

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 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.

Injuring guideposts, penalty.

Bridges not less.

SEC. 18. That bridges on territorial and county roads shall not be less than sixteen feet wide. It 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.

Judges to charge juries.

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.

SEC. 2. That divorces from the bonds of matrimony may be decreed for the following causes:

First. Where either of the parties at the time of the marriage was impotent.

Second. Where either party had a lawful husband or wife living at the time of the marriage.

Third. If either party shall have committed adultery subsequent to the marriage.

Fourth. Where either party shall wilfully desert the other and absent him or herself without reasonable cause for the space of one year.

Fifth. Where either party shall be convicted of felony or infamous crime.

Sixth. Where either party shall be addicted to habitual drunkenness.

Seventh. Where either party shall be guilty of such cruel and barbarous treatment as to endanger the life of the other.

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.

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.

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 subpoena has been served upon any such defendant, or where a subpoena 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.

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.

Husband
abandoning
his wife.

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.

Estate by
marriage to
revert.

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.

Testimony,
how given.

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.

Appeal.

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.