

Call to order.

SEC. 8. That the said chief clerk or if he should not be present, then some member or other person appointed by the members present shall, at twelve o'clock meridian, on the day appointed for the meeting of the legislative assembly, call the members so enrolled to order; the members shall then proceed to elect a speaker for the time being.

Committee of elections.

SEC. 9. That the House, when so organized, shall appoint a committee of elections, by ballot or viva voce, as a majority present shall determine, to consist of five members, who shall forthwith proceed to examine the credentials of the members and all contested elections, (if any,) and report the same to the House.

Election of officers.

SEC. 10. That after the decision of all cases of contested elections, the House shall proceed to elect a speaker, chief clerk, and other officers to continue during the session.

Approved January 16, 1840.

[Chap. 67.]

AN ACT to authorize Adam Ritchie to erect a dam across Crooked Creek, in Henry county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Adam Ritchie is hereby authorized to erect a dam across Crooked Creek, in Henry county, in said territory, at a point on section six, township seventy-three north, range five west, which shall not exceed eight feet above low water mark.

Wilful injury misdemeanor.

SEC. 2. Any person who shall destroy or in anywise injure said dam, shall be deemed to have committed a trespass, and shall be liable accordingly, and any person who shall wilfully or maliciously destroy or injure said dam, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined treble the amount of damages the owner may have sustained, or be imprisoned at the discretion of the court.

Not to flow lands.

SEC. 3. Nothing herein contained shall authorize the individual named in this act, his heirs or assigns, to enter upon and flow the lands of any person without the consent of such person, and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity.

Approved January 16, 1840.

[Chap. 68.]

AN ACT to authorize Harriet Knapp to sell and convey the interest of Nathaniel Knapp, deceased, in the half breed lands, in Lee county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Harriet Knapp, widow of Nathaniel Knapp, deceased, be and she is hereby authorized to sell and convey all the interest of the said Nathaniel Knapp, in the lands in Lee county, commonly known as the half breed reservation, of the Sac and Fox tribe of Indians.

Appraisal. SEC. 2. Before said Harriet Knapp proceeds to sell any interest in said lands above mentioned, she shall cause to be appointed by the board of county commissioners, three suitable persons, householders of the county of Lee, as commissioners, who, after being duly sworn by some justice of the peace, faithfully to discharge their duties, shall proceed to appraise the interest of the said Nathaniel Knapp in the half breed lands above mentioned.

Not to sell for less than appraisal. SEC. 3. Said commissioners shall report to the judge of probate in Lee county, the value of the interest of the said Knapp, deceased, in the above mentioned lands, and said Harriet Knapp shall not be allowed to sell any share or undivided interest in said half breed tract of land for a less sum than its appraised value, as set forth in the report of the commissioners.

Bond. SEC. 4. After the report of the commissioners is received by the judge of probate, and before the said Harriet Knapp proceeds to make any sales, she shall enter into bonds with three or more sufficient securities, to be approved by the judge of probate, payable to the United States, in a penal sum of double the appraised value of the interest to be sold, conditioned for the faithful performance of her duty agreeable to the provisions of this act.

Terms of sale SEC. 5. Said interest may be sold on a credit of not more than two years, and a lien shall in all cases be reserved upon said land for the purchase money.

Proceeds to be vested. SEC. 6. The above mentioned Harriet Knapp, shall vest the proceeds of the sales of the interest by her sold in any real property in this territory, except half breed lands, and deeds for any land by her purchased under the provisions of this act, shall be taken in the name of the heirs of Nathaniel Knapp, deceased, and all real property so conveyed shall be subject to the debts of the said Nathaniel

Knapp, deceased, and shall be dealt with in all cases as if the same had regularly descended from the said Knapp, deceased, to his heirs.

Approved January 16, 1840.

[Chap. 69.]

AN ACT to remove and relocate the county seat of Lee county.

Commissioners.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That George Gallaher, of Des Moines county, and James L. Scott, of Jefferson county, and Samuel C. Reed, of Van Buren county, are hereby appointed commissioners to relocate the county seat of the county of Lee, whose duty it shall be to meet at Fort Madison, in said county, on the first Monday of March next, and they or a majority of them shall proceed forthwith to select a suitable place for said county seat, as near the geographical centre as a suitable site can be obtained.

Proceedings to be put in writing,

SEC. 2. Said commissioners, or a majority of them, immediately after they have selected a suitable place for the same, shall commit their proceedings to writing, describing the place they have selected, together with the quarter section, township and range, together with any deed or deeds for any lands, and also any bond or bonds for the payment of money or for the building of any public buildings, and shall send them all to the clerk of the district court of said county.

and filed with clerk of district court.

Oath.

SEC. 3. Said commissioners shall each of them take and subscribe the following oath, before some person authorized to administer the same, viz: I, A. B. do solemnly swear (or affirm) that I am not either directly or indirectly interested in the relocation or removal of the county seat of Lee county, and that I have no property, either in claims or lands, in said county, and that I will proceed to select a suitable place for the same according to my abilities and the law for relocating the same, so help me God.

On breach of oath may be indicted.

SEC. 4. If it shall be shown at any time within two years that either of said commissioners were interested, or received any gratuity or reward, or any promise of anything, such commissioner or commissioners shall be liable to indictment for perjury, and be liable to the penalty for said crime.

To file deeds, &c. with clerk of district court.

SEC. 5. It shall be the duty of said commissioners to receive any deed or deeds of land or bond for the payment of money which may be made to the county commissioners of said county, and deposit the same with any bond for building any public buildings for said county with the clerk of the district court.

SEC. 6. Said commissioners shall each receive three dollars per day for every day they are necessarily employed in locating said county seat, and three dollars each for every twenty miles travel to and from said county seat. The district court for said county, at its first term after the passage of this act, and until the public buildings are erected at the county seat, shall be held at the town of Fort Madison, and thereafter at the place selected by them for said county seat. And the treasurer of said county is hereby authorized and required to pay said commissioners the respective sums allowed by this act, out of any moneys in the treasury of said county not otherwise appropriated.

Approved January 16, 1840.

[Chap. 70.]

AN ACT relative to habeas corpus.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, [That] every person imprisoned or otherwise restrained of his liberty, may prosecute a writ of habeas corpus according to the provisions of this act, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

Application to be by petition.

SEC. 2. Application for such writ shall be made by petition signed either by the party for whose relief it is intended, or by some person in his behalf, as follows: To any judge of the supreme or district courts, or any supreme court commissioner, being within the county where the prisoner is detained, or if there be no such officer within such county, or if he be absent, or for any cause be incapable of acting, or have refused to grant such writ, then to some officer having such authority residing in any adjoining county.

Application to officer out of county.

SEC. 3. Whenever application for any such writ shall be made to any officer not residing within the county where the prisoner shall be detained, he

shall require proof by the oath of the party applying, or by other sufficient evidence, that there is no officer in such county authorized to grant the writ, or if there be one, that he is absent, or has refused to grant such writ, or from some cause to be specially set forth is incapable of acting, and if such proof be not produced, the application shall be denied.

What to set forth.

SEC. 4. The petition must state in substance,

First. That the person in whose behalf the writ is applied for is imprisoned or restrained in his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming both parties, if their names are known, or describing them, if they are not.

Second. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party.

Third. If the confinement or restraint is by virtue of any warrant, order or process, a copy thereof must be annexed, or it must be averred that by reason of such prisoner's being removed or concealed before the application, a demand of such copy could not be made, or that such demand was made and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused.

Fourth. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

Fifth. It must be verified by the oath of the party making the application, or some other person.

SEC. 5. Any officer empowered to grant any writ applied for under this act, to whom such petition shall be presented, shall grant such writ without delay.

Form of writ.

SEC. 6. Every writ of habeas corpus issued under the provisions of this act, shall be substantially in the following form: "The United States, to the sheriff of, &c., (or to A. B.) You are hereby commanded to have the body of C. D. by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged before E. F., judge of the district court (or supreme court commissioner, as the case may be,) at &c. on &c. (or immediately after the receipt of this writ,) to do and receive what shall then and

there be considered concerning the said C. D.; and have you then and there this writ. Witness, &c.

Want of form shall not vitiate.

SEC. 7. Such writ of habeas corpus shall not be disobeyed for any defect of form, it shall be sufficient,

First. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person.

Second. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described in any other way so as to designate the person intended.

If writ refused, penalty.

SEC. 8. If any officer authorized by the provisions of this act to grant writs of habeas corpus, shall wilfully refuse to grant such writ when legally applied for, he shall forfeit for every such offence to the party aggrieved, one thousand dollars.

Return to state.

SEC. 9. The person upon whom any such writ shall have been duly served, shall state in his return plainly and equivocally,

First. Whether he has or has not the party in his custody, or under his power or restraint.

Second. If he have the party in his custody, or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large.

Third. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ to the officer before whom the same is returnable.

Fourth. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place. The return must be signed by the person making the same, and, except where such person shall be a sworn public officer, and shall make

his return in his official capacity, it shall be verified by his oath.

SEC. 10. The person or officer on whom the habeas corpus shall have been served, shall also bring the body of the person in his custody according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided. To bring in body.

SEC. 11. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this act, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the officer before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this territory, and commanding him forthwith to apprehend such person, and to bring him immediately before such officer; and on such person being so brought, he shall be committed to close custody in the jail of the county in which such officer shall be, without being allowed the liberties thereof, until he shall make return to such writ, and comply with any order that may be made by such officer in relation to the person for whose relief such writ shall have been issued. On refusal, attachment to issue, and person committed.

SEC. 12. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person to be designated therein, who shall have full power to execute the same, and such sheriff, upon being brought up, may be committed to the jail of any county other than his own. In case of sheriff, attachment served by coroner.

SEC. 13. The officer by whom any such attachment may be issued, may also at the same time or afterwards issue a precept to the same sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such officer the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person until he shall be discharged, bailed or remanded, as such officer shall direct. Precept to bring in party may also issue.

SEC. 14. In the execution of such attachment or precept or of either of them, the sheriff or other per- Posse comitatus.

son to whom they shall be directed may call to his aid the power of the county, as in other cases.

To examine cause of restraint.

SEC. 15. The officer before whom the party shall be brought on such writ, shall immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not.

When to be discharged.

SEC. 16. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such officer shall discharge such party from the custody or restraint under which he is held.

Same.

SEC. 17. If it appear on the return that the prisoner is in custody by virtue of civil process of any court legally constituted or issued by any officer in the course of judicial proceedings before him authorized by law, such prisoner can only be discharged in one of the following cases:

First. Where the jurisdiction of such court or officer has been exceeded either as to matter, place, sum, or person.

Second. Where, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged.

Third. Where the process is defective in some matter of substance required by law, rendering such process void.

Fourth. Where the process, though in proper form, has been issued in a case not allowed by law.

Fifth. Where the person having the custody of the prisoner under such process is not the person empowered by law to detain him; or,

Sixth. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

May bail or remand.

SEC. 18. If it appear that the party has been legally committed for any criminal offence, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be guilty of such an offence, although the commitment be irregular, the officer before whom such party shall be brought shall proceed to let such party to bail, if the case be bailable and good bail be offered, or if not, shall forthwith remand such party.

Or otherwise commit.

SEC. 19. If the party be not entitled to his discharge and be not bailed, the officer shall remand

him to the custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was be legally entitled thereto; if not so entitled, he shall be committed by such officer to the custody of such officer or person as by law is entitled thereto.

Temporary custody.

SEC. 20. Until judgment be given upon the return, the officer before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such officer shall be, or place him in such care or under such custody as his age and other circumstances may require.

Persons interested to have notice.

SEC. 21. When it appears from the return to any such writ, that the party named therein is in custody on any process under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney if he have one, if to be found within the county, shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

Party in custody may deny facts in the return.

SEC. 22. The party brought before any such officer on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath, and thereupon such officer shall proceed in a summary way to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

In case of sickness of person in custody,

SEC. 23. Whenever from the sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot without danger be brought before the officer before whom the writ is made returnable, the party in whose custody he is may state that fact in his return to the writ, verifying the same by his oath; and if such officer be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return and to dispose of the matter; and if it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the officer shall grant a writ of discharge,

commanding those having such person in their custody to discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined and is not entitled to be bailed, such officer shall cease from all further proceedings thereon.

Order of discharge enforced by attachment.

SEC. 24. Obedience to any writ of discharge or to any order for the discharge of any prisoner granted pursuant to the provisions of this act may be enforced by the officer issuing such writ or granting such order, by attachment, in the same manner as herein provided for a neglect to make a return to a writ of habeas corpus, and with the like effect in all respects; and the person guilty of such disobedience shall forfeit to the party aggrieved one thousand two hundred and fifty dollars, in addition to any special damages such party may have sustained.

Penalty.

Order of discharge evidence in action for escape.

SEC. 25. No sheriff or other officer shall be liable to any civil action for obeying any such writ or order of discharge, and if any action shall be brought against such officer for suffering any person committed to his custody to go at large pursuant to any such writ or order, he may with his plea of the general issue give notice of the same in bar of such action.

Elusive transfer a misdemeanor.

SEC. 26. Any one having in his custody or under his power, any person for whose relief a writ of habeas corpus shall have been duly issued pursuant to the provisions of this act, who with intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Aid a misdemeanor.

SEC. 27. Every person who shall knowingly aid or assist in the violation of the last preceding section, shall be deemed guilty of a misdemeanor.

How punished.

SEC. 28. Every person convicted of any offence under either of the three last sections, shall be punished by fine or imprisonment, or both, at the discretion of the court in which he shall be convicted; but such fine shall not exceed one thousand dollars, nor such imprisonment six months.

Warrant may issue when

SEC. 29. Whenever it shall appear by satisfactory proof that any one is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the territory, or suffer

some irreparable injury before he can be relieved by the issuing of a habeas corpus, any officer authorized to issue such writ may issue a warrant under his hand and seal, reciting the facts, and directed to any sheriff, constable or other person, commanding such officer or person to take such prisoner and forthwith to bring him before such officer to be dealt with according to law.

When to contain order for arrest.

SEC. 30. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence committed in the taking or detaining of such prisoner, the warrant shall also contain an order for the arrest of such person for such offence.

Like return and proceedings as on habeas corpus.

SEC. 31. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the officer issuing the same; and thereupon the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

Person having custody may be committed.

SEC. 32. If the person having such prisoner in his custody shall be brought before such officer as for a criminal offence, he shall be examined, committed, bailed or discharged by such officer in like manner as in other criminal cases of the like nature.

Refusing copy, penalty.

SEC. 33. Any officer or other person refusing to deliver a copy of any order, warrant, process or other authority by which he shall detain any person, to any one who shall demand such copy, and tender the fees thereof, shall forfeit two hundred dollars to the person so detained.

When returnable.

SEC. 34. Every writ of habeas corpus may be made returnable at a day certain or forthwith, as the case may require.

Certificate of allowance.

SEC. 35. Every such writ shall be endorsed with a certificate that the same has been allowed, and with the date of such allowance, which endorsement shall be signed by the officer allowing the writ.

Habeas corpus, how served.

SEC. 36. Every writ of habeas corpus issued pursuant to this act, may be served by delivering the same to the person to whom it is directed; if he cannot be found, it may be served by being left at the jail or other place in which the prisoner may be confined, with any under officer or other person of

proper age, having charge for the time of such prisoner.

Same.

SEC 37. If the person on whom the writ ought to be served conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling house or of the place where the party is confined.

Charges to be paid by petitioner.

SEC. 38. Every officer allowing a writ of habeas corpus directed to any other than a sheriff, coroner, constable, or marshal, may, in his discretion, require as a duty to be performed in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the petitioner; and in such case he shall, in the allowance of the writ, specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

When returnable.

SEC. 39. If the writ be returnable at a certain day, such return shall be made, and such prisoner shall be produced at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced, within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

Common law abrogated except.

SEC. 40. The provisions of the common law in regard to the writ of habeas corpus, treated of in this act, are hereby abrogated, except so much and such parts thereof as may be necessary to carry into full effect the provisions herein contained; and the authority of courts and officers to award such writ or to proceed thereon by the common law, shall be exercised in conformity to the provisions of this act, in all cases therein provided for.

This act not to restrain.

SEC. 41. Nothing contained in this act shall be construed to restrain the power of any court to issue a writ of habeas corpus when necessary, to bring before them any prisoner for trial in any criminal case lawfully pending in the same court; or to bring in any prisoner to be examined as a witness in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness necessary for the attainment of justice.

Approved January 16, 1840.

[Chap. 71.]

AN ACT to regulate the admission of attorneys.

Attorneys, &c. from other states admitted to practice.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any attorney, counsellor of law, or solicitor in chancery, who may have been admitted and licensed to practice law in any other state or territory in the United States, may be admitted to practice law in the several courts of law and equity within this territory: *Provided,* That any such applicant for admission as aforesaid, shall produce satisfactory evidence to the court of his previous admission as aforesaid, and correct moral character.

No person admitted attorney unless.

SEC. 2. That no person except as in first section provided, shall be admitted an attorney and counsellor of law within this territory, unless he shall have previously obtained a licence for that purpose from any two of the judges of the supreme court, which licence shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all superior and inferior courts of record in this territory. But no person shall be entitled to receive a licence as aforesaid, until he shall undergo a thorough and satisfactory examination by said judges, and produce satisfactory evidence of his correct, moral character.

Mode of admission.

SEC. 3. That all admissions to practice law within this territory, shall be by the supreme or district courts in session.

Clerks to keep roll.

SEC. 4. That the clerks of the several courts of law and equity within this territory, are hereby required to keep a roll of every attorney and counsellor of law or solicitor in chancery who may be admitted to practice in their respective courts.

Oath.

SEC. 5. That every attorney or counsellor of law who shall be admitted to practice as such before he receives his certificate of admission, shall take an oath to support the constitution of the United States, and faithfully to demean himself in the practice of his profession to the best of his knowledge and ability; and said oath shall be endorsed and certified on his certificate of admission by the clerk of the court before whom the oath was taken.

SEC. 6. The supreme or any district court may revoke the license granted to any attorney or counsellor of law, or may suspend any attorney or counsellor of law from practising as such for a limited

time for any deceit, malpractice, or other gross misconduct, and each attorney and counsellor of law for any deceit, malpractice, or other gross misconduct, shall be liable in damages to the party injured thereby, and to such other punishment as may be provided by law: *Provided always*, That every attorney, before his licence shall be revoked, or before he shall be suspended from practising as aforesaid, shall receive a written notice from the clerk of the court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be heard in his defence, and be allowed reasonable time to collect and prepare testimony for his justification.

Approved January 16, 1840.

[Chap. 72.]

AN ACT to establish a university at the town of Mt. Pleasant, in Henry county.

Trustees.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be established at the town of Mount Pleasant, in the county of Henry, a university for the purpose of education of youth, the style, name and title whereof shall be the Iowa university; and the said university shall be under the management of twenty-one trustees, to wit: Charles Mason, J. H. Randolph, E. Killpatrick, Revd. Samuel Hutton, Robert Caulk, George Miller, jr., John S. Stephenson, Lyman Chase, Aaron Street, sen., Joseph B. Teas, Elisha Bell, Joseph Forbes, T. Y. Qualls, D. J. M. Robertson, Revd. Alexander Ewing, Samuel C. Reed, Isham Keith, Samuel Shuffleton, Edward Thomas, Philip Viele, William R. Ross, and they and all further trustees shall continue in place during the pleasure of the legislature, and all vacancies which may occur from time to time be supplied by the legislature.

Name.

SEC. 2. The said trustees and their successors shall forever hereafter be and they are hereby established and declared to be a body politic and corporate, with perpetual succession in deed and in law to all intents and purposes whatsoever, by the name, style and title of the trustees of the Iowa University, by which name and title they and their successors shall be capable at law and in equity of suing and

being sued, holding property real, personal, and mixed, of buying and selling and otherwise lawfully disposing of property, and shall have power to make and use a common seal, and to alter the same at their pleasure. Eleven of the said trustees shall be a quorum for the purpose of disposing of the property and fixing of compensations, and any seven of said trustees shall be a quorum for all other purposes. Powers. Quorum.

SEC. 3. It shall and may be lawful for the trustees from time to time, to apply such part or parts of their estate and funds in such manner as they may think most conducive to the promotion of literature and the advancement of useful knowledge within this territory: *Provided always*, That when grants shall be made to them for certain uses and purposes therein expressed and declared, the same shall not be applied either in whole or in part to any other uses without the consent of the grantor. Trustees to direct the application of funds.

SEC. 4. The said corporation shall appoint by ballot, a treasurer and secretary, to continue in office during the pleasure of the corporation; the treasurer shall give bonds to the trustees in such sum and with such securities for the faithful performance of the duties of his office as the said corporation may direct, and shall keep fair and true accounts of all moneys by him received and paid out; the secretary shall keep a fair journal of the meetings and proceedings of the said corporation, with the yeas and nays on all questions when required, and to all the books and papers of the corporation every trustee shall always have access and shall be permitted to take copies of them. Officers.

SEC. 5. The said trustees may from time to time establish such school or schools preparatory to the organization of said university as they may think proper, and as the funds of the corporation will permit; and it shall be the duty of the said trustees to visit and inspect said school or schools, to examine into the state and system of education and discipline therein, and to make a yearly report thereof to the legislature, to make such by-laws and ordinances not inconsistent with the laws of the United States or of this territory, as they may judge most expedient for the government of such school or schools, or for the accomplishment of the trust hereby reposed in such trustees, to appoint a president, professors, instructors and other officers, to fix their compensa- Duty of trustees.

tion, and to remove them when such trustees think proper, and also confer such degrees as are usually conferred by universities established for the education of youth. It shall be lawful for the said trustees to elect a president of the university at any time and without waiting until the state of the funds will allow the establishment of a college, and the president shall always be ex-officio a member of the corporation.

May be repealed.

SEC. 6. This law may be repealed or modified by the legislature of this territory or state, (as the case may be): *Provided*, That such power of repeal shall never extend to direct to any other purposes than those expressed therein, if any shall be expressed in any grant of property to such corporation, but such property, in the event of the dissolution of such corporation, or in case such grant shall be disapproved of by the legislature, shall revert to the grantor or his heirs.

Repeal not to divert property.

First meeting.

SEC. 7. The first meeting of the trustees under this act, shall be held on the second Monday in May next, and they shall have power to adjourn from time to time and to regulate their own meetings, and if a quorum shall not attend at any meeting, the trustees present may adjourn from time to time until a quorum shall attend.

Approved January 16, 1840.

[Chap. 73.]

AN ACT to establish a system of common schools.

When districts formed, notice.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, [That] Whenever any school district shall be formed in any township by the board of school inspectors, it shall be the duty of said board to deliver a notice in writing describing the boundaries of said district, and the time and place of the first meeting, to a taxable inhabitant of such district.

All voters to be notified.

SEC. 2. It shall be the duty of such inhabitant to notify every qualified voter of such district, either personally or by leaving a written notice at his place of residence, of the time and place of said meeting, at least six days before said meeting.

Neglect to serve notice, forfeiture.

SEC. 3. Whenever such inhabitant shall neglect or refuse to serve notice as required, he shall forfeit to the district, for the use of its library, the sum of

ten dollars, to be recovered in an action of debt by the assessor, when said district shall be organized, before any court of competent jurisdiction.

District officers.

SEC. 4. The qualified voters, when assembled, pursuant to such previous notice, and also at each annual meeting, shall choose a moderator, director and assessor.

Voters.

SEC. 5. Every white male inhabitant of the age of twenty-one years, residing in such district, liable to pay a school district tax, shall be entitled to vote at any district meeting.

Failure to organize.

SEC. 6. In case the inhabitants of a district fail to organize the same, or if any district, after formation, shall be dissolved, such notice shall be renewed in the manner prescribed in the first two sections of this act.

Districts, when dissolved.

SEC. 7. Whenever from whatever cause any district shall become destitute of the three officers provided for in this act for the period of six months, or whenever any district shall neglect or refuse to hold two successive annual meetings, it shall be taken and held to be dissolved.

Special meetings.

SEC. 8. Special meetings may be called by the district board, or by any one of them, on the written request of three legal voters of the district, by giving the required previous notice; but in all such cases the object of meeting shall be clearly stated in said notice.

Meetings, how notified.

SEC. 9. All notices for district meetings, except such as are provided for in the first two sections of this act, whether annual or special, shall set forth the day and hour and place of meeting, and be given at least six days previous to such meeting, by being posted up in the most public place in the district.

Annual meeting.

SEC. 10. The annual meeting of each school district shall be on the first Monday of October.

Each district a body corporate.

SEC. 11. Each school district organized under this act, shall be a body corporate by the name and style of "school district number , of the township of , in the county of , and territory of Iowa," and in that name of suing and being sued, and of holding such real and personal estate as is authorized to be purchased by the provisions of this act, and of selling the same.

Summons and service.

SEC. 12. Whenever any suit shall be brought against any school district, the process shall be by summons, a copy of which shall be left with the

assessor of said district at least ten days previous to the return day thereof.

District voters, power.

SEC. 13. Whenever lawfully assembled, the qualified voters in each district shall have power,

First. To adjourn from time to time as may be necessary.

Second. To designate a site for a school-house, and to change the same by a vote of two-thirds, at any regular meeting. *Provided*, That when no site can be established by said inhabitants, the inspectors of the township or townships shall determine where the site shall be, and said determination shall be final.

Third. To purchase or lease an appropriate site, and to build, hire or purchase a school-house, and to impose such tax as shall be sufficient for the payment thereof. *Provided*, That the amount of such tax shall not exceed in any one year the sum of five hundred dollars.

Fourth. To impose from time to time such tax as may be required to keep the school-house in repair, and provide for the necessary appendages: *Provided*, That all expenses for fuel shall be a tax upon the inhabitants sending pupils to school in proportion to the number of pupils, and the time they shall attend school: *And provided also*, That when any district in which a school-house shall have been built, shall, within two years thereafter, be divided, and there shall be a tax for a school-house raised in the districts to which any portion of such aforesaid district shall have been attached, the remaining portion of such district in which the school-house shall have been built, shall refund to the newly formed district that portion of the tax contributed by such portion of the district so set off.

Fifth. To impose a tax sufficient for the purchase of a suitable library case, also a sum not exceeding ten dollars annually, for the purchase of books to be selected by a vote of the district by the district board, when so directed.

Sixth. To designate the place where the library shall be kept, and the person by whom it shall be kept; and the superintendent of public instruction shall establish the necessary rules for the regulation of the library.

Seventh. To determine at each annual meeting, the length of time, which shall not be less than three months, the school shall be kept, and to fix the

amount of money, in addition to its apportionment, which may be raised for the support of its school teachers the ensuing year, the sum so voted not to exceed in any one year ninety dollars: *Provided*, That in case no sum for the support of schools shall be voted at the annual meeting of any district, the director may call a special meeting for the purpose of voting such tax; at which meeting the district may, by a vote of two-thirds, vote any sum not exceeding that authorized to be raised at the annual meeting.

Eighth. To order and direct the sale of any site that may belong to the district, whenever the school-house shall have been removed or the sale of such other property and buildings as may belong to the district.

Duration of offices.

SEC. 14. The moderator, director and assessor shall hold their respective offices until the annual meeting next following their appointment and until others are chosen: *Provided* They shall not hold their offices beyond the time of a second annual meeting without re-election.

Officer refusing to serve, penalty.

SEC. 15. Every person elected to any one of the above offices who, without sufficient cause, shall neglect or refuse to serve shall forfeit to the district for the use of the library the sum of ten dollars, to be recovered in an action of debt by the assessor before any court of competent jurisdiction.

Duties of moderator.

SEC. 16. The moderator shall have power and it shall be his duty to preside at all meetings of the district, to sign all warrants for the collection of taxes and all orders for payment of moneys to be disbursed by the district, and countersign all warrants of the director upon the township board of inspectors for the moneys apportioned to the district by said board of school inspectors.

Duties of assessor.

SEC. 17. The assessor shall have power and it shall be his duty,

First. To obtain within thirty days of his election, a transcript of so much of the last assessment roll of the township or townships as relates to his district, and shall add to such transcript all the property of persons who may have become residents since the last assessment roll was made, and all the property purchased by non-residents since the making of said roll; said property to be rated according to the rule of valuation adopted in making out the township assessment roll: *Provided*, That no property shall be twice assessed, and the said transcript, together

with such additions as shall be made as aforesaid, shall be the assessment roll of said district; and all taxes to be raised in such district shall be levied upon the taxable property thereof in proportion to such valuation.

Second. To post up whenever any tax shall have been assessed upon the property of his district, in the most frequented and central place, a list of persons taxed, with the amount set opposite their respective names, so far as their names shall be known, and also a description of the property of persons whose names shall be known, and also a description of property of persons whose names are not known at least thirty days previous to the same being offered for collection.

Third. To call a meeting of the district board in case any person shall complain to him, during the above named period, of being taxed beyond his due proportion, who shall examine into the ground of said complaint, and reverse, alter or confirm said assessment as, in their judgment, justice shall require, and at the end of the time specified, he shall certify the same upon the tax list, and present it to the moderator for his warrant.

Taxes to be collected.

Fourth. It shall be the duty of the assessor to collect all taxes assessed upon the taxable property of his district, and pay them over on the warrant of the moderator, and in case any person shall neglect or refuse to pay such tax when called upon, it shall be the duty of the assessor to collect the same by distress and sale of the goods and chattels of such person whenever found in said district, having first published such sale for at least ten days by posting up notice thereof in the most public place in the district; and in the collection of taxes upon lands and tenements said assessor shall make returns to the county collector; and it shall be the duty of the county collector to sell the lands and tenements for the collection of said school tax, in the same manner as is required for the collection of township and county taxes.

Not paid, property sold.

Fifth. It shall also be the duty of the assessor to appear for and in behalf of his district in all suits brought by or against said district, except the case provided for in the nineteenth section of this act.

Duties of director.

SEC. 18. The director shall have power and it shall be his duty,

First. To record all the proceedings of the district in a book to be kept for that purpose, and preserve copies of all reports made to the board of school inspectors.

Second. To employ by and with the advice and consent of the moderator and assessor, or either of them, qualified teachers, and pay them by a draft upon the township board of inspectors, said draft not to exceed the amount due said district on account of the apportionment of the board of school inspectors. To employ teachers.

Third. Whenever the apportionment shall not be sufficient to pay for the services of any such teachers, it shall be the duty of the director to call a meeting of the district board for the purpose of levying the balance upon the taxable property of the district, the amount so levied not to exceed the sum voted by the district at its annual meeting; and in case said sum so voted, together with the apportionment, shall be found insufficient the deficit shall be assessed upon the parents or guardians of the children in proportion to the length of time they shall severally have attended school during the term or terms when such deficiency shall have arisen. When apportionment insufficient.

Fourth. Within ten days of the time of the annual meeting, the director shall take the census of his district by registering the names of all belonging to it between the ages of five and twenty-one years inclusive.

Fifth. A copy of this list he shall give to each and every teacher employed within the district, and require every such teacher carefully to note the time of attendance of each and every scholar, and to make a return of the same to the director.

Sixth. It shall be the duty of the director to provide the necessary appendages for the school-house, and keep the same in good condition and repair during the time of school, and an accurate account of all expenses incurred.

Seventh. He shall present said account to the district board to be assessed and collected in the manner hereinbefore prescribed.

Eighth. It shall be his duty to give the prescribed notice of the annual district meeting, and all such special meetings as shall be called for in accordance with the provisions of this act.

Ninth. At the end of the year the school director shall report to the township board of inspectors at the office of the township clerk.

First. The whole number of persons between the ages of five and twenty-one.

Second. The number attending school under five and over twenty-one.

Third. Whole number that have attended school during the year.

Fourth. Length of time a school has been kept by a qualified teacher.

Fifth. Amount of money received from the board of school inspectors.

Sixth. Amount received for library.

Seventh. Amount of money raised in the district.

Eighth. Purposes for which it was raised, and,

Ninth. Books used in said school.

District board —duties.

SEC. 19. The moderator, director, and assessor shall constitute the district board, and they shall have power and it shall be their duty,

First. To levy and assess upon the taxable property all moneys voted by the district, and the deficit, if any, agreeably to the third provision of the eighteenth section of this act, and the sums requisite for the necessary appendages and fuel for the school house during the continuance of any school.

Second. To equalize the assessment roll of fractional school districts formed from different counties, whenever, in their judgment, the assessment rolls of the townships out of which said district was formed shall be unequal.

Third. To purchase or lease a site as designated by the district for the school-house in the corporate name thereof, to build, hire or purchase such school-house out of the funds collected for that purpose, and to make sale of any site or property of the district as directed by the inhabitants thereof, at an annual or special meeting.

Fourth. To divide the public moneys received by the district for the year in not more than two parts, and to assign and apply one of such portions to each term a school may be kept, in payment of the teachers for services for the same: *Provided*, That no money shall be paid to any teacher who has not received a certificate as provided in the twenty-ninth section of this act.

Fifth. To require of the assessor a bond to be

given to the district in double the amount of taxes to be collected in the district, with two sufficient sureties to be approved by the moderator and director, conditioned for the faithful appropriation of all moneys that come into his hands by virtue of his office: said bond to be lodged in the hands of the moderator; and in case of a non-fulfilment of the condition thereof, the moderator and director, or either of them, may cause a suit for the penalty of said bond to be commenced in the name of the district, before any court of competent jurisdiction.

Sixth. To present at each annual meeting of the district, a report setting forth an accurate account of all moneys received by them or any of them during the preceding year and of the disbursement of the same, which report shall contain the items of such receipts and disbursements, and such report shall be recorded by the director in a distinct book to be provided and kept for that purpose.

Vacancies.

SEC. 20. The district board shall have power to fill by appointment any vacancy that shall occur from whatever cause, and it shall be the duty of the board to supply such vacancy within ten days after the time of its occurrence.

District entitled to proceeds of fines.

SEC. 21. Each and every district that shall comply with the fifth provision of the thirteenth section of this act, shall be entitled to its proportion of the clear proceeds of all fines collected within the several counties for any breach of the penal laws, and also its proportion of the equivalent for exemption from military duty, which fines and equivalent shall be paid over by the several officers collecting the same to the treasurers of their respective counties, to be by them apportioned amongst the several townships in the county according to the number of persons between the ages of five and twenty-one years inclusive.

Compensation.

SEC. 22. Each member of the district board shall receive such compensation for his services as shall be voted in district meetings.

Inspectors.

SEC. 23. There shall be chosen at each annual township meeting, three school inspectors in the same manner as other township officers are chosen, who shall hold their office until others are chosen.

Their duty.

SEC. 24. Said inspectors shall have power and it shall be their duty,

First. To meet within ten days of their election at the office of the township clerk, who shall be ex-

officio clerk of the board, and organize by choosing one of their number chairman, who shall preside at their meetings.

Second. To divide the township into such a number of districts, and to regulate and alter the boundaries of said school districts, as from time to time be necessary.

Third. To apply for and receive from the county treasurer all moneys appropriated for the primary schools and district libraries in their townships, and from the collector of the township all moneys raised therein for the same purpose, as soon as the same may be due.

Fourth. To describe and number the school districts of their township.

Fifth. To apportion the school and library money received by them, on or before the first day of March in each year, among the several school districts in their township, in proportion to the number of persons in each between the ages of five and twenty-one years, as the same shall be shown by the last annual report of the director of each district: *Provided* no school money shall be apportioned to any district from which a report shall not have been received, nor to any district in which a school shall not have been kept at least three months during the year immediately preceding by a qualified teacher, except the first distribution: *And provided*, That no library moneys shall be apportioned to any district that shall not have complied with the fifth provision of the thirteenth section of this act.

Chairman to give bond.

SEC. 25. The chairman of the board of inspectors shall be the treasurer of said board, and it shall be the duty of the inspectors to require of said chairman a bond to be given to the township in double the amount to be received by him, in two sufficient sureties to be approved by the township clerk, conditioned for the faithful appropriation of all moneys that may come into his hands by virtue of his office, said bond to be lodged with the township clerk, who is hereby authorized, in case of the non-fulfilment of the condition of said bond, to sue for the penalty thereof before any court of competent jurisdiction.

Report.

SEC. 26. On or before the twentieth day of October of each year, they shall make out and transmit to the clerk of the district court a report setting forth the whole number of districts in their town-

ship, together with the several particulars set forth in the reports of the school directors.

Penalty.

SEC. 27. If any board of school inspectors shall neglect or refuse to make such report by the time set forth in the preceding section, they shall forfeit to the use of the schools of their township the sum of fifty dollars, and the full amount of the money lost by their failure, with interest on the same, to be recovered in an action of debt by the township collector before any court having competent jurisdiction of the same

District in two townships.

SEC. 28. Whenever it may be necessary or convenient to form a district from two or more adjoining townships, the inspectors, or a majority of them from each of such adjoining townships, may form a district, regulate and alter the same; and the director of such district so formed shall make returns to each township from which said district is formed, specifying in said returns that only which belongs to said township.

To examine teachers.

SEC. 29. It shall be the duty of the inspectors to examine annually all persons offering themselves as candidates for teaching primary schools in their township, in regard to moral character, learning and ability to teach school, and if satisfied that such candidates possess the requisite qualifications, they shall deliver to the person so examined a certificate signed by them, in such form as shall be prescribed by the superintendent of public instruction, which certificate shall be in force one year from the date thereof.

May annul certificates.

SEC 30. Whenever the inspectors shall deem it necessary, they may re-examine any teacher of any primary school in their township, and if found wanting in the requisite qualifications, they may annul any certificate given to such teacher by giving to such person ten days' written notice to that effect, and filing the same in the office of the clerk of their township.

To visit schools.

SEC. 31. It shall be the duty of the inspectors to visit all such schools in their township, at least twice in each year, as shall be organized according to law, to inquire into the condition, examine the scholars, and give such advice to both teachers and scholars as they shall deem proper.

Fill vacancies.

SEC. 32. In case of the death, or removal, or disability to act of any one of the inspectors, the board shall fill such vacancy by appointment.

Same.

SEC. 33. Whenever any district board shall fail to supply any vacancy within the time limited in section twenty, the board of inspectors shall fill the same by appointment.

Compensation.

SEC. 34. The inspectors shall be entitled to receive for their services the sum of one dollar per day, to be audited and paid as the accounts of other township officers are audited and paid.

SEC 35. Any person elected or appointed school inspector who shall neglect or refuse, without sufficient cause, to serve as such, shall forfeit to the use of the school fund of his township the sum of twenty-five dollars, to be recovered as prescribed in the twenty-fifth section of this act.

Clerk, his duty.

SEC. 36. The township clerk shall be ex-officio clerk of the board of inspectors, and shall have power and it shall be his duty,

First. To attend all meetings of the inspectors and to prepare, under their directions, all their reports, estimates and apportionments of school moneys, and record the same and all their proceedings in a book to be kept for that purpose.

Second. To receive and keep all reports made to the inspectors from the directors of the several school districts, and all the books and papers belonging to the inspectors, and file the same in his office.

Third. To receive all such communications as may be directed to him by the superintendent of public instruction, and dispose of the same in the manner directed therein.

Fourth. To transmit to the clerk of the district court all such reports as may be made for such clerk by the inspectors, within the time limited in this act, and generally to do and execute all such things as belong to his office, and may be required of him by the inspectors.

Clerk of district court, duties.

SEC. 37. It shall be the duty of each and every clerk of the district court, to receive all such communications as may be directed to him by the superintendent of public instruc ion, and dispose of the same in the manner therein directed.

Report.

SEC. 38. It shall be the duty of each clerk of the district court, on or before the twentieth of November of every year, to make and transmit to the superintendent of public instruction, a report in writing, containing the whole number of townships in his county, distinguishing townships from which the

required reports have been made to him by the inspectors of schools, and containing a certified copy of all their reports; and the board of supervisors or commissioners of each county are hereby authorized to allow to the clerk of the district courts such compensation as they may deem proper for the services he may perform under and by virtue of the provisions of this act. Compensation.

SEC. 39. Any clerk who shall neglect or refuse to make such report by the time so limited, shall, for each offence, forfeit the sum of one hundred dollars, to the use of the schools of said county, to be recovered in an action of debt to be commenced forthwith by and in the name of the superintendent of public instruction. And the money so recovered shall, when received by the superintendent, be paid into the treasury of the county, to the credit and for the use of the district or districts, which may suffer from such neglect of the clerk; and the sum may be drawn out by the proper authority of said district or districts. Penalty.

SEC. 40. The moneys to be hereafter distributed annually for the support of primary schools, shall be payable on the first Monday of January in each year, on the warrant of the auditor of public accounts to the treasurers of the several counties. Moneys when paid.

SEC. 41. The treasurers of the counties shall apply for and receive such moneys as are apportioned to their respective counties when the same shall become due.

SEC. 42. The treasurer of each county, when he shall receive such moneys, shall give notice in writing to the chairman or clerk of the board of school inspectors of each township in his county, of the amount of school and library moneys apportioned to such township, and shall hold the same subject to the order of the inspectors.

SEC. 43. In case any moneys apportioned to any township shall not be applied for by such inspectors, the moneys so remaining shall be added to the moneys next received by the treasurer for distribution from the superintendent of public instruction, and in the same proportion distributed.

SEC. 44. Whenever the clerk of any county shall receive from the superintendent notice of the amount of money to be disbursed in the several townships in his county, he shall file the same in his office, and

within one week transmit a certified copy thereof to the clerk of the board of commissioners, which copy said clerk shall lay before the commissioners at their next regular meeting.

Money to be raised in townships.

SEC. 45. It shall be the duty of the commissioners, at such meeting, to add to the sums of money to be raised in each of the townships of the county, a sum equal to that which shall have been apportioned to such township from the school fund, to be levied and collected in the same manner as other moneys are directed to be raised in the townships.

To be paid to chairman.

SEC. 46. The commissioners shall cause and require the collector of each township by their warrant to pay such moneys, when collected, to the chairman of the board of school inspectors in such township for the use of schools therein.

SEC. 47. Should any township neglect or refuse to elect a board of school inspectors, the collector shall pay the moneys so collected to the county treasurer to be apportioned among the several townships as provided in the fortieth section of this act.

Penalty.

SEC. 48. Each and every officer created by the provisions of this act, who shall receive, by virtue of his office, any books, papers, or moneys, and shall refuse to deliver the same to his successor in office, or shall wilfully mutilate or destroy the same, or any part thereof, shall be deemed guilty of a misdemeanor and liable to a fine of not less than fifty dollars nor more than five hundred, at the discretion of the court.

Repeal.

SEC. 49. All acts and parts of acts coming within the purview of this act, are hereby repealed.

Approved January 16, 1840.

[Chap. 74.]

AN ACT to authorize William Ingersoll to build a dam across Skunk river in the northern part of Jefferson county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That William Ingersoll, his heirs or assigns, are hereby authorized to build a dam across Skunk river in the northern part of Jefferson county, in town seventy-two north, in range eight west, in accordance with the provisions and restrictions of an act approved January nineteenth, eighteen hundred and thirty-nine, of Iowa laws, except that said Ingersoll, his

heirs or assigns, is required to build the lock in said dam twenty-five feet wide.

Approved January 16, 1840.

[Chap. 75.]

AN ACT amendatory of "An act subjecting real and personal estate to execution," approved January twenty-five, eighteen hundred and thirty-nine.

Articles exempt.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That in addition to the property exempt from execution in the act to which this is amendatory, the following shall hereafter be deemed as exempt in like manner, to wit: the family portraits and pictures, all spinning wheels and looms put up and kept for use, five sheep, with fleeces of ten sheep, and the yarn or cloth manufactured from the same, the necessary food for all animals exempted from execution, four months provisions for the family, and necessary fuel for the use of the family for sixty days, the surgical instruments and medical library of every practicing physician or surveyor, and the library of every practicing lawyer or counsellor. The astronomical and mathematical instruments of every teacher or school master shall be viewed in the light of mechanics' tools, and necessary in their particular calling or profession. A bed shall include a straw and feather bed and bedstead.

SEC. 2. All property exempt from execution shall be exempt from attachment or other process at law.

Approved January 16, 1840.

[Chap. 76.]

AN ACT to provide for the Execution of Title Deeds to lots in Iowa City, and for other purposes.

Payments to acting commissioner.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That in all sales heretofore and hereafter made of lots or out lots in the city of Iowa, the purchase money therefor shall be paid by the purchaser into the hands of the acting commissioner appointed by the act entitled "An act to locate the seat of government of the territory of Iowa, and for other purposes." And all sums becoming due upon any

promissory notes or obligations for the purchase of any of said lots, shall be paid to said acting commissioner or his successor in office, which sums as well as moneys heretofore paid him for lots as aforesaid to be by him applied to the erection of the public buildings at Iowa City; and the acting commissioner is hereby required to make a correct exhibit of his accounts to the territorial treasurer, once in three months, whose duty it shall be to audit the same and keep a record thereof; and if the said commissioner shall refuse to comply with this provision of this act, his office shall be vacated.

Surplus.

SEC. 2. After the completion of said buildings, the surplus shall be paid into the territorial treasury for the use of the territory.

Deeds, when and how made.

SEC. 3. Whenever the purchase money shall be paid up in full for the purchase of any lot or lots in the city of Iowa, and as soon as the title to said lands is bona fide obtained from the general government, the acting commissioner shall make out the requisite title deeds to the purchaser or purchasers for the same, in conformity with the certificate of purchase, to be signed by the governor and the seal of the territory affixed thereto, and countersigned and acknowledged by said acting commissioner.

SEC. 4. The acting commissioner shall be and he is hereby allowed the sum of twelve hundred and fifty dollars per annum, as a compensation for his services, to be paid out of any moneys arising from the sale of lots in Iowa City; and the other two commissioners shall be paid, in the same manner, the sum of five dollars per day for the time they are actually employed, and three dollars for every twenty-five miles travel to and from the seat of government.

[Presented to the governor on the 14th January, 1840. and having remained with the governor three days (Sunday excepted) the legislative assembly being in session, this bill became a law January 17th, 1840.]

[Chap. 77.]

AN ACT amendatory of "An act regulating practice, &c.," approved January twenty-five, eighteen hundred and thirty-nine.

Jurisdiction of supreme court over errors in fact.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That the supreme court shall sustain and have jurisdiction in cases of error in fact from the district courts; and

in all cases of appeals, writs of error upon matters of law or fact, if the supreme court cannot render a final judgment in the cause by reason of any error or defect in the proceedings in the court below the said supreme court, shall have power to remand the cause by a writ of procedendo, commanding the court below to proceed in the cause and take such steps as may be necessary to correct such error or defect in the proceedings below, by a new trial by a jury or otherwise, as the case may require, that justice may be done. May remand.

SEC. 2. That appeals from the district courts to the supreme court of this territory, shall be allowed upon all final judgments at law and decrees in chancery, when the judgment or decree appealed from shall amount exclusive of costs, to the sum of twenty-five dollars; and any such appeal shall operate as a supersedeas of the said judgment or decree of the district court: *Provided* Such appeal be prayed for at the time such judgment or decree be rendered: *And provided further*, That the party or some person in his behalf praying for such appeal shall give bond with satisfactory security to be approved of by the said court or the clerk thereof, in a sum sufficient to cover the judgment or decree appealed from, conditioned to prosecute such appeal to effect without delay, and to pay the opposite party the amount of said judgment or decree with all costs, interests and damages that may arise in the supreme court in consequence of such appeal, in the event that the judgment or decree of the district court shall be affirmed, and the obligee in such bond may, at any time, upon a breach of the condition thereof, have and maintain an action at law thereon, as upon other bonds. Appeals from district courts. Bond.

SEC. 3. That writs of error may be sued out from the supreme court, or any judge thereof in vacation at any time within one year from the rendition of the judgment upon which they are granted, and every writ of error shall operate as a supersedeas of the judgment to be removed: *Provided*, The party or some person in his behalf procuring the same, shall give bond in the manner and with conditions required in cases of appeals from the judgments or decrees of the district courts to the supreme court of this territory. Writs of error. When shall be supersedeas.

SEC. 4. All returns of any original writ, alias, pluries, or other process shall specify the manner Returns to specify.

of service thereof, as a necessary part of the service and return thereto.

Repeal. SEC. 5. The fiftieth section of the act to which this is amendatory is hereby repealed.

Jury fee. SEC. 6. In each cause tried by a jury in the district court there shall be taxed in the bill of costs in such cause, three dollars, as a jury fee, which, when collected, shall be paid by the clerk of said court into the county treasury.

By whom cause discharged. SEC. 7. That in all suits, actions, prosecutions or judicial proceedings now pending or hereafter to be instituted in courts of this territory, the attorney of record only and no other person, shall be competent or able in law or equity to discharge such judicial proceedings or the cause of action on which the same is or shall be founded, except such release or discharge be allowed and presented by the court in open court on notice to such attorney, counsellor, or solicitor, or his legal representatives.

Approved January 17, 1840.

[Chap. 78.]

AN ACT to punish for trespass on school and other lands.

Trustees. SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the several boards of county commissioners are hereby made the trustees of the school lands in their respective counties, and they shall execute the duties of trustees of the school lands so far as relates to the sixteenth section according to law, and the best of their understanding.

Trespasses—penalty. SEC. 2. That if any person shall hereafter trespass upon the school lands or sixteenth section or other lands selected in lieu thereof, by cutting down, destroying, or hauling from off the same any timber, stone-coal, or minerals of any description, every person so offending shall forfeit and pay double the value of such timber, stone, or stone coal, or minerals of any description, to be recovered in the name of the trustees before any justice of the peace or before any court having competent jurisdiction thereof, or by indictment by the grand jury of the district court of the county, and to be appropriated to the use of the townships for school purposes.

On non-payment to be imprisoned. SEC. 3. Hereafter when any person shall be found guilty of trespassing on the sixteenth section or other school lands in this territory, and neglects

or refuses to pay damages and costs, it shall be the duty of the court before whom such judgment was rendered to imprison the defendant not less than ten days nor more than two months.

On other lands, penalty

SEC. 4. That hereafter if any person knowingly enter on the lands belonging to another person, fall, box, bore, or carry away any timber, stone, or stone-coal, or minerals of any description, the person so offending shall forfeit and pay double the value of such timber, stone, stone-coal, or minerals, to be recovered, together with costs of suit by the person injured, before any justice of the peace or any court having jurisdiction thereof.

Occupants to have firewood

SEC. 5. That all persons heretofore and now living and who have made improvements on the sixteenth section or school lands, shall be entitled to the use of such timber as is necessary to keep up fences, repair buildings, fire-wood, &c: *Provided however* They shall not be allowed by the trustees to make use of timber in any other way than for repairing their improvements on the sixteenth section. A departure from the above provision by any occupant on the sixteenth section, shall subject him or her to the same penalties as other trespassers on the sixteenth section or school lands.

Trespass on public grounds, penalty.

SEC. 6. That if any person or persons shall, without proper authority, cut down, injure or destroy any living ornamental tree or trees either planted or preserved, standing or growing on any commons or public ground, or any street, alley, sidewalk, avenue, or promenade, every such person or persons so offending, shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and shall moreover be liable to the action of the party injured in double damages.

SEC. 7. This act to take effect and be in force from and after its passage.

Approved January 17, 1840.

[Chap. 79.]

AN ACT to authorize the keeping of certain Ferries therein mentioned.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the persons herein named and their heirs and assigns respectively, be and they are hereby authorized to keep ferries at the places hereinafter designated for

the term of twenty years from and after the passage of this act, to wit:

SEC. 2. Angus M. Anderson, a ferry across the St. Peter's river at its mouth, with the exclusive privilege for the distance of two miles up and along said river.

SEC. 3. Joseph R. Brown a ferry across the Mississippi river at the place called Massey's Landing, opposite Rejection in Wisconsin territory, with the exclusive privilege for the distance of one mile along the same each side of said ferry.

SEC. 4. Henry C. Mencke a ferry across the Mississippi river, above and near the Falls of St. Anthony, with the exclusive privilege for the distance of five miles up the river above said falls: *Provided*, That each of the persons hereinbefore named shall, within one year after the passage of this act, provide and keep at their respective ferries above specified good and sufficient flat boats for the transportation of all persons and their property without delay.

To keep boats

Subject to general law.

SEC. 5. And provided further, that the said ferries shall be under the same restrictions and subject to the same regulations as other ferries by the laws of this territory fixing the rates of toll and prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 6. This act to be in force from and after its passage.

Approved January 17, 1840.

[Chap. 80.]

AN ACT defining the duties of supervisors of roads and highways.

Persons liable to labor.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That all male persons between twenty-one and fifty years of age, who have resided one month in this territory, and who are not a county or township charge or otherwise exempt by law, shall be liable yearly and every year to do and perform three days work on the public roads, under the direction of the supervisor within whose district they may respectively reside.

Delinquent—penalties.

SEC. 2. That it shall be duty of every supervisor to order out every such person resident as aforesaid, between the first days of April and October annually, to do and perform the work aforesaid on the public roads within his district; and if any such resident

being personally warned by the supervisor, or by leaving a written notice at his place of abode, or by some person under the direction of the supervisor by whom such warning can be proven, shall refuse or neglect, having had at least three days' notice, to attend by himself or substitute to the acceptance of the supervisor on the day and at the time and place directed by the supervisor, or having attended shall refuse to obey the directions of the supervisor, or shall spend the time in idleness and inattention to the duties assigned him, every such delinquent shall forfeit and pay for each day he shall so refuse or neglect to attend, or for any of the offences above specified, the sum of one dollar and fifty cents, to be recovered by action of debt before any justice of the peace having jurisdiction thereof, at the suit of the supervisor within whose district such delinquent may reside; and the money so collected shall be paid over to the township treasurer and accounted for by the supervisor at the annual settlement with the trustees of his township: *Provided*, That in counties where townships are not organized such forfeiture so collected shall be paid into the county treasury and appropriated as provided for in this act.

SEC. 3. That in case any person shall remove from one district to another who has, prior to such removal, performed the whole or any part of the labor aforesaid, or in other respects has paid the whole or any part of the amount aforesaid in lieu of said labor, and shall produce a certificate of the same from the supervisors of the proper district, such certificate shall be a complete discharge for the amount therein specified.

SEC. 4. That every person called upon to perform any labor upon public roads and highways under any of the provisions of this act, shall 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 the supervisor may, if necessary for the improvement of the roads, order any person owning the same to furnish a team of horses or oxen, and wagon, cart, scraper, or plough, to be employed or used on the roads under the direction of said supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper, or plough in discharge of any labor due from said person.

Exempts.

SEC. 5. That all persons who may be deemed by the supervisor unable to perform or cause to be performed the three days' work required by this act, shall be exempted from the requisitions of the same.

In case of sickness.

SEC. 6. That whenever it shall happen in consequence of sickness, absence from home, or any other cause that the three days' work aforesaid shall not be performed within the time specified in this act, the supervisor shall be authorized to require the performance of such work at any other time.

Road districts

SEC. 7. That the county commissioners or the trustees of townships when the same shall be organized, shall, as often as they may deem it necessary, but not oftener than once a year, divide their respective counties or townships or any part thereof into suitable and convenient road districts, and cause a brief description of the same to be entered on the county or township records, and in case any public road shall be established as a part of the line or boundary of any township where townships are organized, the trustees of the adjoining townships shall meet at some convenient place as soon after such division as convenient, and apportion such road or roads between the two townships as justice and equity may require, for the purpose of opening and improving the same, and the supervisors and inhabitants of each township shall be bound to work on said road or roads accordingly.

Fines, how collected and paid.

SEC. 8. That the several supervisors within their respective districts, shall collect, by suit or otherwise, all fines, forfeitures, and penalties, arising and accruing under the provisions of this act, unless the collection thereof is herein provided for, and pay the same into the township treasury, if the townships are organized on or before the first Monday in March, otherwise into the county treasury on or before the first Monday of April annually, taking the treasurer's receipt for the same, which receipt shall be the proper voucher for the supervisor to settle with the trustees or county commissioners for the amount thereof, and all fines and forfeitures sued for and recovered under the provisions of this act by any other person than a supervisor shall be paid over within twenty days by the justice of the peace or constable collecting the same to the township treasurer, if townships are organized, if not, to the county treasurer, taking a receipt therefor, and

the trustees of townships or county commissioners shall cause all moneys so paid into the township or county treasury to be immediately appropriated to repairing the public roads in such road district wherein such fine or forfeiture accrued, and if any person shall be sued for doing or performing any act or thing required or authorized by this act, such person may plead the general issue, and give this act and the special matter in evidence, and no suit or action shall be brought or maintained unless it shall have been commenced within six months after the cause of such action shall have arisen: *Provided*, That nothing in this section shall be so construed as to prevent the trustees of townships or county commissioners from collecting or recovering any moneys in the hands of the township or county treasurers or supervisors of roads and highways.

To open and repair roads.

SEC. 9 That it shall be the duty of each and every supervisor to open or cause to be opened all public roads and highways which have been or may hereafter be laid out and established through any part of the district assigned to such supervisor, and keep the same in repair, for which purpose the supervisors are hereby authorized to enter upon any unimproved lands near or adjoining the public roads, to cut and carry away any timber, to dig or cause to be dug and carried away any gravel, sand, or stone, or gather any loose stone which may be necessary to improve or repair the roads, and to enter on any lands adjoining or lying near the roads, to make such drains or ditches through the same as they deem necessary for the benefit of the roads, doing as little injury as may be to said lands, and the drains or ditches so made shall not be stopped or obstructed by the owner or occupier of such lands or any other person or persons under the penalty of forfeiting a sum not exceeding twenty dollars for each offence, to be recovered and appropriated as provided in the preceding section of this act.

Damages.

SEC. 10. That if any person or persons shall feel aggrieved by any supervisor's cutting or carrying away any timber or stone as aforesaid, they may make complaint thereof to the county commissioners of the proper county at any regular meeting within six months after the cause of such complaint shall exist, and the commissioners shall appoint three disinterested landholders of the county whose duty it shall be after taking an oath or affirmation

to discharge their duty faithfully and impartially, to proceed and examine the matter complained of by the complainant, and assess and determine the damages, if any, and they shall report the same in writing to the commissioners at their next meeting thereafter, and if the commissioners shall be satisfied that the amount so assessed and determined be just and equitable, they shall cause the same to be paid to the complainant out of the county treasury, but if upon view the said landholders should be of opinion that there is no grievance or just cause of complaint, the person so complaining shall pay the costs of such view.

Guideposts.

SEC. 11. That each supervisor within his district shall erect and keep up, at the expense of the county, at the forks of every territorial or county road, a post and guide board or figure board, containing an inscription in legible letters, directing the way and distance to the next town or towns, or public place or places, situated on each road respectively; said post to be at least six inches in diameter, and not less than twelve feet high, and well set in the ground.

Supervisor to make repairs.

SEC. 12. That any time during the year when any public road shall be obstructed by the fall of timber or any other cause, or any bridge shall be impaired so that the passage of teams or travellers on said road or bridge shall be dangerous, and the supervisor in the district in which such obstruction or impaired bridge may exist, shall be notified of the same, it shall be his duty to cause such obstruction to be removed or bridge repaired forthwith, for which purpose he shall immediately order out such number of the inhabitants of his district as he may deem necessary to remove said obstructions or repair said bridge, and the persons so ordered out shall, after having had one day's notice to attend as aforesaid, be subject to the same restrictions and liable to the same penalties as if ordered out under the provisions of the second and fourth sections of this act.

Penalty.

Certificate assignable.

SEC. 13. That in all cases when any person shall, under the direction of his supervisor, perform more labor on the public roads than may be due from him, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate shall be assignable and received for the amount specified in such certificate in discharge of any labor within the same road district,

which may be due from the holder of such certificate in any succeeding year under the provisions of this act: *Provided*, That the preceding section shall not authorize any supervisor to require any person to perform more than two days' work in any one year over and above the amount of labor due from such person agreeably to the provisions of the first section of this act.

Trustees to settle accounts.

SEC. 14. That where townships are organized the trustees shall meet at the place of holding township elections, on the first Monday of March annually, at which time and place the several supervisors of the township shall attend, and each produce his lists and accounts, together with the township treasurer's receipt for all fines, penalties and forfeitures by him collected, and the trustees are hereby authorized and required to adjust and settle all accounts so produced to them, and allow such amount for delinquencies as they shall deem just and reasonable; and, if upon a fair and accurate settlement there shall appear to be a balance due to any supervisor for his services under this act, the trustees shall give him an order on the township treasurer for the amount due: *Provided*, That the supervisor shall, in all cases, be held accountable for the full amount of labor due in his district, unless for good cause shown the trustees shall deem it just to remit the same: *And provided further*, That in counties where townships are not organized the county commissioners shall annually on the first Monday in April, settle the accounts of the supervisors within their respective counties agreeably to the provisions of this; and the supervisors of such counties shall attend upon said commissioners on said day.

Supervisors giving false certificates.

SEC. 15. That each and every supervisor who shall neglect or refuse to perform the several duties enjoined on him by this act, or who shall, under any pretence whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for labor performed or money paid, unless the labor shall have been performed or money paid prior to the giving or signing such receipt or certificate; every supervisor so offending shall forfeit for every such offence not less than five dollars nor more than twenty-five dollars, to be recovered by indictment in the district court, or by action of debt before any justice of the peace having jurisdiction of the same; and it is hereby made the duty of the trustees of the

township in counties where the same are organized, and county commissioners where townships are not organized, to prosecute all offences against the provisions of this act: *Provided*, That if any supervisor shall conceive himself aggrieved by the judgment of the justice of the peace, he may appeal to the district court as in other cases.

Compensation.

SEC. 16. That each supervisor shall receive for his services for each day employed under the provisions of this act over and above three days the sum of one dollar, to be paid out of the township treasury on the order of the trustees where townships are organized, but in counties where townships are not organized the supervisor shall be paid out of the county treasury on the order of the county commissioners.

County commissioners to appoint supervisors.

SEC. 17. That the several boards of county commissioners in counties where townships are not organized, shall annually at their April session, appoint a suitable number of supervisors for such road districts as are not provided for by law, and they may fill vacancies at any time when they may occur, and shall cause the supervisors by them appointed to be notified thereof in writing. That

Injuring guideposts, penalty.

any person who shall destroy or in anywise deface or obliterate any guide board or mile post set up according to the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined the sum of not less than ten nor more than fifty dollars, and be imprisoned not less than one month nor more than three months at the discretion of the court.

Bridges not less.

SEC. 18. That bridges on territorial and county roads shall not be less than sixteen feet wide. It

Judges to charge juries.

shall be the duty of the judges of the district court to give the foregoing section of this act in charge to the grand juries at each term of their respective courts.

Approved January 17, 1840.

[Chap. 81.]

AN ACT relative to Divorce, Alimony and other purposes.

Jurisdiction district court.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the district courts as courts of chancery shall have original jurisdiction in all cases of divorce and

alimony and guardianship connected therewith, and the like process and proceedings shall be had in all such cases as are had in other cases in equity. The bill of complaint shall be accompanied by an affidavit annexed thereto, that the facts stated in said bill are true according to the best knowledge and belief of the complainant, that the complaint is not made by collusion between the complainant and the defendant, nor through fear, restraint, or out of levity, for the mere purpose of being separated from each other, but in sincerity and truth, for the reason mentioned in said bill. The proceedings shall be in the county where the complainant resides, and the process of the court may be directed into any other county in the territory where the defendant may reside. Affidavit.

SEC. 2. That divorces from the bonds of matrimony may be decreed for the following causes: Causes:

First. Where either of the parties at the time of the marriage was impotent. Impotency.

Second. Where either party had a lawful husband or wife living at the time of the marriage. Pre-contract.

Third. If either party shall have committed adultery subsequent to the marriage. Adultery.

Fourth. Where either party shall wilfully desert the other and absent him or herself without reasonable cause for the space of one year. Desertion.

Fifth. Where either party shall be convicted of felony or infamous crime. Felony.

Sixth. Where either party shall be addicted to habitual drunkenness. Drunkenness.

Seventh. Where either party shall be guilty of such cruel and barbarous treatment as to endanger the life of the other. Cruel treatment.

Eighth. When either party shall offer such indignities to the person of the other, as shall render his or her situation intolerable. In all such cases the innocent and injured party may obtain a divorce from the bonds of matrimony; but no such divorce shall affect the legitimacy of children. Indignities.

SEC. 3. That no person shall be entitled to a divorce from the bonds of matrimony who has not resided in this territory six months next preceding the time of filing the bill therefor, unless the offence complained of was committed in this territory or whilst one of the parties resided therein. To apply only to residents.

Collusion.

SEC. 4. That if it shall appear in evidence to the court, that the offence or injury complained of shall have been occasioned by the collusion of the parties, or done with an intent to procure a divorce, and that the complainant consented thereto, or that both the parties have been guilty of adultery, then no divorce shall be decreed, and every such bill shall be dismissed with costs against the complainant.

Mutual crime.

Alimony and maintenance of children.

SEC. 5. That whenever a divorce as aforesaid shall be decreed, the court shall make such order and decree touching the estate and property of the parties, the alimony and maintenance of the wife, the guardianship, custody, care and maintenance of children, as from the nature of the case and the circumstances of the parties may appear to the court equitable and just. When the wife is complainant, the court shall order the defendant to give security for such alimony and maintenance as shall be decreed against him, and upon his neglect or refusal to give the security required, or upon the default of him or his security to pay or provide such alimony or maintenance, the court shall award execution for the collection thereof, or may proceed to enforce the performance of the order or decree of said court by a sequestration of property, or by such other lawful ways and means as accord with the usages and practices of courts of equity. And the said courts, on the application of either party, may make such alterations from time to time in the alimony or maintenance allowed as may be proper, and may order any reasonable sum to be paid for the support of the wife during the pendency of her application for a divorce.

Rights by marriage forfeit.

SEC. 6. That whenever a divorce from the bonds of matrimony shall be decreed, the guilty party shall forfeit all right acquired by virtue of such marriage.

Defendant not answering.

SEC. 7. That when the defendant to any bill of divorce is a non-resident of the territory at the time of filing the bill, or if a resident neglect to appear and answer said bill after a subpœna has been served upon any such defendant, or where a subpœna has been issued and returned non est, the complainant may proceed by attachment to compel an appearance and answer, or by an order of publication for a decree pro confesso, provided the order for publication be published in some newspaper printed in the territory, for eight successive weeks next before the

succeeding term of said court. And in all cases if the defendant does not appear and answer said bill, upon the return of such order, upon proof being made of the good conduct of the complainant, and to satisfy the court that the complainant is the innocent and injured party, the said court shall proceed to a final decree in the same manner and with the same effect as if the defendant had appeared and answered the complainant's bill.

Husband abandoning his wife.

SEC. 8. That when the husband without good cause shall abandon his wife and neglect or refuse to provide for her maintenance and support, the district courts, upon a petition being filed by the wife, supported by competent proof of such desertion and neglect, or refusal to provide for her support or the support of his children, shall have power to decree such support and maintenance for such wife and the children by that marriage out of his property, and for such length of time as the nature and circumstances of the case may require; and may compel the defendant to give security to abide by and perform the decrees of the court in the case; and the court shall have power from time to time to alter and change such allowance as shall be equitable and just under the circumstances of the parties, and to enforce their orders and decrees, in all such cases as is hereinbefore provided.

Estate by marriage to revert.

SEC. 9. That when a wife shall obtain a divorce from the bonds of matrimony, all the estate and property that came to the husband by virtue of such marriage, that remains undisposed of at the time of filing the bill, shall revert to and be settled in the decree of divorce upon the wife and children, if there be any, by the marriage. And if any part of such estate or property be invested in other property the court shall decree the value thereof out of the estate or property in which the same may have been thus invested.

Testimony, how given.

SEC. 10. That in all cases of divorce, the testimony in behalf of either party may be taken and certified as is required in other causes in chancery, or the same may be given viva voce, on the trial of any such cause.

Appeal.

SEC. 11. That if either party shall feel aggrieved by any final order or decree of the district court in any case of divorce, the party so aggrieved may appeal to the supreme court as in other cases in chancery.

Repeal.

SEC. 12. That "An act concerning divorces," approved December twenty-nine, eighteen hundred and thirty-nine, is hereby repealed.

Approved January 17, 1840.

[Chap. 82.]

AN ACT to abolish imprisonment for debt.

Affidavit.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That no person shall be arrested upon any original or mesne process, or required to give bail, unless upon an affidavit being filed with the clerk of the court or justice of the peace from which such process is to be issued, stating that the plaintiff verily believes that the person against whom such process is about to issue will leave this territory or move his property out of the same before judgment can be obtained or otherwise abscond so that the process of the court after judgment cannot be issued, and upon such affidavit being filed the clerk shall endorse that bail is required, and in what sum.

Condition not to remove property.

SEC. 2. That when any person may be held to bail in any civil action, the undertaking of the bail shall be that the defendant shall not remove his property or effects out of this territory until the plaintiff's judgment, if one shall be recovered, is discharged.

On nulla bona scire facias against bail,

SEC. 3. That upon a return of no property found on any fieri facias directed to the proper county, it shall be lawful for the plaintiff to cause a scire facias to issue against the bail, suggesting that the defendant has removed his property or effects out of this territory; and should the bail not answer the scire facias upon due execution thereof, or should it appear to the satisfaction of the court, upon issue joined, that the defendant has removed his property or effects out of this territory after the undertaking of such bail, and that the plaintiff's judgment remains unsatisfied, judgment of execution shall be awarded against the bail for the amount of the original judgment or so much thereof as may remain undischarged.

and execution.

Service.

SEC. 4. That a return of not found upon two writs of scire facias directed to the proper county, shall be considered a due execution of the scire facias authorized by this act.

SEC. 5. That upon the trial of any scire facias herein directed to issue, the defendant shall be allowed to plead and prove that the defendant in the original action was insolvent at the time said bail was given, and if that fact be proven, it shall be adjudged a good defence. Insolvency good defence.

SEC. 6. In all cases whenever a right of action against bail in any suit may have heretofore accrued, the party to whom the same shall have so accrued may have his election to proceed by an action on the bail-bond or by a scire facias as above provided, so that the same be adapted to the circumstances of the case. Plaintiff may elect.

Approved January 17, 1840.

[Chap. 83.]

AN ACT relating to auctioneers and auction sales.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the governor of this territory shall appoint, upon application from any county within the same, one or more persons as auctioneers for such county; such auctioneer so appointed shall be liable to any tax the county commissioners may think proper, not exceeding one hundred dollars per annum, upon payment of which tax a license shall be granted by said county commissioners to any person appointed as above to act as auctioneer within the county. Appointment. License.

SEC. 2. Any person who shall act as auctioneer without appointment and license as provided above, shall be liable to the county in a penalty not exceeding two hundred dollars, to be collected by action of assumpsit in the proper court. Acting without license, penalty.

SEC. 3. If any auctioneer shall receive for sale by auction any goods from any minor or servant, knowing him to be such, or shall sell by auction any goods except books, before sunrise or after sunset, he shall forfeit to the county a sum not exceeding two hundred dollars, to be recovered by action of debt or indictment. Sales to be by daylight.

SEC. 4. Every auctioneer shall keep a fair and particular account of all goods and chattels sold by him, of the names of the persons of whom the same were received, and the names of the persons to whom the same shall have been sold. Accounts.

SEC. 5. Nothing in this act shall prevent any person from selling his own property by public sale or Not to prevent certain sales.

auction, nor permit sheriffs, deputy sheriffs, coroners, constables, collectors of taxes, executors, administrators, guardians or any other person required by law to sell any real or personal estate from selling such property by public sale or auction.

SEC. 6. No appointment as above mentioned shall continue in force for more than one year from the date thereof.

Approved January 17, 1840.

NOTE.—The word "permit" is in the enrolled bill as printed here, in second line of fifth section, probably intended "prevent."—[Supervisor.]

[Chap. 84.]

AN ACT to incorporate the city of Du Buque.

Boundaries.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the city of Du Buque shall be bounded as follows: Beginning at a point in the middle of the main channel of the river Mississippi east and parallel with the south line of the town of Du Buque as surveyed and laid off by the commissioners appointed under an act of congress to lay off the towns of Fort Madison, Burlington, and Du Buque, &c. and running westwardly with the said line to a stone which marks the southwest corner of said town, thence northwardly to a stone which marks the northwest corner of said town; thence, with the line of said town, to the slough; thence east-north-east to the middle of the main channel of the Mississippi river; thence with said channel to the place of beginning. All the inhabitants resident within the aforesaid limits are hereby declared to be incorporated by the name of "The Mayor and Aldermen of the City of Du Buque."

Incorporation.

Election of city council.

SEC. 2. There shall be elected on the first Monday of April one thousand eight hundred and forty, and annually thereafter, one mayor and six aldermen, who shall hold their offices for one year and until their successors are elected and qualified, and they shall be the judges of their own elections, and the mayor and aldermen shall constitute the city council, a majority of whom shall constitute a quorum to do business. The said election shall be ballot, and each free white male citizen of the age of twenty-one years, who has been a resident of said city three months prior to the day of election, shall be entitled to vote at all elections for city officers.

Corporate powerss.

SEC. 3. That the mayor, aldermen and inhabitants thereof shall be a body politic and corporate,

with perpetual succession to be known by the name of the mayor and aldermen of the city of Du Buque, and shall be capable in law by their corporate name to acquire real and personal property for the use of said city, sell and convey the same, may have a common seal, and may alter and change the same at pleasure; they may sue and be sued, plead and be impleaded, defend and be defended, in all manner of courts of judicature in this territory, and in all manner of actions whatever, and when any suit shall be brought against the city an attested copy of the summons shall be left with the mayor or at his place of residence, ten days before the return thereof, or in his absence with the clerk of the council.

City council, powers.

SEC. 4. The mayor and aldermen shall have power to make and establish by-laws, regulations and ordinances for the government of the city, and alter and repeal the same at pleasure, to prescribe the duties and compensation of such subordinate officers as they may deem proper, to appoint and remove them at pleasure, to fix reasonable fines and penalties for any violation of the laws and ordinances of the corporation: *Provided*, That no person shall be fined exceeding fifty dollars for any one offence against any one ordinance, and may be recovered by action of debt before any justice or any magistrate of competent jurisdiction within the limits of the city, and to provide for the collection and disposition of the same, and no by-laws or ordinances shall take effect until the same shall have been published.

Same.

SEC. 5. The city council shall have power to grade, ditch and cut sewers, to make, alter, widen and repair streets, lanes and alleys; to make and repair wharves or public landings within the corporation, to license houses where liquor is sold by the dram, to license, drays, carts and other vehicles kept for public hire, to license and prohibit shows and other public exhibitions, to dig and keep in repair public wells, to license and regulate billiard tables, to prohibit the discharging of firearms and the racing or immoderate running of horses within the corporation, to levy and collect a tax upon dogs, to restrain or prohibit the running at large of ferocious animals, to establish and regulate public markets, to establish and regulate the rate of wharfage of all boats or vessels or rafts landing within the limits of the cor-

poration, to establish a ferry or ferries and for annually leasing the same, to cause to be fenced vacant or unimproved lots, to restrain and prohibit houses of ill fame, and all indecent exhibitions within the city, to hold, purchase and convey real and personal estate for the use of said city, to borrow money at any rate of interest not to exceed twenty per centum per annum, and all money so borrowed shall be expended in the public improvement of the city and for no other purpose, and to secure the payment thereof they shall have the power to pledge the faith and property of said city, to levy and collect a tax on all real and personal property within the corporation and subject to a county tax: *Provided*, it shall not exceed in any one year more than the one-fourth of one per centum of the aggregate amount of all such taxable property. The said tax shall be assessed and collected by such officer or officers as the city council may from time to time appoint, in such manner and under the same regulations as are or may be provided by law for the assessment and collection of county taxes; to provide against danger by fire, and for this purpose there may be organized within the limits two fire companies not to exceed twenty-five men each, and when so organized the members thereof shall be exempt from militia duty, to prohibit the keeping in any one place large quantities of gunpowder. They shall have power to pass all laws and ordinances not inconsistent with the constitution of the United States and laws of this territory for the purpose of carrying the aforesaid powers into effect, and for the preservation of the peace, health and cleanliness of said city.

City marshal.

SEC. 6. The council shall appoint a suitable person to be marshal of the city, whose duty shall be to execute and return all process directed to him by the mayor or any justice of the peace within the limits of the corporation in the name of the mayor and aldermen of the city of Du Buque, and shall have the same authority and perform the same duties and be subject to the same liabilities that constables are in their respective counties, and shall receive the same fees for services that are or may be allowed by law to constables within this territory, and do and perform all other duties that may be imposed on him by ordinance.

Writs, how served.

SEC. 7. All writs and process issued by any justice of the peace or any other court under any of

the ordinances of the corporation, shall be served and returned in like manner and with like effect as writs and process are now served and returned under the laws of this territory.

Mayor. SEC. 8. The mayor shall attend and preside at all meetings of the city council, he shall not vote except in case of a tie, when he shall give the casting vote, he shall sign all laws or ordinances passed by the board, and see that they are faithfully executed, he shall sign all bonds and drafts ordered by the city council and attested by the clerk, and all such bonds and drafts so signed shall bind the said corporation and shall be good in law and equity in every court in the territory for what is therein expressed.

Vacancy of mayor. SEC. 9. In case of the resignation, absence, sickness or death of the mayor, the aldermen shall elect one of their number mayor pro tem., who shall be invested with all the authority and perform all the duties of mayor during his absence or until another is elected and qualified.

Oath. SEC. 10. The mayor and aldermen and all other officers of the city shall, before entering upon their respective duties, take and subscribe an oath to support the constitution of the United States and laws of this territory, and faithfully perform the duties for which they were elected, which oath shall be filed with the clerk.

Clerk. SEC. 11. The city council shall appoint a clerk, who shall keep a fair record of all the proceedings of the mayor and aldermen, shall attend all meetings and act as secretary of the same, shall keep all books and papers and provide all necessary rooms and stationery for the use of the board, he shall do all other acts which may by ordinance be required.

Treasurer. SEC. 12. They shall also appoint a treasurer, who shall receive and safely keep all moneys which may come into his hands, and when he receives moneys from the marshal, collector or clerk, he shall give a receipt for the same, he shall, once in every three months, make out a list of all moneys by him received and paid out, and make a complete settlement with the board, he shall not purchase, buy or in any way trade for any city orders at a less value than the amount called for by the same, he shall give to the board a bond with security to their satisfaction, and be in all things governed by the by-laws and ordinances.

Wards. SEC. 13. The city council shall, upon the application of any twenty voters, or may, without such application, divide the city into three or more wards, having regard to the number of inhabitants, and apportion the aldermen to be elected in each ward as near equal as can be, according to the population thereof.

Elections. SEC. 14. The city council shall, at least two weeks before the time expires for which they were elected, give public notice in the newspaper, or by notices posted up in three of the most public places in the city of an election for city officers, together with the place at which each election shall be held, they shall appoint two judges and one clerk to each ward. It shall be the duty of the clerk to record in a book kept for that purpose the name of each voter. The said election shall be kept open from nine in the morning to five o'clock in the afternoon. After the close of said polls the judges shall count the ballots and give a certificate of election to the person having the greatest number of votes, the same to be attested by the clerk. Said clerk shall return the poll books to the city council, and the city council shall, at the same time, publish a statement of the receipts and expenditures of the preceding year.

Opening streets. SEC. 15. When the city council shall order any street, lane or alley to be opened or extended, and the same runs upon any individual property, it shall be the duty of the mayor to issue a venire for twelve good and discreet men property holders in said city to make a jury for the purpose of assessing damages, if any sustained by the opening of said street, lane or alley. And the said jury shall be under oath to assess the same without fear, favor or partiality to the best of their judgment, and they shall take into consideration the benefit the property holders shall derive by the opening of said street, lane or alley, as well as the loss they shall sustain, and if they find the loss to be greater than the benefit, they shall render their verdict for the amount, and the mayor shall draw his draft upon the treasurer in favor of such person so injured for the amount assessed, but if the jury is of opinion that the benefit is equal to the loss they shall so render their verdict certified under their hands. In either case the city council shall proceed to open said street, lane or alley, and keep the same open for public use.

Paving. SEC. 16. When any street, lane or alley, shall be

paved or macadamized, the city council shall assess the cost thereof to the owners of the property on each side of the street, lane or alley so made, according to the number of feet front each person does own on said street, lane or alley, and in like manner, if side walks are only made each person shall be liable for the expense incurred in front of his, her or their property, and if the said assessment is not paid after giving due notice thereof the property shall be sold after giving the usual notice as in case of execution for to satisfy the amount with costs. This section shall not apply to the public landing except to the sidewalk on one side of the same: *And provided further*, That the city council shall have discretionary power to charge to the owners of property such part of the expense of grading, paving, or macadamizing any street, lane or alley as they may deem just, the balance to be paid out of the city treasury.

SEC. 17. Whenever the owners of more than one half of the property on any street, part of a street, lane or alley, not less than the length of one square or block, shall petition the city council to have the same paved or macadamized, it shall be the duty of the city council to have the same ordered to be done according to the plan adopted by the city, and the cost taxed as is provided in the preceding section: *Provided*, They may make such order without such petition.

Vacancy of aldermen.

SEC. 18. In case of death, resignation, or absence of two months without leave, of any alderman, it shall be the duty of the clerk to give ten days' notice of an election to be held to supply the vacancy; if the city is districted into wards the election shall be held in the ward which the alderman represented whose seat has been vacant; if the city has not been districted, then the election shall be general throughout the city.

SEC. 19. That nothing in this act shall be so construed as to interfere with the rights of the county or territory to tax the people within the limits of said city.

Act to be accepted.

SEC. 20. This act to be in force and take effect from and after the third Monday in March next: *Provided*, That the legal voters of said city having paid a town or corporation tax, may assemble at the court house on the first Monday in March next, and proceed to vote by ballot for or against this charter,

and if a majority of the voters shall be in favor of the same, they shall proceed according to the provisions of this act, otherwise the same shall not take effect, but if at any future day by previous notice of at least thirty days, they shall agree to adopt it, it shall be as binding as if it had been adopted on the day set forth in this section.

Business transferred.

SEC. 21. That all unfinished business of the president and trustees of the town of Du Buque, is hereby transferred for adjustment to the mayor and aldermen of said city; and they shall be holden for all debts, credits and contracts of, and enjoy all rights and privileges heretofore exercised by and granted to said president and trustees.

Approved January 17, 1840.

[Chap. 85.]

AN ACT to restrict the commissioners in the expenditure of money in the erection of public buildings at Iowa city.

Cost not to exceed.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That it shall be the duty of the commissioners on public buildings at Iowa city, to adopt a plan for said buildings at that place, the aggregate cost of which, when completed, shall not exceed fifty-one thousand dollars.

SEC. 2. If said commissioners have already adopted a plan for said buildings, the cost of which will exceed the sum aforesaid, then the said commissioners shall set aside such plan and comply strictly with the provisions of the first section of this act.

When to complete.

SEC. 3. That it is hereby made the duty of said commissioners to complete the said buildings at as early a period as possible for the accommodation of the legislative assembly, and to make a full report of their proceedings to the special session of the legislative assembly in July next, embracing a statement of

Report.

First. The plan of said buildings.

Second. The contracts entered into by them, and with whom.

Third. The terms of said contracts, together with the securities by them taken from each contractor for the faithful performance of his contract.

Fourth. The sum of money to be paid to each contractor.

Fifth. All moneys paid out or expended by said commissioners, to whom paid, and for what purpose.

Sixth. Embracing a particular description of the lots sold, and designating the number of said lots, and the blocks in which they are situated, and to whom sold.

Seventh. The price for which each lot was sold, what payments have been received, the amount still due on each, and when payable.

Bond. SEC. 4. That the acting commissioner shall enter into bonds in the sum of twenty thousand dollars, to be approved by the governor, and filed in the secretary's office, conditioned that he shall safely keep and pay over as hereinafter provided, all funds now in his hands or which may hereafter come into his hands arising from the sale of lots in Iowa city.

Commissioners to keep and manage funds. SEC. 5. That after said bond shall have been properly executed and filed in the secretary's office, it shall be the duty of said commissioners to receive, keep and pay over all funds arising from the sale of lots or out lots or other property belonging to this territory in Iowa city, in such manner as may be necessary for the speedy erection and completion of said public building: *Provided*, That all accounts or demands paid by said commissioners shall be first audited by the auditor of this territory.

And pay over balance. SEC. 6. That said commissioners shall, on the completion of said public buildings, transfer and pay over to the treasurer of this territory, all funds, notes or other obligations arising from the sale of the property of this territory, at Iowa city, which remains unexpended according to the provisions of this act.

Approved January 17, 1840.

[Chap. 86.]

AN ACT to amend "An act to provide for the erection of a penitentiary and establishing and regulating prison discipline for the same."

To be one director. SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the duties required of three directors by the act to which this is amendatory, shall, after the expiration of twelve months from the time said directors were elected be performed by one director, who shall have the same powers, perform the same duties, and be responsible in like manner that the three would have been had this act not passed.

Compensation. SEC. 2. The directors shall hereafter receive for their services an annual salary of five hundred dollars, to be paid quarterly by the superintendent out

of any money appropriated as aforesaid, he taking proper receipts therefor.

Superintendent.

SEC. 3. The superintendent shall receive an annual salary for his services until otherwise directed by law, the sum of one thousand dollars, payable on the order of the director, quarterly, and who shall be responsible in like manner to the one director that he would have been to the three, had this act not been passed.

SEC. 4 That the offices of the two directors of said penitentiary first elected at the last session of this assembly, are hereby repealed from the twenty-fifth day of January, A. D. eighteen hundred and forty, and so much of the act to which this act is amendatory as contravenes the provisions of this act, is hereby repealed. This act to take effect from and after its passage.

Approved January 17, 1840.

[Chap. 87.]

AN ACT to lay out and establish a territorial road from Wyoming to Iowa City.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That John Sherfey and John Hesser, of Muscatine county, and Jonathan Harris, of Johnson county, are hereby appointed commissioners to lay out and establish a territorial road from Wyoming on the most direct route to Iowa City.

SEC. 2. That said commissioners, or a majority of them, shall meet at Wyoming on the second Monday of May next, and proceed to discharge their duties.

Approved January 17, 1840.

[Chap. 88.]

AN ACT to amend "An act fixing the terms of the Supreme and District courts of the Territory of Iowa, and for other purposes."

Term of supreme court.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the annual term of the supreme court shall be held on the first Monday in July in each year.

Of district court.

SEC. 2. The terms of the district court in the first judicial district shall be as follows:

Des Moines.

In Des Moines on the third Mondays in February and October.

Henry.

In Henry on the third Monday in March and first Monday in September.

In Jefferson on the first Monday in April and second Monday in September. Jefferson.

In Van Buren on the second Monday in April and the third Monday of September. Van Buren.

In Lee on the fourth Monday in April and first Monday in October: *Provided*, That all executions on judgments heretofore obtained in the county of Des Moines shall not be returnable till the first Monday of May next. Lee.

SEC. 3. No suits, writs, indictments, recognizances, informations, declarations, plea or other process or proceeding, returnable to or pending in the supreme or any of the district courts of this territory, shall abate, be made void or in any wise affected in consequence of any change of time of holding of any of said courts by the provisions of this act; but where the same may have been issued or may have been made returnable to any day in accordance with the time heretofore fixed for holding said courts, they shall be considered returnable to the term of the courts respectively named in this act. And all jurors, witnesses and other persons bound in any way or summoned to appear before the courts mentioned above at the next term thereof, shall be bound to appear at the time specified by this act as the time for holding said court. Suits not to abate.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 17, 1840.

[Chap. 89.]

AN ACT appointing commissioners to review a territorial road.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Joshua Holland, Henry Swan, and Thomas Blair, be and they are hereby appointed commissioners to review so much of the territorial road leading from the city of Burlington, in Des Moines county, by the way of New London and Mount Pleasant, Trenton, York's and Lee's to the Indian boundary line, as runs through the county of Des Moines. Said commissioners shall meet in the city of Burlington on the second Monday in April next, to discharge their duties. Commissioners.

SEC. 2. *And be it further enacted*, That the said commissioners shall proceed to review said road, to straighten or alter any part thereof as to them To review and alter,

may appear right and expedient, and make report of their proceedings to the next annual session of the board of county commissioners of Des Moines county, naming every person through whose land the said reviewed road runs, if any alteration be made.

Persons to be notified.

SEC. 3. *And be it further enacted*, That the said county commissioners shall direct the sheriff to notify each individual through whose land such review is made, to appear at their next annual meeting and make objections, if any they have to such review, and in this case the commissioners shall proceed according to law.

To be public highway.

SEC. 4. *And be it further enacted*, That [if] upon the report of the commissioners appointed by the first section of this act, it shall appear that the said commissioners have made alterations in said road, the board of county commissioners shall declare the said reviewed road to be a public highway, and order the same to be opened and worked, but should the said commissioners report that no alteration be necessary, the board of county commissioners shall declare the present road to be a highway, and direct the same to be worked and kept in repair, but in either case any county or territorial roads now laid off and worked and kept in repair for the same purpose shall be discontinued: *Provided however*, That the county commissioners of Des Moines county, at their next session of their board deem it inexpedient to have such review made, they shall issue an order directing their sheriff to inform the commissioners appointed by this act to make such review of the same; and the said board of county commissioners shall proceed immediately to declare which of the two roads, to wit, the territorial or the county road now worked and kept in repair shall be the public highway; and upon such decision the other road shall be by said board discontinued.

Proviso.

Approved January 17, 1840.

[Chap. 90.]

AN ACT to provide for the settlement of the claim that Des Moines county has upon Lee, Van Buren, Henry, Slaughter, (now Washington,) Louisa and Muscatine counties.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the several boards of the counties above named shall,

upon application from the board of county commissioners of Des Moines county, audit and pay to the said board or their legally authorized agent, what shall be their legal and equitable proportion according to the law passed at Bellmont session, of the Wisconsin legislative assembly, of eighteen hundred thirty-six.

Des Moines to present exhibit.

SEC. 2. It is hereby made the duty of the board of county commissioners of Des Moines county, to present to the different counties herein named a fair exhibit of the debt due by the county of Des Moines in accordance with the above named law. And it is hereby made the duty of the several boards above named, to transmit to the board of county commissioners of Des Moines, the assessment value of the property in accordance with said law above recited, and after the reception thereof by the board of Des Moines, they shall make out a fair exhibit of the dividend due from each county and send it to the several boards herein named; and if they consider the same just they are hereby required to audit and pay the same as is directed in the first section of this act; but should they consider the same unjust, illegal, or not equitable, they shall send the same back, showing wherein the same is unjust, illegal, or not equitable. They shall each appoint an auditor, who shall meet at such time and place as they may agree upon, who shall choose a third one from some other county, and they shall proceed to settle the same, whose decision shall be final.

Approved January 17, 1840.

[Chap. 91.]

AN ACT for opening and regulating roads and highways.

To be opened and kept in repair.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That all county and territorial roads which have been or may hereafter be laid out and established agreeably to law within this territory, shall be opened and kept in repair in the manner hereinafter provided; and all county roads shall hereafter be laid out and established agreeably to the provisions of this act, and all county roads shall be sixty feet wide.

Width.

Applications for roads.

SEC. 2. That all applications for laying out or altering any county road, shall be by petition to the commissioners, signed by at least twelve house-

holders of the county residing in the vicinity where said road is to be laid out or altered, and said petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road.

Notice.

SEC. 3. That previous to any petition being presented for a county road, or for the alteration of a county road, notice thereof shall be given by advertisement set up at the place of holding county commissioners' courts, and three public places in each township through which any part of such road is designed, to be laid out or altered at least thirty days' previous to the meeting of the commissioners, at which the petition shall be presented: and on the petition being presented and the commissioners satisfied that notice has been given as aforesaid, they shall appoint three disinterested house-holders of the county as viewers of said road, and a skilful surveyor to survey the same, and shall issue an order directing said viewers and surveyors to proceed 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.

Duty of viewers.

SEC. 4. That it shall be the duty of the viewers and surveyor appointed as aforesaid, after receiving at least six days' previous notice by one of the petitioners, to meet at the time and place specified in the order of the 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, shall take to their assistance two suitable persons as chain carriers and one marker, and proceed to view, survey and lay out or alter said road as prayed for in the petition, or as near the same as in their opinion a good road can be made at a reasonable expense, taking into consideration the utility, convenience and 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 courses and distances, and at the end of each mile shall cause the number of the same and also the commencement and termination of said road or survey to be marked on a tree or monument erected for that purpose. He 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 shall make and sign a report in writing, stating their opinion in favor or against the establishing 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 commissioners' clerk by one of the viewers on or before the first day of the session of the county commissioners then next ensuing, and it shall be the duty of the commissioners on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting, and if no legal application shall be made to them for a review of said road or alteration or petition for damages between the first day of their session, at which the report and survey are made, and the second day of their next stated session they 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 their order directing said road to be opened. But if the report of the viewers be against such proposed road or alteration, then no further proceedings shall be had thereon, and the obligor or obligors in the bond receiving the payment of costs and expenses shall be liable for the full amount of such costs and expenses: *Provided*, That 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 or reviewers who have previously been sworn or affirmed themselves.

Review.

SEC. 5. That after the viewers of any county road shall have made return in favor of the same agreeably to the preceding section and before said return shall be recorded and the road established, it shall be lawful for any land holder of the county to apply to the commissioners for a review of said road by petition signed by at least twelve house-holders residing in that part of the county through which said road is proposed to be established, and the commissioners shall, on such petition being presented and they satisfied it is just and reasonable, appoint five disinterested qualified voters of the county to view said road and issue their order to said viewers directing them to meet at a time speci-

fied in such order or within five days thereafter; and said viewers shall meet after having received six days' previous notice by one of the petitioners, and after taking the oath or affirmation required by the preceding section, shall proceed to examine the route surveyed for said road by the former viewers, and make a report in writing to the commissioners stating their opinion in favor of or against the establishment of said road and their reasons for the same, and if the report of the viewers be in favor of said road the same shall be established, recorded and opened agreeably to the provisions of this act, and the person or persons bound for the same shall pay into the county treasury the amount of the costs of such review, but if the report be against the establishment of such road, no further proceedings shall be had thereon before the commissioners and the persons executing the first bond shall pay into the county treasury the amount of costs and expenses of the first view and survey and review of said road.

Damages.

SEC. 6. That if any person or persons through whose land any territorial or county road may be laid out shall feel injured thereby, such person or persons may make complaint thereof to the county commissioners at any time between the session of the commissioners at which the report of said road is made, and the second day of their next stated session, and the commissioners shall appoint three disinterested house-holders of the county, whose duty it shall be after having been duly sworn or affirmed to discharge their duty faithfully and impartially to proceed and view said road the whole distance the same may have been established through the premises of the complainant, and assess and determine how much less valuable the land or premises of the complainant has been or will be rendered by the opening of said road, and they shall report the same in writing to the commissioners at their next meeting thereafter, and if the commissioners shall be satisfied that the amount so assessed and determined be just and equitable and that said road will, in their opinion, be of sufficient importance to the public to cause the damages to be paid by the county, they shall order the same to be paid to the petitioner from the county treasury, but if in their opinion the said road is not of sufficient importance to the public to cause the same to be paid by the

county, they may refuse to establish the same a public highway, unless the damages and expenses are paid by the petitioners.

SEC. 7. That when any county road shall be considered useless, any twelve house-holders residing in that part of the county where such road is established may make application by petition to the commissioners of the county to vacate the same, setting forth in said petition the reasons why said road ought to be vacated, which petition shall be presented and publicly read at a regular session of the commissioners, and no other proceedings shall be had thereon until the next stated session of said commissioners, when it shall be again read as aforesaid, and if no objection be made the commissioners may on the last day of that session declare said road vacated or any part thereof which they may deem unnecessary to keep open for public convenience; but if objection be made in writing, signed at least by twelve house-holders residing in the neighborhood of the road proposed to be vacated, the commissioners shall appoint three disinterested persons to view said road, who shall take the same oath or affirmation as is required by the fourth section of this act, and proceed to view the road aforesaid, and make a report of their opinion thereon, and their reasons for the same to the commissioners; and if said viewers shall report in favor of vacating said road or any part thereof, the commissioners may, if they shall deem it reasonable and just, declare said road vacated agreeably to the report of the viewers, but in case said viewers shall report against vacating said road then and in that case no further proceedings shall be had thereon: *Provided*, That previous to any petition being presented under the provisions of this section the same notice shall be given as is required by the third section of this act.

Boundaries uncertain—review.

SEC. 8. That when the place of beginning or true course of any territorial or county road shall be uncertain by reason of the removal of any monument or marked tree by which such road was originally designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested persons, citizens of the county, to review and straighten said road, if they shall deem it necessary; and the reviewers shall cause said road to be correctly marked throughout as in case of new roads, and a correct survey to be

made of the same and shall make return of said survey and plat of said road to the commissioners, who shall cause the same to be recorded as in other cases, and from thenceforth said road surveyed as aforesaid, shall be considered a public highway.

Alteration.

SEC. 9. That if any person or persons through whose land any territorial or county road is or may be established, shall be desirous of turning said road through any other part of his or her land, such person or persons may, by notice and petition agreeably to the second and third sections of this act, apply to the commissioners of the county while in session to permit him or them to turn said road through any other part of his, her or their land, on as good ground and without increasing the distance to the injury of the public, and upon the receipt of such petition the commissioners shall appoint a surveyor and three disinterested house-holders of the county as viewers of said road, who, or any two of them, shall proceed to view and survey the ground over which said road is proposed to be turned, and ascertain the distance which said road will be increased by such proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility or inutility of making said alteration, and if said viewers shall report to the commissioners that the prayer of the petitioner or petitioners is reasonable, and that the alteration will not place the road on worse ground or increase the distance to the injury of the public, they shall, 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 travellers, the commissioners aforesaid may declare said new road a public highway, and make record thereof, and at the some time vacate so much of the old road as is embraced by the new, and the person or persons desiring the alteration aforesaid, shall pay all the costs of the view, survey and return of said alteration.

Viewer neglecting, penalty.

SEC. 10. That if any person who shall be appointed by the county commissioners as a viewer, reviewer or surveyor of any road, shall refuse or neglect to perform the duties required by this act, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding five dollars, to be recovered by action of debt by any person suing for the same before any justice of the

peace having jurisdiction of the same, and shall be paid over without delay to the county treasurer by the justice of the peace or constable collecting the same, taking his receipt therefor, and the county commissioners shall cause all fines which shall be paid into the county treasury under the provisions of this act, to be expended on roads and bridges within their county.

Compensation.

SEC. 11. That the person required to render services under this act, shall receive compensation for each day they shall be necessarily employed, as follows, to wit: viewers and reviewers, one dollar and fifty cents each; chain carriers and markers, one dollar and twenty-five cents each, and surveyors two dollars and fifty cents, to be charged as costs and expenses, and paid out of the county treasury on the order of the county commissioners.

SEC. 12. That when it shall become necessary to establish a road on a county line, the inhabitants along such line may petition the commissioners of their respective counties for a view of such road in the manner pointed out in the preceding section of this act, and it shall be the duty of such boards of commissioners for each of the counties interested, to appoint two discreet citizens as viewers, who, or a majority of them, shall meet at the time and place named in the order of the commissioners of the oldest county interested, who shall appoint a surveyor, and the viewers and surveyor appointed as aforesaid, shall make their report in writing for or against such road to the commissioners of the counties concerned, and the said commissioners, upon receiving such report shall in all respects be governed by the provisions of this act.

SEC. 13. That if on receiving such report the commissioners of all the counties interested shall be of opinion that such road if opened would be of public utility, they shall order the same to be opened in the manner pointed out by this act.

SEC. 14. That when any road is located under the provisions of the twelfth and thirteenth sections of this act, it shall be the duty of the county commissioners or trustees of townships adjoining such road to select one from their number whose duty it shall be to meet at some convenient place near the line of the same (the time and place to be appointed by the commissioners or trustees of the oldest county

or township interested) previous to the time appointed by law for apportioning labor to their respective road districts, and shall assign a sufficient number of persons, if practicable, to open such road and keep the same in repair, dividing the road in such manner that the persons so assigned may work under the orders of the supervisors in the county or township to which they belong, and the supervisors and persons so assigned shall be governed by the provisions of the act entitled "An act defining the duties of supervisors of roads and highways."

SEC. 15. That on all applications made under the provisions of this act, the county commissioners shall before granting any order thereon require of the person or persons making such application a bond with one or more sufficient securities, made payable to the county treasurer, and approved by the county commissioners, for the use of the county, conditioned that the persons making such application for a view, review, alteration or vacation of any road, or damages on the same (as the case may be) shall pay into the treasury of the county the amount of all costs and expenses accruing on such view, review, alteration or vacation, on application for damages in case the same shall not be granted or the proceedings had thereon finally confirmed and established.

SEC. 16. That all bonds given under the provisions of this act shall be deposited with the county commissioners' clerk, to be by him prosecuted under the order of the county commissioners, where the same shall have become forfeited and money paid into the county treasury for the use of the county.

Approved January 17, 1840.

[Chap. 92.]

AN ACT to establish a Ferry on the Mississippi river.

Ferry at Du Buque.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That George W. Jones, his heirs and assigns, are hereby authorized to establish and keep a ferry across the Mississippi river at and from some point in the town or city of Du Buque, in this territory; and that said Jones, his heirs and assigns, have such privilege for the term of twenty years: *Provided,* That said Jones, his heirs or assigns, keep a good and sufficient boat,

propelled by either steam or horse power, for the safe and speedy transportation of passengers and property across said river.

Subject to General law.

SEC. 2. That said ferry shall be subject to any general law fixing the rates of toll and prescribing the manner in which licensed ferries shall be kept and regulated: *Provided*, That nothing in this act shall be so construed as to affect the rights of individuals on this side of said river, or to conflict with the act of congress relative to Du Buque, Fort Madison, &c., approved the third July, A. D. eighteen hundred thirty six.

Not to conflict with former charter.

SEC. 3. Provided that nothing in the foregoing parts of this act shall be so construed as to conflict with the act heretofore passed granting a charter for a ferry, to T. Fanning and his heirs and assigns, across the Mississippi river at said town of Dubuque, and an act to incorporate the city of Dubuque.

Approved January 17, 1840.

[Chap. 93.]

AN ACT to locate the Seat of Justice in and for the county of Jones.

Commissioners.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That John G. M'Donald of Jackson county, and Franklin Moffatt of Delaware county, and Thomas M. Isett of Muscatine county, be and they are hereby appointed commissioners to locate and establish the seat of justice in and for the county of Jones.

Oath.

SEC. 2. The said commissioners shall, before they enter upon their duties as commissioners, take and subscribe before some district judge or justice of the peace, the following oath, to wit: "I, one of the commissioners appointed to locate the seat of justice in and for the county of Jones, do hereby solemnly swear (or affirm) that I will perform the duties imposed on me by said appointment honestly and faithfully, according to the best of my abilities, and according to the law relative to locating said county seat. And I do further swear (or affirm) that I am not directly or indirectly interested in said location; but that in locating said county seat, I will be actuated only by a desire to the best interests of said county, without the slightest partiality towards any person or persons, and without bias from fear, favor or recompense, or the hope of any gain or advantage to myself in any respect whatever."

To select.

SEC. 3. That said commissioners, or a majority of them, shall meet at the house of Thomas Dixon, on or before the second Monday in April, A. D. eighteen hundred and forty, and shall forthwith proceed to examine into and determine upon the most eligible point for the seat of justice of said county, having due reference to a central and healthful location, convenience to timber and water, and to the accommodation to the people of said county.

And locate.

SEC. 4. So soon as said commissioners shall have determined upon the place where said seat of justice shall be located, it shall be their duty to proceed forthwith to lay out one quarter section of land into lots, outlots, streets and squares, and to determine upon the lots or places upon which the public buildings shall be erected, and to name said seat of justice by such name as they may think proper, and forthwith commit their proceedings to writing and sign the same, and file them with the clerk of the district court of said county, whose duty it shall be to record the same in the proper book, and the place thus selected shall be the future and permanent seat of justice of said county.

Record.

Compensation.

SEC. 5. Said commissioners shall receive three dollars per diem for the time they shall be actually engaged in the discharge of their duties as above provided, not exceeding twenty days, and three dollars for every twenty-five miles going from their respective residence to and returning from such seat of justice, to be paid out of the treasury of the county of Jones.

Vacancies.

SEC. 6. *Be it further enacted*, That in case of vacancy by death or otherwise in said board of commissioners, it shall be the duty of the county commissioners in the county where such vacancies may occur, to appoint some suitable person who shall be duly authorized to fill said vacancy by subscribing to and taking the oath provided in this act.

To enter land.

SEC. 7. That it shall be the duty of the county commissioners of said county of Jones, within thirty days after the seat of justice of said county shall have been located and the site laid out in lots as aforesaid, to borrow a sum of money sufficient to enter at the land office the quarter section of land on which said seat of justice is located, in accordance with the act of congress approved May twenty-six, eighteen hundred and twenty-four, entitled "An act granting to counties or parishes of each state and

territory of the United States, in which public lands are situated, the right of pre-emption to one quarter section of land, for seats of justice within the same;" and to pay interest for the same not exceeding forty per cent, and forthwith to enter the said quarter section of land at the land office at Du Buque.

To sell lots.

SEC. 8. That it shall be the duty of said county commissioners, within ninety days after said quarter section shall have been entered as above provided, to proceed to sell at public auction, for cash, a sufficient number of lots in said seat of justice, to refund the money borrowed to enter said quarter section, together with the interest accruing thereon.

Notice.

SEC. 9. That it shall be the duty of said county commissioners to give notice of said sale by publishing the same in the "Iowa News," at Dubuque, and by posting up written notices in four of the most public places in said county, at least sixty days preceding said sale.

Approved January 17, 1840.

[Chap. 94.]

AN ACT allowing and confirming the compensation of printers of the last legislative assembly, and for other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be paid out of any money now or hereafter to be appropriated by congress to defray the expenses of the last session of the legislative assembly, to James Clarke and company, for printing bills, slips, rules, blank certificates, yeas and nays, &c. for both houses, two thousand two hundred and eighty-five dollars and seventy-five cents; to James G. Edwards, for printing bills for the House of Representatives, nine hundred and seventeen dollars and thirty-six cents; to James G. Edwards, for printing memorials and furnishing newspapers, eighty-four dollars; to James Clarke and company, for furnishing the members of the legislative assembly with twenty copies each of the Iowa Territorial Gazette, during the session of the legislature, seven hundred and eighty dollars; to committee appointed to investigate the affairs of the Miners' bank of Du Buque, three hundred dollars; to Mortimer Bainbridge, for services as attorney and clerk during the investigation of the affairs of the Miners' bank of

Du Buque, twenty-five dollars; to the Methodist Episcopal church, in the city of Burlington, for house rent, twelve hundred dollars; to pay the members of the Council, two thousand nine hundred and twenty-five dollars; extra pay for the president, two hundred and twenty-five dollars; to pay the members of the House of Representatives, five thousand eight hundred and fifty dollars; extra pay for the speaker, two hundred and twenty-five dollars, to pay the clerks and officers of the Council, two thousand eight hundred and fifty dollars; to pay the clerks and officers of the House of Representatives, three thousand three hundred dollars; carpeting, rugs, matting, &c for the Council and House of Representatives, four hundred and seventy-five dollars; desks, tables, &c., five hundred and eighty dollars; chairs, benches, &c., two hundred and ninety-five dollars; stoves, pipes, shovels, tongs, &c., three hundred and twenty dollars; fuel, lights, &c., four hundred and fifty dollars; stationery, seven hundred and twenty dollars; freight and furniture, stationery, &c., one hundred and forty-seven dollars; postage for session eighteen hundred and thirty-eight and nine, three hundred and ten dollars; to secretary of the territory, for procuring memorials to be copied, fifty dollars; publication of proclamations and other notices by the executive and secretary of the territory, two hundred and seventy-five dollars; to secretary of the territory, for procuring safe means for keeping the public money, account books, public papers, &c., including secretary's office rent and furniture, five hundred dollars; to maps for the House of Representatives, four hundred and fifty-two dollars; to Charles Weston, for distributing the laws of the last session, the sum of two hundred and seventy-five dollars; to the legal representatives of W. B. Conway, late secretary of this territory, for copying the laws of the last session of the legislative assembly for the printers, and making index thereto, &c., the sum of seven hundred dollars; to Russell and Reeves, for publishing the laws, a balance of three thousand nine hundred and forty-three dollars; and for printing the journals of the Council, eight hundred and twenty-six dollars and seventy-five cents.

Approved January 17, 1840.

[Chap. 95.]

AN ACT providing for the appointment and duties of auditor of public accounts, and regulating the duties of territorial treasurer.

Appointment.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be appointed by the governor of the territory, as soon as he may think it necessary, by and with the advice and consent of the Council, a territorial auditor, who shall hold his office for the term of one year, and shall, previous to entering upon the duties of his office, give bond to the United States in the sum of five thousand dollars, with three or more sufficient securities to be approved of by the governor of the territory, conditioned for the faithful discharge of the duties of his office, and shall also take an oath in the following form, before one of the judges of the supreme court: I, A. B., do solemnly swear (or affirm) that I will faithfully and honestly execute the duties appertaining to the office of auditor of the territory of Iowa, and will deliver over to my successor all books, records, vouchers, papers, presses, and furniture, appertaining to said office, whole, safe, and undefaced.

Bond and oath.

SEC. 2. That when any condition of said bond shall be broken by said auditor, the governor shall cause suit to be instituted against the auditor, and his sureties on his said bond, and one recovery thereon shall not render the bond void, but further breaches thereof may be prosecuted from time to time until the whole penalty be recovered.

To sign warrants.

SEC. 3. The auditor of public accounts shall, in all cases personally, sign all warrants for money on the treasurer of the territory, all tax receipts and all other papers necessary and proper for the auditor to sign.

Treasurer to sign warrants.

SEC. 4. In all cases where warrants for money are issued by the auditor upon the territorial treasurer, the said warrants, before they are delivered to the person or persons for whose benefit the same are drawn, shall be presented by the auditor to the territorial treasurer, who shall personally countersign the same, and shall also enter in a book to be kept for that purpose by him, the date, amount, and the name of the person or persons to whom the same are made payable.

Receipt to be countersigned.

SEC. 5. Whenever any person shall pay to the territorial treasurer an auditor's warrant, or money, on account of any debt due the territory, or for

taxes, the treasurer is required to give duplicate receipts for such payments, one of which receipts shall be filed in the auditor's office and entered in a book to be kept for that purpose, and the other copy shall be countersigned by the auditor and delivered to the person making payment, and no receipt, unless it be so countersigned, shall be evidence of such payment.

Auditor to keep accounts.

SEC. 6. It shall be the duty of the auditor at all times to keep the accounts of the territory with any state or territory, and with the United States, with all public officers, corporations, and individuals having accounts with this territory. He shall audit all accounts of public officers who are to be paid out of the territorial treasury, and all persons authorized to receive money out of the treasury by virtue of an appropriation made or to be made by law.

When to grant warrant.

SEC. 7. On ascertaining the amount due any person from the treasury, the auditor shall grant his warrant on the treasury for the sum due.

Duty of auditor.

SEC. 8. The said auditor shall make a fair list of all accounts by him audited, in a book by him to be kept for that purpose, as also an account of all taxes or other moneys which may be due by any person to this territory, or which may be paid into the territorial treasury; he shall make out and present to each regular session of the legislative assembly by the tenth day of the session, a report showing the amount of warrants by him drawn on the treasury, stating particularly on what account said warrants were drawn, to whom, and for what they were issued. He shall also report the amount of money received into the treasury, stating particularly the sources of revenue from which the same were derived.

Record.

SEC. 9. The said auditor shall keep a fair record of all warrants by him drawn, numbering the same, in a book to be kept for that purpose.

How to proceed against collectors.

SEC. 10. When the auditor shall have made out abstracts of all sums due in the respective counties and sent them to the different collectors, he shall make out, in a book to be kept for that purpose, a fair account against such collector, a certified copy of which, with the seal of his office thereto attached, shall be sufficient for the attorney general or district attorneys to proceed by motion or action against such delinquent collectors and their securi-

ties before the district court. All quietuses necessary to be granted shall issue by the auditor under his hand and seal of office.

Treasurer to give additional bond.

SEC. 11. That the treasurer shall, whenever directed by the governor, give an additional bond with two or more securities to be approved of by the governor, in any amount not exceeding fifty thousand dollars, conditioned for the faithful performance of his duties, and for the delivery over to his succcssor of all books, records and papers appertaining to his office, and all moneys in his possession as treasurer. The bonds of the treasurer and auditor shall be filed in the office of the secretary of the territory. And suit may be instituted on the bonds of the treasurer in like manner as on those of the auditor.

Accounts, &c. to be delivered to successor.

SEC. 12. If said treasurer die, resign, or be displaced, or otherwise cease to hold his office, then such treasurer, his heirs, executors or administrators shall regularly state the amount, and deliver the moneys and warrants, together with all books, records, memorandums, papers and instruments of writing of the territory in his or their possession, or which such treasurer shall have received and not paid out according to law, to the succeeding treasurer, who shall make report thereon to the legislative assembly. And the said report, if confirmed by the legislature, shall be a discharge of such treasurer's bonds, in which case they shall be given up to such treasurer, his heirs, executors or administrators.

Duties of treasurer.

SEC. 13. It shall be the duty of the territorial treasurer to receive the proceeds of all taxes and other public moneys of this territory, and safely keep the same. He shall not pay out of the treasury any money but on a warrant of the auditor, except the auditor's salary. He shall keep a regular and fair account of all moneys and revenues he receives and pays out agreeably to law, stating therein particularly on what account each particular sum was paid out or received, and the time when, and lay a copy thereof before the legislative assembly by the tenth day of any regular session.

Same.

SEC. 14. It shall be the duty of the treasurer to report quarterly to the auditor the amount of money which he may have received, stating on what account the same was paid into the treasury. He shall also report quarterly an account of payments out of the

treasury, and deposit with the auditor all warrants which he may have paid or received, and take the auditor's receipt for the same; and it shall be the duty of the auditor to make entries of said reports in books to be kept by him for that purpose.

Suits. SEC. 15. It shall be the duty of the auditor to institute all suits and motions in favor of the territory.

When warrant is lost. SEC. 16. If any auditor's warrant shall be lost, mislaid or destroyed, so that the same cannot be presented for payment by the person entitled thereto, it shall be lawful for the auditor, at any time before such warrant shall be paid at the treasury, to issue a duplicate warrant to the person or persons having so lost any warrant as aforesaid, on such person filing with the auditor an affidavit in writing, sworn before some justice of the peace or judge, stating the loss or destruction of any such warrant, and the auditor shall immediately certify the same to the treasurer, who shall thereby be authorized to pay any such duplicate warrant.

Compensation. SEC. 17. The auditor and treasurer shall each receive one hundred dollars per annum for their services, and keep their offices at the seat of government: *Provided*, That a further compensation may be allowed each by the legislature, if the amount of services seem to demand it.

Vacancy. SEC. 18. That whenever during the recess of the legislature, the office of auditor of public accounts or territorial treasurer shall become vacant by death, resignation, or otherwise, the governor shall appoint such officer pro tem. to fill such vacancy, whose term of service shall expire at the end of the next session of the legislative assembly.

Repeal. SEC. 19. That sections second, third, and fourth of the act entitled "an act to provide for the appointment of a territorial treasurer, and defining his duties," approved January twenty-fourth, eighteen hundred and thirty-nine, be and the same are hereby repealed. This act to take effect and be in force from and after its passage.

Approved January 7, 1840.

NOTE.—In the last clause of the second section, the word "on," in the enrolled bill has been printed "one," being evidently so intended. This act was not in the hands of the supervisor to insert in the order of its date.

RESOLUTIONS.

[No. 1.]

Whereas, the territory of Iowa is deprived of a secretary by the recent death of the Hon. William B. Conway, late secretary of this territory; and whereas no provision is made by the organic law, or by any act of congress, to meet such contingency; therefore, be it

Resolved by the Council and House of Representatives of the Territory of Iowa, That Charles Weston be appointed a fiscal agent, and that he be authorized to take charge of all public funds, drafts or bills of exchange properly belonging to this department, and that he be required to make such disbursements as legally pertain to his appointment as aforesaid, taking proper vouchers for the same.

Resolved, That the said Charles Weston be required to make a settlement of all his acts as fiscal agent with the secretary of the territory, when appointed, and he enters upon the duties of his office; and the said Charles Weston shall be allowed by said secretary the amounts by him expended as fiscal agent out of the funds appropriated by congress to defray the expenses of the present legislative assembly.

Resolved, That the said Charles Weston be required to enter into bond to the governor of the territory, in the sum of twenty thousand dollars, with two sufficient securities to be approved by the governor, for the faithful performance of his duties under the provisions of these resolutions.

Approved November 25, 1839.

[No. 2.]

Resolved by the Council and House of Representatives of the Territory of Iowa, That Russell & Reeves, publishers of the laws of the territory, be and they are hereby entitled to the balance due on said work,

as though the same had been done by the first day of May eighteen hundred thirty-nine.

[Presented to the governor on the 29th November, 1839, and not approved and signed by him.]

[No. 3.]

Resolved by the Council and House of Representatives of the Territory of Iowa, That the acts of the twenty-fifth congress in possession of the governor shall be distributed in the following manner, viz: one copy to the governor, one copy to the secretary of the territory, one copy to each of the judges of the supreme court, one copy to the district attorney of the territory, one copy to the marshal of the territory, one copy to the clerk of the supreme court, eleven copies for the use of the council, and twenty copies for the use of the house of representatives.

Approved December 6, 1839.

[No. 4.]

PREAMBLE and Joint Resolution relative to the improvement of the Des Moines river.

Whereas, the Des Moines river seems to demand the attention both of this legislative assembly and of congress, for the following reasons, to wit:

First. On account of its position in the territory of the United States, and also forming the boundary of a portion of the state of Missouri. It will enter the probable limits of the state of Iowa in the northwestern part, and running a southeasterly course through the interior of said limits, enters the Mississippi at the extreme southeasterly point of the same. Its central position between those two great rivers, Mississippi and Missouri, which must necessarily form the eastern and western boundaries of the state, points it out as the natural channel for imports and exports for the extensive and fertile country in the interior of Iowa and a portion of the state of Missouri.

Secondly. On account of its affording but few facilities for navigation, without that improvement of which it is peculiarly susceptible, being admirably adapted to the building of dams for the purpose of slack water navigation. The channel and banks everywhere afford suitable stone for the foundation

and structure of such dams as would be necessary for said improvement. Added to the importance of the navigation of said stream, would be the vast quantity of hydraulic power obtained by the construction of dams, which alone would be of incalculable value to the country through which it passes, being almost destitute of those advantages from other sources; therefore,

Resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate in congress be requested to solicit and use his best exertions to obtain an appropriation by congress for the purpose of paying the expense of a survey of said river by a corps of engineers under the authority of the United States, and also for an appropriation of one hundred thousand dollars, to be made either in money or land, for the purpose of improving the navigation of the same.

And be it further resolved, That the governor of this territory be requested to forward five copies of the above preamble and resolutions, one to the president of the senate, one to the speaker of the house of representatives, one to the secretary of war, one to our delegate in congress, and one to the governor of Missouri, with a request that he will transmit a copy of the same to the honorable members in congress from the said state of Missouri, soliciting their aid in behalf of the appropriation for the proposed improvement.

Approved December 14, 1839.

[No. 5.]

Resolved by the Council and House of Representatives of the Territory of Iowa, That Charles Weston be requested to make and forward to the President of the Senate and Speaker of the House of Representatives of the United States, and to the honorable William W. Chapman, our delegate to Congress, each a copy of all memorials and resolutions of the last session, now in his possession, the object of which is to obtain the aid or action of Congress of the United States.

Approved December 23, 1839.

[No. 6.]

PREAMBLE and Joint Resolutions relative to the unsurveyed lands.

Whereas, the country purchased of the Sac and Fox Indians, in the month of October, eighteen hundred

and thirty-seven, is rapidly populating by a respectable and industrious class of citizens, making large farms, building towns, and constructing extensive machinery, which must necessarily be divided and sub divided by the future survey of the government of the United States, the result of which will be loss, litigation, and serious difficulty, the never failing check to such laudable industry; therefore

Be it resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate in Congress be requested to use his best exertions to obtain an appropriation for the survey of all the unsurveyed lands in the territory of Iowa to which the Indian title has been extinguished.

And be it further resolved, That the governor of this territory be requested to forward four copies of these resolutions, one to our delegate in Congress, one to the Speaker of the House of Representatives, and one to the President of the United States, and one to the commissioner of the general land office.

Approved December 24, 1839.

[No. 7.]

Resolved by the Council and House of Representatives of the Territory of Iowa, That the devices of the seals for the supreme and district courts, &c., as suggested by the honorable W. B. Conway in his communication to Mr. Wm. Wagner, are very appropriate and emblematic of the duties of the several courts to which they belong.

Resolved, That the secretary of this territory be and he is hereby authorized to pay Wm. Wagner, upon the delivery of said seals, such sums of money as is customary for such work, and that he be required to make the necessary distribution of said seals.

Approved December 30, 1839.

[No. 8.]

A PREAMBLE and resolutions to the Congress of the United States, asking for an appropriation for the improvement of a territorial road on the Des Moines river.

Whereas, The legislative assembly of last session passed a law authorizing the survey and opening of a territorial road, commencing at Keokuk on the Mississippi river, in Lee county, running thence upon the north bank of the Des Moines river, passing

through the towns of Farmington, New Lexington, Bentonsport, Columbus and Philadelphia; thence up to and terminating at Iowaville on the Des Moines river, formerly Iowa city, said road, if improved, must necessarily be of great importance both to the territory and the general government. Keokuk, the commencing place of this road, is the natural and most convenient depot for all the extensive Des Moines country, being situated at the foot of the Des Moines rapids and immediately above the mouth of the Des Moines river. This road, when finished, will afford great facilities for the transportation of mails, passing as it does through a number of towns and a densely populated country, terminating on the Indian borders, thereby affording the remotest of our inhabitants the benefit of mails.

And, whereas, This road passes over a number of tributary streams to the Des Moines river, which, at many seasons of the year, are backed up by the said river, making them impassable.

And, whereas, The improvement of said road is deemed to be of too much magnitude to be undertaken in the ordinary way of improving such roads; therefore

Resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate in Congress be requested to use his influence in obtaining an appropriation of ten thousand dollars for the opening of said road.

Be it further resolved, That the governor be requested to forward one copy of this preamble and resolution to our delegate in Congress.

Approved December 31, 1839.

[No. 9.]

A RESOLUTION to provide for the appointment of supervisor to the printing of the laws of the present session.

Resolved by the Council and House of Representatives of the Territory of Iowa, That W. J. A. Bradford be employed to prepare for publication and to supervise the printing of the laws of the present session of the legislature, and to make an index thereto, together with marginal notes, and that he be allowed and paid the sum of three hundred dollars for said services.

Approved December 31, 1839.

[No. 10.]

RESOLUTIONS relative to the pay of officers and members, &c.

Whereas, The territory of Iowa at an early period of the present session of the legislative assembly, was deprived of a disbursing officer in consequence of the death of the honorable Wm. B. Conway; and whereas, the present secretary, in consequence of his recent appointment, together with a precedent which is strictly adhered to by the treasury department not to remit drafts, &c. to a disbursing officer until his letter accepting an appointment is received; and whereas, it is inferred from the secretary's communication, that he will receive no drafts before the adjournment, but that the receiver at this place will advance the means to pay the members and officers, provided the legislative assembly will indemnify him; therefore,

Be it resolved by the Council and House of Representatives of the Territory of Iowa, That general V. P. Van Antwerp, receiver of public moneys at the city of Burlington, is hereby respectfully requested to advance to the honorable James Clarke, secretary of the territory of Iowa, money sufficient to pay the members and officers of the present session.

And be it further resolved, That the faith of the territory is hereby pledged to general V. P. Van Antwerp for his indemnification for any advances he may make to the secretary of the territory to defray the expenses of the present session.

And be it further resolved, That the secretary of the territory is hereby instructed to refund the amount that may be advanced as aforesaid, out of any money appropriated by Congress to defray the expenses of the present legislative assembly immediately after the receipt thereof.

Approved January 1, 1840.

[No. 11.]

Resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate in Congress be instructed to apply for an additional appropriation of fourteen thousand dollars, to defray the expenses of the present legislative assembly of Iowa territory.

[Presented to the executive January 8, 1840, not approved and signed by him.]

[No. 12.]

Resolved by the Council and House of Representatives of the Territory of Iowa, That John H. M'Kenny be the printer of the laws of the present session, and that he enter into bond immediately to the governor in the sum of ten thousand dollars, with sureties to be approved of by the governor conditioned that the said M'Kenny, and his heirs or legal representatives, print in pamphlet form in workmanlike style, fifteen hundred copies of all the laws passed and to be passed by the legislative assembly at its present session with an index thereto, and deliver said copies to the secretary of the territory within ninety days next after the adjournment of the present session.

Resolved further, That said secretary is hereby required to pay said printer for doing the said work the like prices allowed for similar work by Congress, and that he distribute the laws in like manner as the laws of the last session were required to be distributed.

Resolved further, That the supervisor of the printing of the laws is hereby allowed the use of the enrolled copies in the secretary's office, for the purpose of preparing copies for the printer, and that he furnish the printer with copies thereof as soon as possible, in the order in which they are approved by the governor, or become laws under the act of Congress, chapter ninety, approved March third, eighteen hundred thirty-nine: *Provided*, That the joint resolutions be printed in their order at the end of the acts.

[No. 13.]

JOINT RESOLUTION on the subject of post offices, &c.

Whereas, The legislative assembly of this territory have, at the present session, memorialized Congress for the establishment of a mail route on the national road from Du Buque to the southern boundary of the territory; and whereas, it is confidently believed that the same will be granted; therefore,

Resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate in Congress be requested to use his best exertions to have a mail carried upon said route as soon as the same is established, and also to recommend the establishment of post offices on said route, as follows: one

at the falls of the Maquoketa, in Du Buque county, and that Arthur Thomas be appointed postmaster; one at Buffalo fork, in Jones county, and that George H. Walworth be appointed postmaster; one at Ivanhoe, in Cedar county, and that Anson Coles be appointed postmaster; one at or near Astoria, in Washington county, and that David Goble be appointed postmaster; one at Washington, in Henry county, and that John Courey be appointed postmaster.

Resolved, That his excellency the governor be requested to forward one copy of this resolution to the postmaster general, and one to our delegate in Congress.

Approved January 9, 1840.

[No. 14.]

A RESOLUTION requesting our Delegate in Congress to use his exertions to procure additional Mail Facilities on the route leading from Davenport to Du Buque.

Resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate in congress be requested to use his best exertions to have a line of semi-weekly post coaches put upon the mail route from Davenport to Du Buque, via Pleasant Valley, Parkhurst, Wabesipinica, Camanche, Charleston and Belleview.

Resolved, That his excellency the governor be requested to forward two copies of this resolution, one to the postmaster general and one to our delegate in congress.

Approved January 10, 1840.

[No. 15.]

RESOLUTION providing for the payment of the rent of the building occupied by the Legislative Assembly.

Resolved by the Council and House of Representatives of the Territory of Iowa, That the secretary of the territory be and he is hereby required to pay to the trustees of the Methodist episcopal church, or to Levi Hagar, their legally authorized agent, in the town of Burlington, the sum of six hundred dollars, for the use and occupancy of their brick church during the present session of the legislative assembly.

Approved January 13, 1840.

[No. 16.]

JOINT RESOLUTION requesting our Delegate in Congress to urge the passage of a law for a Post Road.

Resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate in congress be requested to urge the passage of a law establishing a post road from Andover, Illinois, by Illinois City, Wyoming, Iowa, to Moscow.

Approved January 13, 1840.

[No. 17.]

Resolved by the Council and House of Representatives of the Territory of Iowa, That the secretary of war be and he is hereby respectfully requested to appoint as resident engineer, a citizen of this territory, to have charge of the public works within its limits, and that the governor of the territory be requested to forward a copy of this resolution to the honorable J. R. Poinsett, secretary of war.

Approved January 14, 1840.

[No. 18.]

RESOLUTION relative to taking the census.

Resolved by the Council and House of Representatives of the Territory of Iowa, That the United States marshal, of this territory, is hereby requested to cause the census (which he is directed to make in chapter eighty, of the laws of the twenty-fifth Congress of the United States,) to be made so early as to enable him to present the returns of the same on the first day of the next session of the legislative assembly, commencing on the second Monday of July, eighteen hundred forty, and that he is hereby requested to present the same to the legislature at that time, and that the faith of the territory is hereby pledged to him for any extra expense which he may incur in completing the census in less time than is required by the law of the Congress of the United States directing the taking of such census, and that a copy of this resolution be presented by the chief clerk of the House of Representatives to the United States marshal, of this territory.

[Presented to the governor January 14, 1840; not approved and signed by him]

[No. 19.]

Resolved by the Council and House of Representatives of the Territory of Iowa, That the secretary of this territory pay out of the appropriations by Congress to defray the expenses of this legislative assembly, two hundred and seventy dollars, to Alexander C. Donaldson, for services in carrying an extra mail from Davenport to Dubuque during the last session of this legislative assembly, under a contract authorized by a resolution passed at said session.

Presented to the governor January 16, 1840, and not approved and signed by him.

[No. 20.]

JOINT RESOLUTIONS requesting our delegate to Congress to obtain the passage of a law relative to the election of governor of this territory by the people.

Resolved by the Council and House of Representatives of the Territory of Iowa, That W. W. Chapman, our delegate to Congress, be and he is hereby requested to endeavor to obtain the passage of a law by Congress authorizing the election of the governor of this territory by the people after the term of office of the present incumbent expires, and the legislature of this territory to pass such laws as may be requisite to carry the same into effect.

Resolved, That the governor of the territory is hereby requested to forward one copy of the foregoing to the President of the United States Senate, one to the Speaker of the House of Representatives, and one to our delegate to Congress.

Approved January 16, 1840.

[No. 21.]

RESOLUTION to provide for printing the reports of the decisions of the supreme court.

Resolved by the Council and House of Representatives of the Territory of Iowa, That the reporter of the decisions of the supreme court, be and he is hereby authorized and directed to cause to be printed five hundred copies of the reports of decisions made by said court at and previous to the last term thereof.

Resolved further, That the secretary of the territory be and he is hereby authorized and directed to pay

said reporter the sum of three hundred dollars, which sum is to be in full for furnishing and printing said reports.

Resolved further, That said copies be deposited in the library of the territory, and sold by the librarian for the benefit of the library at such prices as the governor shall direct.

Resolved further, That one copy of said reports shall be presented to each of the judges of the supreme court.

Approved January 16, 1840.

[No. 22.]

A RESOLUTION relative to an appropriation to defray the expenses of the extra session of the legislative assembly.

Resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate to Congress be requested to obtain an appropriation of ten thousand dollars to defray the expenses of the extra session of the legislative assembly to be held in July next.

Resolved, That the governor is hereby requested to forward one copy of the above resolution to our delegate in Congress.

This resolution submitted to the governor January seventeen, eighteen hundred and forty, not approved and signed by him.

[No. 23.]

JOINT RESOLUTION relative to a Post Route.

Resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate in congress be and he is hereby requested to use his best exertions to have a semi-weekly post route established direct from Burlington City to Keosauqua, in Van Buren county.

Resolved, That his excellency the governor is respectfully requested to forward a copy of this resolution to our delegate in congress.

Approved January 17, 1840.

[No. 24.]

RESOLUTION relative to publishing a List of the Acts of the present Session.

Resolved by the Council and House of Representatives of the Territory of Iowa, That the secretary of

the territory be and he is hereby required to publish a list of the acts passed at the present session of the legislative assembly, in the several newspapers published in the territory, and that he pay for the same out of the appropriation made to defray the expenses of the present session of the legislative assembly.

Approved January 17, 1840.

[No. 25.]

JOINT RESOLUTIONS relative to the Sale of the Statute Laws.

Resolved by the Council and House of Representatives of the Territory of Iowa, That the secretary of the territory is hereby authorized to sell as many copies of the statutes of the last and present session of the legislative assembly, which remain in his office after the distribution required by law, as he may deem proper, retaining a sufficient number to distribute to a new legislature: *Provided*, That he shall sell no copy for less than one dollar and fifty cents, and that he expend the proceeds in purchasing such books for the territorial library, as are necessary for the use of the legislature.

Resolved further, That the several boards of county commissioners are hereby authorized to sell as many of the copies of said statutes as remain in their offices after the required distribution as they think proper, and pay the proceeds into the county treasury: *Provided*, That no copy shall be sold for less than one dollar and fifty cents.

Approved January 17, 1840.

[No. 26.]

JOINT RESOLUTIONS approbating the views set forth in the late Message of the President of the United States.

Resolved by the Council and House of Representatives of the Territory of Iowa, That the principles and views of the president of the United States generally, as set forth in his recent able message to congress, are such as commend themselves to the cordial approbation of this legislative assembly.

Resolved, That approbating the bold and manly course of the president in his efforts to restore to the country a constitutional currency, this legislative assembly especially applaud his luminous discussion of this subject, as clearly demonstrating the

identity of the best interests of the country with their final adoption.

Resolved, That the course of policy pursued by the present general administration towards the western country has been liberal beyond example, and such as is deserving the approbation of the settlers.

Approved January 17, 1840.

[No. 27.]

A RESOLUTION relative to the safe keeping of the Furniture belonging to the Legislative Assembly.

Resolved by the Council and House of Representatives of the Territory of Iowa, That Levi Hagar and Robert Cock be authorized to receive and take care of the furniture belonging to the legislative assembly of this territory, and that they be authorized to receive such compensation as may hereafter be allowed by law for their services.

Approved January 17, 1840.

[No. 28.]

RESOLUTION relative to compensation to J. G. Edwards, for printing in pamphlet form the act prescribing the duties of justices of the peace.

Resolved by the Council and House of Representatives of the Territory of Iowa, That James G. Edwards be allowed the sum of two hundred and twenty-five dollars for publishing in pamphlet form at the last session of the legislature, the act relative to justices of the peace and constables, and that the secretary of the territory be authorized to pay said sum. And that the resolution passed at the last session of the legislature allowing the said Edwards two hundred dollars for the same services, is hereby rescinded.

Approved January 17, 1840.

[No. 29.]

Resolved by the Council and House of Representatives of the Territory of Iowa, That the secretary of the territory be requested to publish in the Gazette, Hawkeye and Patriot, Iowa News, and Iowa Sun, all laws of a general nature passed at the present session, and all laws for the establishment of territorial roads in this territory.

Approved January 17, 1840.

[No. 30.]

RESOLUTION to defray the expenses incurred by the joint committee appointed to attend the remains of the honorable Wm. B. Conway to Davenport.

Resolved by the Council and House of Representatives of the Territory of Iowa, That the joint committee appointed on the part of both houses to accompany the remains of the late secretary of the territory to his residence, be allowed fifty dollars each, and the secretary of the territory is hereby authorized to pay the same.

[This resolution has no date, nor memorandum of presentation to the governor.]

[No. 31.]

PREAMBLE and resolution for the benefit of the former sheriffs.

Whereas, William B. Slaughter, secretary of the territory of Wisconsin, has refused or neglected to pay the sheriffs in the counties on the west side of the Mississippi river for taking the census in the year eighteen hundred and thirty-eight; therefore,

Resolved by the Council and House of Representatives of the Territory of Iowa, That our delegate in Congress be instructed to use his best exertions to procure pay for the said sheriffs.

[This resolution has no date, nor memorandum of presentation to the governor.]

[No. 32.]

PREAMBLE and resolutions relative to the difficulties between the territory of Iowa and the state of Missouri.

Whereas, an unfortunate crisis has arrived in the difficulties hitherto existing between the state of Missouri and the territory of Iowa, in relation to the boundary line between the two governments; and whereas, the territory of Iowa, under any circumstances, would deprecate any military collision between the forces of said state and territory, fully believing that the most friendly feelings exist between the great mass of the citizens of the respective parties; and whereas, the organic law of said territory renders it impossible for the constituted authorities of said territory to accede to the propositions hitherto made by the citizens of Missouri, although they fully reciprocate the kind feeling

evinced by the late delegation from the county court of Clark county; therefore

Resolved by the Council and House of Representatives of the Territory of Iowa, That the officers now on duty on the part of the state of Missouri be respectfully requested to suspend all further military operations on the part of the said state until these resolutions can be submitted to his excellency governor Boggs.

Resolved, That his excellency governor Boggs be requested to authorize a suspension of hostilities on the part of the state of Missouri until the first day of July next, with a view of having the unfortunate difficulties now existing between the state of Missouri and the territory of Iowa adjusted by the action of Congress.

Resolved, That his excellency the governor of Iowa be requested to suspend all further military operations until the decision of his excellency governor Boggs may be obtained relative to propositions herein contained.

Resolved, That the governor be requested forthwith to forward a copy of these resolutions to the governor of Missouri, one to the county court of Clark county, and copies to the officers in command on the disputed ground, to be by them presented to the officers of the Missouri forces.

[This resolution has no date, nor memorandum of presentation to the governor.

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