

L A W S

OF THE

**TERRITORY OF IOWA,**

PASSED AT

**THE EXTRA SESSION**

OF THE

**LEGISLATIVE ASSEMBLY,**

BEGUN AND HELD IN THE CITY OF BURLINGTON ON THE  
FIRST MONDAY IN JULY, IN THE YEAR OF OUR LORD  
ONE THOUSAND EIGHT HUNDRED AND FORTY.

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**PUBLISHED BY AUTHORITY.**

**BURLINGTON:**  
PRINTED BY J. H. M'KENNY.  
1840.

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REPRINTED BY THE  
HISTORICAL DEPARTMENT OF IOWA  
1902.

SECRETARY'S OFFICE, }  
August 24, 1840. }

I do hereby certify that the Acts, Resolutions and Memorials, hereinafter published, have been compared with the copies on file in this Office, and that they correspond in every respect with said copies.

JAMES CLARKE,  
*Secretary of Iowa Territory.*

# LAWS OF IOWA.

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## [Chap. 1.]

AN ACT to change the time of holding the District Courts in the second and third Judicial Districts.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the terms of the District Courts in the third Judicial District shall commence in each organized county as follows, in each year: In Jones county on the fourth Mondays in March and September; in Scott county on the first Mondays next after the fourth Mondays of March and September; in Clinton county on the second Mondays of April and October; in Jackson county on the third Mondays of April and October; in Clayton county on the fourth Mondays of April and October; in Du Buque county on the first Mondays of May and November.

Time of holding courts in third Judicial District.

SEC. 2. That the terms of holding court in the second Judicial District shall commence in Cedar county the third Mondays of May and October, and in Linn county the fourth Mondays in May and October, and in Johnson county on the first Monday next after the fourth Mondays in May and October, and in Washington on the second Mondays next after the fourth Mondays in May and October, and in Louisa on the third Mondays next after the fourth Mondays in May and October, and in Muscatine on the fourth Mondays next after the fourth Mondays in May and October.

Time of holding courts in second Judicial District.

SEC. 3. That it shall be the duty of the Clerk of the District court of the county of Johnson to certify, under the seal of said court, all the indictments, recognizances, papers, and other matters now on file, or on record in said office in any wise appertaining to the county of Linn to the Clerk of the District Court of said county of Linn.

Duty of Clerk of Johnson county.

Acts of S. H. Tryon Clerk of Linn county court legalized.

SEC. 4. *Be it further enacted*, That the acts and proceedings of S. H. Tryon performed as Clerk of the District Court of Linn county are hereby declared as legal and valid as they would have been had he been legally appointed, and that he is hereby declared the legal Clerk of said District Court until the next term of the district court in said Co., or until another person shall be appointed clerk in his place.

Suits, &c. pending not to be affected by change of term of court.

SEC. 5. No suits, writs, indictments, recognizances, informations, declarations, pleas, or other process, or proceeding returnable to or pending in any of the District Courts in the above named Districts 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 when the same may have been issued or may have been returnable to any day, in accordance with the time heretofore fixed for holding said courts, they shall be considered returnable to 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 courts.

SEC. 6. This act shall take effect and be in force from and after its passage.

EDWARD JOHNSTON,  
*Speaker of the House of Representatives.*  
JAMES M. CLARK,  
*President of the Council.*

APPROVED, July 22, 1840.  
ROBERT LUCAS.

[Chap. 2.]

AN ACT to authorize James Wilson, his heirs or assigns, to build a Dam across Skunk River, in Jefferson county.

To erect dam.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That James Wilson, his heirs and assigns, are hereby authorized to build a Dam across Skunk river, on the South West quarter of section 12, Township 72, North, of Range 8 West, in accordance with the provisions and restrictions of an act approved January the nineteenth, eighteen hundred and thirty-nine, of

According to act of Jan. 19, 1839.



Iowa Laws, except that said James Wilson, his heirs or assigns, is required to build the Lock in said dam twenty-five feet wide, and *Provided further*, That said Wilson his heirs or assigns shall not interfere with any charter granted, or any person who is now erecting a dam on said River. Not to interfere.

APPROVED, July 24, 1840.

[Chap. 3.]

AN ACT to authorize Guy Wells and James Wilson, their heirs or assigns, to build a Dam across Skunk River in Henry county.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Guy Wells and James Wilson, their heirs or assigns, are hereby authorized to build a Dam across Skunk River, on the West half of the North West quarter of section four, Township seventy North, range six West, in accordance with the provisions and restrictions of an act approved January the nineteenth eighteen hundred and thirty-nine, of Iowa Laws, except that said Guy Wells and James Wilson, their heirs or assigns are required to build said Lock in said Dam twenty-five feet wide; and *Provided further*, That said Wells and Wilson shall not be allowed to dam said River so as to interfere with the privilege of Robert Wilson, his heirs or assigns. To build Dam. According to act of Jan. 19, 1839. Not to interfere.

APPROVED, July 24, 1840.

[Chap. 4.]

AN ACT amendatory of "An act subjecting real and personal estate to execution," approved January twenty-fifth eighteen hundred and thirty-nine.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That in addition to the property exempted from execution in the act to which this is amendatory, the following shall hereafter be deemed exempt in like manner, to wit: the necessary arms, accoutrements and uniform, or dress, belonging to the militia of this Territory; the arms, accoutrements and dress, or uniform, belonging to any non-commissioned officer, musician or private, subject to do militia duty under the laws of this Territory. Arms, accoutrements, &c. of militia, exempt from execution.

SEC. 2. All property exempt from execution shall be exempt from attachment or other process at law.

APPROVED, July 24, 1840.

## [Chap. 5.]

AN ACT directing the valuation and sale of Lots in Iowa City, and to provide for executing Deeds for the same.

Fixing minimum average value of lots.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the unsold lots within the city plat of Iowa city, the seat of Government of the Territory, shall not be sold for a less average value than three hundred dollars per lot.

Governor, Secretary and Act. Com'r. to fix value.

SEC. 2. That it shall be the duty of the Governor, Secretary of the Territory, and the Acting Commissioner of public buildings to equalize the value of the unsold lots in the city plat of Iowa city, and affix to each lot a specific value, in proportion to its situation, so as not to reduce the aggregate value of the whole below the average sum of three hundred dollars per lot.

The same to make out lists of lots equalized.

SEC. 3. That it shall be the duty of the Governor, Secretary and the Acting Commissioner of public buildings to make out two fair lists of the lots equalized and valued by them, designating the value of each lot, which list shall be certified and signed by them, and one copy kept in the office of the Secretary of the Territory, where the same shall be filed and preserved, and the other copy shall be delivered to the Acting Commissioner of public buildings, who shall record the same in a durable book to be provided by him for that purpose, and shall also file and preserve the original in his office.

Copy of same preserved.

Governor to issue proclamation.

SEC. 4. That after the lists of lots are made out and filed, as required by the preceding section of this act, the Governor shall, by proclamation, authorize a public sale of the lots, which sale shall be continued from day to day until the whole shall have been offered for sale, providing that no lot shall be sold for a less sum than the value placed upon it in said list.

Private sale.

SEC. 5. That it shall be the duty of the Acting Commissioner of public buildings, after the close of the public sale, to sell at private sale, to any person or persons applying for the same, any lot or lots that may not have been sold at public sale, for the price fixed upon such lot or lots in the list filed with him, as referred to in this act.

SEC. 6. That whenever full payment shall have been made for any lot or lots in Iowa city, the Act-

ing Commissioner of public buildings shall give to the person or persons entitled thereto a certificate of final payment for the same. Final certificate.

SEC. 7. That whenever any certificate of final payment for lots in Iowa city shall be presented to the Secretary of the Territory, he shall file the same in his office and make out a deed of conveyance in accordance with such certificate, which deed of conveyance shall be sealed with the seal of the Territory, signed by the Governor and countersigned by the Secretary of the Territory, and when thus executed, shall convey to the grantee a title in fee simple to the lots therein described. Secretary to make out deed.

SEC. 8. It shall be the duty of the Secretary of the Territory to keep a record in his office of all deeds of conveyance made out by him under the provisions of this act. Secretary to keep record of deeds.

SEC. 9. That in all cases where full payment may be made on lots heretofore sold on a credit, at public sale, in Iowa city, at the time the last instalment may become due, or within thirty days thereafter, all such delinquent lots shall revert to the Territory, and the payments that may have been made thereon shall be forfeited according to the condition of sale. Lots forfeited.

SEC. 10. That it shall be the duty of the Acting Commissioner of public buildings to place all forfeited lots upon the list of unsold lots, and to place a valuation upon them not less than the same were previously sold for, nor less than the minimum average price of lots in the city, and to dispose of them as other lots at private sale. Forfeited lots to be valued and sold like other lots.

SEC. 11. That all acts and parts of acts that are in contravention of the provisions of this act be, and the same are hereby repealed. Acts repealed.

SEC. 12. This act shall take effect and be in force from and after its passage.

APPROVED, July 24, 1840.

[Chap. 6.]

AN ACT to re-locate the County Seat of Jackson County.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Andrew Bankson, of Du Buque county, William Hutton, of Jones county, and Abner Beard, of Clinton county be, and they are hereby appointed, Commissioners to re-locate the county seat of Jackson, whose duty Commissioners appointed.



Time of meeting.

it shall be, or a majority of them, to meet at the town of Bellview, on the second Monday of October next, and proceed forthwith to locate the seat of justice of said county, having reference to the geographical centre, water, timber, and the welfare and convenience of the present and future population.

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 or affirmation, to wit: We, the commissioners to relocate the seat of justice in and for the county of Jackson, do solemnly swear, (or affirm, as the case may be,) that we will perform the duties imposed on us by said appointment, honestly and faithfully, and according to the best of our abilities, and according to the law relative to locating said county seat; and we do further swear, that we are not, directly or indirectly interested in said location, but that in locating said county seat we will be actuated only for the best interests of said county, without the slightest partiality towards any person or persons, without bias from fear, favor or recompense, or the hope of any gain or advantage to ourselves in any respect whatever.

Commissioners to name seat of justice.

SEC. 3. That 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 in the office of the clerk of the District Court of said county, whose duty it shall be to record the same in the record book.

Pay of Commissioners.

SEC. 4. That said commissioners shall each receive three dollars per diem for the time they are actually employed in the location of said seat of justice, not exceeding ten days, and three dollars for every twenty-five miles travel going to and from Bellview to their place of residence, to be paid out of the Treasury of Jackson county by an order from the board of county commissioners.

County Commissioners to fill vacancy.

SEC. 5. 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.



SEC. 6. That the site selected, as aforesaid, shall be the seat of justice for Jackson county from and after the first day of December next, provided that until suitable buildings are erected at the place selected as the county seat the District Court shall be held at the town of Bellview.

Site selected to be seat of justice from 1st Dec. next, provided.

APPROVED, July 24, 1840.

[Chap. 7.]

AN ACT to amend an act entitled "An act to provide for the organization of the county of Delaware, and to locate the county seat thereof."

WHEREAS, The commissioners appointed by "An act to provide for the organization of the county of Delaware, and to locate the seat of justice thereof," approved December 20, 1839, did wholly fail to meet on the first of May, eighteen hundred and forty, and to locate the county seat for said county, according to the provisions of said act—therefore,

*Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That so much of said act as relates to the meeting of the commissioners for the purpose of locating said county seat on or before the first day of May, eighteen hundred and forty, be, and the same is hereby repealed; and that William Smith, senior, of Du Buque county, William Jones, of Jackson county, and Thomas Denson, of Jones county, are hereby appointed commissioners to meet at the house of William Eads, in said county, on the first Monday of October, in the year of our Lord eighteen hundred and forty, or within ten days thereafter, and proceed to permanently locate the county seat in and for said county according to the provisions and requirements of the act to which this is amendatory.

Part of act repealed.

Commissioners appointed.

When to meet.

SEC. 2. That the eighth section of the act to which this is amendatory is hereby repealed.

Section repealed.

APPROVED, July 24, 1840.

[Chap. 8.]

AN ACT to amend an act entitled "An act to authorize Timothy Fanning to establish and keep a Ferry across the Mississippi river at the town of Du Buque.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the aforesaid act, to which this is an amendment, be and is

Act altered.

Horse ferry  
boat sufficient.

Proviso.

hereby so altered and amended as to authorize Timothy Fanning, his heirs and assigns, to keep a horse ferry boat; and that if the said Fanning, his heirs or assigns, shall procure a good and sufficient horse ferry boat, which shall be kept at said ferry for the transportation of all persons, and their property, across said river, without delay, within the time prescribed in the act to which this is an amendment, to wit, the 14th day of December, 1840, it shall be considered a compliance with the requisition of said act; *Provided*, That nothing herein contained shall be so construed as to prevent the said Fanning, his heirs and assigns, from keeping at said ferry a steam ferry boat.

APPROVED, July 24, 1840.

[Chap. 9.]

AN ACT to define the jurisdiction of the several counties in this Territory that front upon the Mississippi river.

Preamble.

WHEREAS, Doubts have arisen whether the jurisdiction of the several counties in the Territory of Iowa that front upon the Mississippi river extends to the eastern shore of said river, concurrently with any other State or Territory, so far as the said river shall form a common boundary between this Territory and any other conterminous State or Territory, under the act of Congress, approved March 30, 1839, chapter 91—therefore,

Establishing  
jurisdiction on  
Mississippi  
river.

*Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That from and after the passage of this act, all the counties in this Territory, that are now formed, or which may hereafter be formed, in any part of said Territory, fronting eastward upon the Mississippi river, shall have and exercise jurisdiction, for all civil and criminal purposes, upon the Mississippi river concurrently with any other conterminous State or Territory so far, and to such extent, as the said river shall form a common boundary between the Territory of Iowa and any other such conterminous State or Territory.

APPROVED, July 24, 1840.

[Chap. 10.]

AN ACT to legalize the establishment of a Territorial Road from the ferry landing, opposite Oquawka, in Illinois, to Napoleon, in Johnson County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That a certain Territorial Road, from the ferry landing opposite Oquawka, in Illinois, to Napoleon, in Johnson county, laid out and established by Daniel Brewer and Jacob S. Rinearson, of Louisa county, in the summer of 1829, shall be, and is hereby declared as good and valid in law in all respects as though the same had been located, and returns thereof made by the persons whose names appear as commissioners for that purpose in an act entitled an act establishing certain Territorial Roads, approved January 25, 1839. Legalizing survey of road.

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

APPROVED, July 24, 1840.

[Chap. 11.]

AN ACT relative to writs of scire facias upon judgments in the District Court.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That no writ of scire facias shall be necessary to revive any judgments heretofore or hereafter had in any of the District Courts of this Territory until after the lapse of five years from the rendition of the same, and execution may at any time be issued upon the same until said lapse of five years, unless said judgment be sooner satisfied. Writ of scire facias not necessary to revise judgment until.

APPROVED, July 24, 1840.

[Chap. 12.]

AN ACT to establish the County Seat of Lee County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That at the next general election in the County of Lee, the qualified voters of said county shall be allowed to vote for the location of the seat of justice of said county. To vote for county seat.



May vote for any point.

SEC. 2. Every voter may vote for any point as the seat of justice, and the votes shall be returned to the office of the clerk of the board of county commissioners, and the result declared as in other cases, and the clerk thereupon shall cause to be entered upon the records of said board the whole number of votes given for each place named.

Majority of votes establishes seat.

SEC. 3. If at said election, any one point shall receive a majority of votes over all the other points, it shall be declared the seat of justice of said county.

Provides for a second election.

SEC. 4. If no one point receives a majority of all the votes cast at said election, then there shall be a second election held on the second Monday of November next, at which second election the two points receiving the highest number of votes at the first election shall be voted for, and none others, and the point for which the highest number of votes is cast shall be declared the seat of justice of said county.

Two points only to be voted for.

Judges to administer oath.

SEC. 5. That the judges of said election, or any one of them, shall have power, and on any person offering to vote, being challenged by any elector who has voted at such election, are hereby required to administer an oath to such person offering to vote, true answers to make to such questions touching his qualifications as a voter as shall be propounded to him, and shall examine such person as to his right to vote, and said judges shall not permit any person to vote for said county seat unless he be a qualified voter of said county.

Any one swearing falsely—how punished.

SEC. 6. That any person who may swear falsely, touching his qualifications as a voter, shall, upon indictment, if found guilty, suffer all the pains and penalties of wilful and corrupt perjury.

Duty of clerk of board of county commissioners.

SEC. 7. As soon as the votes cast at the first election are counted agreeably to law, if it shall appear that no one point has received a majority of all the votes cast at said first election, it shall be the duty of the clerk of the board of county commissioners to write three notices for each election precinct in said county, which notices shall set forth the two places receiving the highest number of votes at the first election, and which places are to be voted for at the second election, and also the day on which said second election is to be held, which notices shall be delivered to the Sheriff of said county, and



by him posted up in the following manner, to wit: one notice at the place of voting in each precinct and two others in two of the most public places in each precinct at least ten days before the time of holding said election.

SEC. 8. Said second election shall be conducted in all respects agreeably to the laws regulating general elections, and the point receiving the highest number of votes shall be declared the county seat. Second election, how conducted.

SEC. 9. That it shall be the duty of the county commissioners to receive any bond or bonds for the payment of money, or to receive any donation of land, or other property which shall be applied to aid in erecting public buildings for said county. Duty of county commissioners.

APPROVED, July 27, 1840.

[Chap. 13.]

AN ACT to establish a Territorial Road from the town of Lyons, in Clinton county, to Iowa city, in Johnson county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That Stephen Tripp, of Clinton county, James Ross, of Cedar county, and A. C. Sutliff, of Johnson county, be and they are hereby appointed commissioners to locate a Territorial Road from Lyons, in Clinton county, in a direction to Iowa city, on the nearest and best route, until it intersects a road to be established by an act of the last session of the legislature from Camanche to Iowa city. Commissioners appointed.

SEC. 2. That said commissioners, or a majority of them, shall meet at Lyons any time during the present year that they shall agree upon to discharge their duties. When to meet.

SEC. 3. That the commissioners aforesaid shall receive two dollars and fifty cents for every day they shall be necessarily employed in the discharge of their duties, the surveyor three dollars per day, and chain carriers and markers one dollar and fifty cents per day, to be paid according to the provisions of the fifth section of an act to provide for laying out and opening Territorial Roads. Pay of commissioners, surveyor, &c.

SEC. 4. That the fourth section of an act establishing certain Territorial Roads therein named, approved January fourteenth eighteen hundred and forty, is hereby so far amended as to make Samuel P. Higginson, of Cedar county, and John Wilson, Act amended. Other commissioners appointed.

senior, of Muscatine county, commissioners in place of William St. John and Luke Douglass, and that the said Territorial Road be laid out from Rockingham to Moscow, and no further.

APPROVED, July 27, 1840.

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[Chap. 14.]

AN ACT to divorce Harriet Williams.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the marriage contract heretofore existing between Harriet Williams and Enos Williams, be, and the same is hereby dissolved so far as relates to the said Harriet Williams, and that hereafter she be called and known by the name of Harriet Knapp.

Presented for approval July 27, 1840, and become a law July 30, 1840, according to provisions of amendments to organic law.

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[Chap. 15.]

AN ACT to incorporate the Unitarian Society of Burlington.

Company.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That George Partridge, S. S. Ransom, John P. Bradstreet, S. A. Hudson, W. Henry Starr, and their associates, successors and assigns be and they are hereby created a body politic and corporate by the name and style of the Unitarian Society of Burlington, and by that name may have succession, and shall be able in law and equity to sue and be sued, and hold property, personal, real and mixed, to select and choose such officers, and make and ordain such by-laws, rules and regulations, as may be convenient or necessary for conducting the affairs of such Society not contrary to law.

Name.

Powers.

Object declared.

SEC. 2. The objects of the said Society are hereby declared to be to procure a suitable lot of ground and erect thereon a proper and convenient church for public worship, with power to sell, alien and transfer the same at the will of two thirds of the stockholders in said corporation.

Stock, &c. not to exceed.

SEC. 3. The capital stock and assets of said company or corporation shall at no time exceed ten thousand dollars.

SEC. 4. Any three of the above named persons shall have power to call a meeting of said company by giving ten days notice, at which or any subsequent meeting the stockholders are empowered to dispose of their stock, choose officers and make by laws in such manner as they may see fit, not incompatible with law.

SEC. 5. This charter can be amended, altered, or repealed, by any subsequent legislature.

APPROVED, July 27, 1840.

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[Chap. 16.]

AN ACT to district Musketine County for the election of County Commissioners.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the board of commissioners in and for Musketine county be, and they are hereby authorized and required to lay off said county into three county commissioners districts prior to the next general election, dividing, as nearly as possible, the population of said county.

SEC. 2. The election of commissioners shall take place in accordance with the provisions of an act of the legislative assembly, entitled "An act organizing a Board of County Commissioners in each county in this Territory," approved December fourteenth, eighteen hundred and thirty-eight, in the same manner as though the county had been districted under the provisions of the above recited act.

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

APPROVED, July 27, 1840.

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[Chap. 17.]

AN ACT to district Van Buren County for the election of County Commissioners.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the board of commissioners in and for Van Buren county be, and they are hereby authorized and required to lay off said county into three county commissioners districts prior to the next general elec-

tion, dividing, as nearly as possible, the population of said county.

Election of  
commission-  
ers.

SEC. 2. The election of commissioners shall take place in accordance with the provisions of an act of the legislative assembly, entitled "An act organizing a Board of County Commissioners in each county in this Territory," approved December fourteenth eighteen hundred and thirty-eight, in the same manner as though the county had been districted under the provisions of the above recited act.

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

APPROVED, July 27, 1840.

[Chap. 18.]

AN ACT to establish a Territorial Road from Burlington to Keokuk, and thence to the mouth of Des Moines River.

Commission-  
ers appointed.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That John Hillis, Hugh Wilson and George Gearhart, of Burlington, be, and they are hereby appointed commissioners to locate and mark a Territorial Road, via Lloyd's ford to Fort Madison, thence the nearest and best route to Keokuk, thence the nearest and best route to the mouth of the Des Moines river.

When to meet.

SEC. 2. That the commissioners aforesaid, or any two of them, shall meet at Burlington on the first day of September next to proceed to the discharge of their duties, and they are authorized to adjourn from day to day and from time to time, as they may agree, and that in case said commissioners shall fail to meet on the day appointed, that then the Sheriff of Des Moines county is hereby authorized and required, on the application of any of said commissioners, either written or verbal, to notify in writing said commissioners of some other time, to be by him appointed, and request their attendance at such day at the place aforesaid.

Commission-  
ers failing to  
meet.

Sheriff to  
notify.

APPROVED, July 27, 1840,



## [Chap. 19.]

AN ACT to amend "An act to re-locate the County Seat of Clayton County."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the election for county seat in Clayton county, shall take place on the first Monday of October next in manner directed in the seventh section of the act to which this is amendatory, and not on the first Monday of August. Election. When and manner.

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

APPROVED, July 28, 1840.

## [Chap. 20.]

AN ACT to provide for the payment of contingent expenses of the Offices of Auditor and Treasurer.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the following be, and they are hereby appropriated, out of any money in the Territorial Treasury not otherwise appropriated, for the following purposes, to wit: Money appropriated.

SEC. 2. For procuring a seal and press for the use of the office of the Auditor of Public Accounts, fifty dollars. For auditor's office.

SEC. 3. For procuring books of record, stationery, and for the payment of postage and other incidental expenses of the offices of Auditor and Treasurer, one hundred dollars. For auditor and treasurer's offices.

APPROVED, July 28, 1840.

## [Chap. 21.]

AN ACT to legalize the survey, and make valid in law, the present plat of the town of Augusta, in Des Moines County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the present survey of the town of Augusta, and the present plat of the same, as made upon the south west quarter of section twenty-four, township sixty-nine, north, of range four west, be, and they are hereby declared good and valid in law. Survey and plat legalized.

APPROVED, July 28, 1840.

## [Chap. 22.]

AN ACT in relation to that portion of Country which is attached to the several organized Counties in this Territory for judicial purposes.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all the country that is at present, or may hereafter be attached to any of the organized counties in the Territory, be, and the same is hereby attached for revenue, election and judicial purposes, and the inhabitants thereof shall be entitled to and enjoy all the rights and privileges of the county or counties to which they are attached that they would be entitled to were they citizens proper of some organized county.

Inhabitants to enjoy rights common to citizens of organized counties.

Proviso.

SEC. 2. *Provided,* That nothing herein contained shall be so construed as to authorize the authorities of any county in this Territory to lay out or open any public road or highway, or to make any public improvement whatever beyond the line to which the Indian title to the land has been or may hereafter be extinguished.

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

APPROVED, July 28, 1840.

## [Chap. 23.]

AN ACT to authorize Peter Brewer, his heirs or assigns, to erect a Dam across Skunk River.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Peter Brewer, his heirs or assigns, are hereby authorized to construct a Dam across Skunk River at or near the mouth of Long Creek, in Des Moines county; said Dam shall contain a convenient lock not less than seventy-five feet in length, and not less than fifty feet wide, for the passage of steam, keel, and flat boats, and rafts and other water crafts.

To erect dam.

Lock to admit steam boats, &c.

Owner to pass boats through free.

SEC. 2. It shall be the duty of the person 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 he shall at all reasonable times pass all steam, keel, and flat boats, rafts and other water crafts, through free of toll without any unnecessary delay. Any person who shall be unnecessarily

detained shall be entitled to recover of said owner or owners double the amount of damages they shall prove to have sustained by reason of such detention.

Penalty of detention.

SEC. 3. Any person or persons who shall destroy or in any wise injure 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 Dam or lock, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined treble the amount of damages the owner or owners may have sustained, or be imprisoned, at the discretion of the court, *Provided* such imprisonment does not exceed six months.

To injure said dam deemed a trespass; to wilfully destroy, a misdemeanor; how punished.

SEC. 4. Nothing herein contained shall authorize the individual named in this act, his heirs or assigns, to enter upon and flow the land or lands, of any person without the consent of such person or persons, and he 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 without consent; and to remove all nuisances.

SEC. 5. The Legislature of the Territory (or State) may at any time alter or amend this act so as to provide for the navigation of said river, *Provided* nothing in this act contained shall authorize the individual, his heirs or assigns, to in any wise injure the mill of Levi Moffitt, his heirs or assigns, by back water.

Right of repeal reserved.

APPROVED, July 29, 1840.

[Chap. 24.]

AN ACT for the relief of William W. Hadden.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the county commissioners of Van Buren county are hereby authorized to investigate the claims of the said William W. Hadden, on the quarter section of land selected for county purposes, taking into consideration the advantages as well as the disadvantages accruing to the said Hadden by said selection, and the location of the county seat thereon, and deal with the subject as justice and equity seem to require, all the circumstances therewith connected duly and impartially considered.

Commissioners to investigate.

APPROVED, July 29, 1840.

## [Chap. 25.]

AN ACT to establish the Seat of Justice of Scott County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That for the purpose of permanently establishing the seat of justice of Scott county, an election shall be held at the several precincts in said county, on the third Monday of August next, at which time the qualified electors of said county, shall vote for Davenport or Rockingham, for the seat of justice.

To establish county seat at Davenport or Rockingham.

SEC. 2. That to entitle any person to vote at said election, he must be a citizen of the United States, twenty-one years of age, and shall have resided in said county sixty days, and in the Territory six months next preceding said election.

Persons entitled to vote.

Judges of general election to act in this case.

SEC. 3. That the same persons who are or may be appointed judges or managers at the several precincts in said county of the general election, shall be judges or managers of the election directed by this act; and in case of failure of any of them to attend at the hour for opening the polls their places shall be supplied in the manner directed by the law regulating general elections, and the said judges of each precinct shall appoint two suitable persons, having the qualifications of electors, to act as clerks of said election, and the said judges and clerks, before entering upon the discharge of their duties, shall take an oath before some person authorized to administer the same, honestly, faithfully and impartially to perform the duties required of them by this act.

In case of failure their places to be supplied.

Clerks of election; who appointed.

Power of Judges.

SEC. 4. That the said judges or any one of them shall have power and on any person offering to vote, being challenged by any elector who has voted at such election, are hereby required to administer an oath to such persons offering to vote, true answers to make to such questions touching his qualifications as a voter as shall be propounded to him, and shall thereupon examine such person as to his right to vote, and said judges shall not permit any person to vote at said election who is not qualified according to the requirements of this act.

Persons not permitted to vote.

Duty of clerks.

SEC. 5. That each of the clerks of said election shall keep a separate poll book or list of voters, and shall enter on his poll book the name of every person voting at his precinct, numbering them from one,



progressively in the order in which they shall vote with the proper number set opposite each name, and the judges of said election are hereby required to number the vote or ballot (on the back thereof,) of each and every voter with the same number that stands opposite the name of such voter on the clerks' poll books, and the ballot so given and numbered shall be deposited in a box and shall be safely kept by the judges of said election, until disposed of as hereinafter directed. The polls shall be opened at each precinct at the hour of nine o'clock, A. M. and not before, and shall be closed at six o'clock, P. M. of the same day. Upon closing the polls the judges shall proceed openly and in the presence of such electors as may choose to attend to count the ballots so given in, and the clerks shall severally keep a tally of the votes so counted out, designating the name of the town for which said votes or ballots may have been given, and when they shall all have been counted they shall be added up and the aggregate for each town set down in figures and in words at full length, and the said judges and clerks shall certify that the same is a true statement of the votes polled at such precinct, and shall return the said ballots into the box from which they were taken, and seal up said box; and the said judges shall return said box, containing the ballots so sealed up, and shall also return one of the poll books of each precinct to the clerk of the District Court of Scott county, by three o'clock P. M. of the third day after said election; on which said third day after said election, the judges of the several precincts shall meet at the office of the clerk of said District Court, and shall, in the presence of each other and of the clerk of said District Court, proceed to examine the returns from each precinct, and on said judges, or a majority of them, being satisfied that one of the two places mentioned in the first section of this act has received a greater number of legal votes than the other, said judges shall declare the town having received such majority of votes the seat of justice of Scott county, and the clerk of the District Court shall make an entry of such fact in the minutes of said District Court, and the town so declared to have received a majority of votes shall thenceforth be the seat of justice of Scott county.

Time of opening polls.

Judges to count votes.

Judges and clerks to certify returns.

And return same to clerk of district court within three days.

Judges of several precincts to meet at office of clerk of district court.

And declare result.

Clerk of court to make an entry of same.

Ballots to be kept at clerks office for twenty days.

SEC. 6. That the ballots and poll books so returned from the several precincts shall be safely kept by the clerk of the District Court in his office for twenty days from the day of said election, at which time he shall destroy said ballots, unless within that time said election shall be contested in the manner hereinafter provided.

In case of contest—how prosecuted.

SEC. 7. That any three electors who shall have voted at said election may, within twenty days after said election, notify said clerk of the District Court in writing that they contest said election, and if they shall within said twenty days enter into bond with sufficient security to be approved of by the said clerk, payable to said clerk, in the penal sum of three hundred dollars, conditioned to prosecute said contest with effect, or failing therein, to pay all such costs as may accrue in the premises, the said clerk shall immediately notify the judge of said District Court that said election is contested, and the said judge, on receiving such notice, shall appoint a time and place, in Scott county, for enquiring into and deciding the said contested election, and notice of such time and place shall be given by said clerk by publication in the "Iowa Sun," a newspaper published in said county, not less than fifteen days prior to the time so appointed for the trial of said contested election; and said clerk shall issue subpoenas for all such witnesses as said persons contesting said election, or any other three voters of said county, may require, returnable to the time and place as aforesaid appointed for said trial.

Duty of clerk of court and sheriff.

SEC. 8. That the clerk of said District Court, and the sheriff of Scott county, shall attend the judge of said court at the time and place so appointed, and the clerk of said court shall deliver to the judge thereof the ballots and poll books returned to him as above provided, and said judge shall proceed to enquire into the legality of said election, and may examine said ballots and poll books, and receive the testimony of all such witnesses as may be produced before him, and shall purge the said polls of all illegal votes that may have been received, and shall decide the said contested election in favor of the town that may have received the greatest number of legal votes at said election, and the clerk of said District Court shall make an entry of the decision of said judge on the minutes of said court as a judgment thereof.

To enquire into legality of election.

SEC. 9. That if any person shall vote at said election without being qualified as above provided, or who shall vote more than once at said election, or shall vote at more than one precinct in said county, or who shall, for the purpose of voting at said election, swear falsely touching his qualifications as a voter, shall be fined in a sum not less than fifty nor more than five hundred dollars, one half thereof to the use of the county, and the other half to any one who shall prosecute for the same, and shall be further liable to an indictment, and if found guilty of swearing falsely shall suffer all the pains and penalties of wilful and corrupt perjury.

Illegal voting;  
how punished.

SEC. 10. That if either of the judges or clerks of said election shall be guilty of any wilful violation of any duty required of them by this act, and shall be thereof convicted on indictment, such person so convicted shall be fined in any sum not less than one thousand nor more than two thousand dollars, or imprisoned not more than twelve months, at the discretion of the jury trying the same.

Violation of  
duty by judges  
or clerks;  
how punished.

APPROVED, July 29, 1840.

[Chap. 26.]

AN ACT supplemental to "An act to establish the Seat of Justice of Scott County," approved July 1840.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the act to which this is a supplement, and this supplement, shall both take effect from and after the third day of August next.

Act to take  
effect.

APPROVED, July 29, 1840.

[Chap. 27.]

AN ACT to incorporate the Baptist Church of Du Buque.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Benj. Rupert, Amos Mathews, Jenks Dexter, Jos. T. Fales, Alexander D. Anderson, J. D. Graffort, and their associates and successors, be, and they are hereby created a body politic and corporate by the name and style of the Baptist Church of Du Buque, and by that name may have succession, and shall be able in law and equity to sue and be sued, and hold property, personal, real and mixed,

Body cor-  
porate.



To hold prop-  
erty, not to  
exceed.

not exceeding ten thousand dollars, to select and choose officers, and make and ordain such by-laws, rules and regulations as may be convenient or necessary for conducting the affairs of such church, not contrary to law.

Objects de-  
clared.

SEC. 2. The objects of the said corporation are hereby declared to be, to procure a suitable lot of ground, and erect thereon a proper and convenient church for public worship, with power to sell, alien and transfer the same at the will of a majority of the members of said church.

SEC. 3. This charter can be amended, altered or repealed by any subsequent legislature.

APPROVED, July 27, 1840

[Chap. 28.]

AN ACT to provide for the survey of a Territorial Road.

Governor to  
appoint.

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 a competent surveyor, or engineer, whose duty it shall be to re-locate so much of the Territorial Road leading from the city of Burlington, in Des Moines county, by 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.

When to re-  
locate.

SEC. 2. That the said surveyor, or engineer, shall proceed to make such re-location on the second Monday of August, or as soon thereafter as practicable, commencing at the northwest corner of the public square in the old town of Burlington, thence as nearly on a straight line to the point where the former Territorial Road crosses the western boundary of the county, as the nature of the route will permit, *Provided however*, That said surveyor, or engineer, have power to make such offsets, or angles, as may be necessary to accommodate farms and improvements, not to exceed eighty rods at any one point.

Route.

Proviso.

Pay.

SEC. 3. That the said surveyor or engineer, shall receive for his services the sum of four dollars per day for the time actually engaged in such survey and making out the report of the same, which shall be paid out of the county treasury, *Provided*, That the whole time so consumed shall not exceed fifteen days.

Proviso.

SEC. 4. That this act shall take effect from and after its passage.

APPROVED, July 29, 1840.

[Chap. 29.]

AN ACT to repeal the acts therein mentioned.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all the acts of the Territory of Michigan and the Territory of Wisconsin, which were in force in the Territory of Iowa on the fourth day of July in the year one thousand eight hundred and thirty-eight are hereby repealed. Acts repealed.

SEC. 2. The repeal of any act by any law of this Territory shall never be construed to revive any act previously in force, unless such repealing act shall contain an express provision that any such repealed act shall be thereby revived and put in force. Repeal not to revive any act previously in force, unless.

SEC. 3. That "An act respecting seals," approved January 24, 1839, is hereby repealed. Acts repealed.

SEC. 4. The repeal of any statutory provision by this act shall not affect any act done, or right accrued or established, or any proceeding, suit, or prosecution had or commenced previous to the time when such repeal shall take effect, but every such right, act and proceeding shall remain as valid and effectual as if the provision so repealed had remained in full force. Repeal not to effect any previous proceedings in law, or any right previously accrued, but.

SEC. 5. No offence committed, and no penalty or forfeiture incurred previous to the time when any statutory provisions shall be repealed, shall be affected by such repeal, except that when any punishment, forfeiture or penalty shall have been mitigated by the laws to be in force after such repeal, such provision shall apply to and control any judgment to be pronounced after the repeal for any offence committed before that time. Offence committed or penalty incurred previous to repeal, not to be affected, except.

SEC. 6. No prosecution for any offence, or for the recovery of any penalty, or forfeiture, pending at the time any statutory provision shall be repealed, shall be affected by such repeal, but the same shall proceed as if any such provision had not been repealed, except that such proceedings shall be conducted according to the provisions of the law in force at and after the time of such repeal. Prosecutions not to be affected by repeal. Except.

Repeal not to extend to laws of a private nature, &c.

SEC. 7. The repeal of the laws of Wisconsin, as contemplated in the first section of this act, shall not extend to any law private in its nature, nor to any act conferring rights, privileges, or immunities upon any individual, or association of individuals, or conferring corporate powers upon any county, town, society or individuals.

SEC. 8. None of the statutes of Great Britain shall be considered as law in this Territory.

[Adopted by two thirds of both branches of the legislature, and became a law 30th July, 1840.]

[Chap. 30.]

AN ACT authorizing a re-location of a certain Territorial Road.

Commissioners appointed.

SECTION 1. *Be it Enacted by the Council and House of Representatives of the Territory of Iowa*, That Thomas Blair, James McGuffey, and Michael Ramsey of Des Moines county, be, and they are hereby appointed commissioners to review a Territorial Road located by John Lorton and Luke Douglass under the second section of an act establishing certain Territorial roads therein named, approved January fourteenth eighteen hundred and forty. The said commissioners shall meet at the Virginia Grove on the third Monday in August next, or as soon thereafter as a majority of said commissioners shall agree.

When to meet.

Duty of commissioners.

SEC. 2. That said commissioners shall carefully examine a route from Chamberlain's point of the Virginia Grove, by way of Archer's Gap, to some point on the Territorial Road, in Section eleven, of Township seventy, north, of range three, west, and if, after full examination of said route, they are of opinion a better road can be had thereon than that of the present location, they shall then proceed to re-locate said road by surveying and marking the same, agreeably to the existing law on that subject, and make returns as provided for in other similar cases.

Present location best, commissioners not to alter.

SEC. 3. That if said commissioners shall, after examination as herein required, be of opinion that a better road cannot be had on the above designated route, then and in that case they are not authorized to make any change in said road, and they shall report their proceedings under this act to the Secre-



tary of the Territory and the clerks of the boards of county commissioners as in other cases.

SEC. 4. That the expenses of the review authorized by this act, shall be paid in the same manner as provided for in the act establishing certain Territorial Roads therein named, approved January fourteenth, eighteen hundred and forty. Expenses—how paid.

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

APPROVED, July 30, 1840.

[Chap. 31.]

AN ACT to district the Territory of Iowa into Electoral Districts, and to apportion the Representatives of each.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the following shall constitute the Electoral Districts of the Territory of Iowa, for the election of members of the Council and House of Representatives, and that each district shall elect and send to the Legislative Assembly, in manner directed by law, the number of members in this act apportioned to each. Constituting districts.

SEC. 2. That the County of Lee shall form the First Electoral District, and shall be entitled to two members of the Council and three members to the House of Representatives:—The County of Van Buren and the country thereunto attached, shall form the Second Electoral District, and shall be entitled to two members of the Council, and three members of the House of Representatives;—The County of Des Moines shall form the Third Electoral District, and shall be entitled to one member of the Council, and five members of the House of Representatives;—The County of Henry shall form the Fourth Electoral District, and shall be entitled to one member of the Council, and three members of the House of Representatives;—The County of Jefferson shall form the Fifth Electoral District, and shall be entitled to one member of the Council, and one member of the House of Representatives;—The Counties of Louisa and Washington shall form the Sixth Electoral District, and shall be entitled to one member of the Council, and two members of the House of Representatives;—The County of Louisa shall elect one, and the County of Washington one of said members;—The Counties of Mus-

First electoral district.

Second district.

Third district.

Fourth district.

Fifth district.

Sixth district.

Seventh district.

catine and Johnson shall form the Seventh Electoral District, and shall each elect one member to the House of Representatives, and two members to the Council;—The Counties of Cedar, Jones, and Linn shall form the Eighth Electoral District, and shall be entitled to one member of the Council, and two members of the House of Representatives;—The

Eighth district.

Ninth district.

Counties of Scott and Clinton shall form the Ninth Electoral District, and shall be entitled to one member of the Council, and two members of the House of Representatives;—The Counties of Du Buque, Jackson, Delaware, Clayton and the country thereunto attached, shall form the Tenth Electoral District, and shall be entitled to two members of the Council, and three members of the House of Representatives;—The County of Jackson shall elect one, and the Counties of Du Buque, Delaware, Clayton, and the country thereunto attached, shall elect two of said members to the House of Representatives.

Tenth district.

Act of 1839 repealed.

SEC. 3. That the act entitled "An act to district the Territory of Iowa into Electoral Districts and to apportion the Representatives of each, approved January 21, 1839," be and the same is hereby repealed.

APPROVED, July 30, 1840.

### [Chap. 32.]

AN ACT to organize, discipline and govern the Militia of this Territory.

#### TITLE I.

Persons liable to duty.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That all able bodied free white male inhabitants, between the ages of eighteen and forty-five years, resident in this Territory, and not exempted from serving in the militia, by the laws of the United States, or of this Territory, are subject to military duty within this Territory.

Who exempt.

SEC. 2 In addition to the persons exempted by the laws of the United States, the following persons shall be exempt from military duty.

1st. The Secretary of the Territory.

2nd. The members of the legislature, and its officers, during the session thereof, and fourteen days before and after each meeting.

3rd. Ministers and preachers of the gospel, teachers in all colleges.

4th. Officers hereafter to be commissioned, who shall serve as such in the militia of this Territory, or in that of one of the United States for the space of five years; but no such officer who may have served in the militia of this Territory shall be so exempt unless by his resignation, after such term of service duly accepted, or in some other lawful manner he shall have been honorably discharged from his commission.

5th. Every non-commissioned officer, musician and private, of every uniform company, raised or hereafter to be raised, who has uniformed himself, or shall hereafter uniform and equip himself, and whose term of service in such company shall have amounted, or shall amount to ten years from the time of his enrolment therein, shall be exempt from military duty, except in cases of insurrection or invasion.

6th. If any member of such company, who shall have been regularly uniformed and equipped, shall upon his removal out of the district of such company, or upon the disbandment thereof, enlist into another uniform company, and uniform and equip himself therefor, and serve in the same, whenever the whole time of his service in such companies, computed together, shall amount to ten years, he shall be exempt from military duty, in like manner, as if he had served for the whole period in the company in which he was first enrolled.

7th. Every person actually employed by the year or season on board any vessel, or in the merchant service or coasting trade in this Territory, all firemen attached to supply engines, and all other firemen belonging to any company in any city or village in this Territory, not exceeding twenty-four (24) in number, attached to a fire engine, unless, in cases otherwise especially provided, shall be exempt from military duty, and also all ferrymen actually employed on post roads, not exceeding two in number, to each ferry, except in cases of war, insurrection or invasion.



## TITLE II.

## OF THE APPOINTMENT OF MILITIA OFFICERS AND THE TENOR OF THEIR OFFICES.

Officers how appointed.

SECTION 1. The officers of the militia shall be appointed in the manner prescribed in the seventh section of the "Act of Congress, establishing the territorial government of Iowa," and shall hold their commissions without limitation of time, subject however to be revoked and determined by the Governor of the Territory for the time being, at his pleasure.

Tenure of office.

Staff of com. in chief.

SEC. 2. The commander-in-chief shall appoint his own staff.

Other staff officers.

SEC. 3. Major-generals, brigadier-generals and commanding officers of regiments, or separate battalions, shall appoint the staff officers of their respective divisions, brigades, regiments, or separate battalions.

Officers, how removed.

SEC. 4. No commissioned officer can be removed, except by the Governor, or by the decision of a court-martial pursuant to law.

Warrant officers.

SEC. 5. Sergeant-majors, quarter-master sergeants, sergeant-standard-bearers, drum-majors, fife-majors, and trumpet-majors, shall be appointed by the commanding officer of the regiment or separate battalion to which they shall belong, by warrant under the hand of such commanding officer, and shall hold their office during his pleasure.

Vacancies, how filled.

SEC. 6. Whenever the office of any commissioned officer in the militia, except those of the staff, shall become vacant, the commander-in-chief shall have power to fill the same, which appointment shall continue until the last day of the next succeeding session of the Legislative Assembly.

Officers to take oath.

SEC. 7. Every officer duly commissioned, shall within twenty days after his commission shall be tendered to him or within twenty days after he shall be personally notified that the same is held in readiness for him, by any superior officer, take and subscribe an oath to support the constitution of the United States of America. and well and faithfully discharge the duties of his said office; and in case of neglect or refusal to take such oath within the time mentioned, he shall be deemed to have resigned said office, and a new appointment shall be forthwith made to fill his place. The neglect or refusal of an officer appointed to take such oath, shall be no excuse for neglect of duty until another shall be duly commissioned in his place.

SEC. 8. Every commissioned officer shall take and subscribe such oath before a judge of some court of record in this Territory, clerks of courts, notaries public, justice of the peace, or some general or field officer, who having previously taken it himself, is hereby authorized to administer the same. By whom administered.

SEC. 9. A certificate of the oath, shall be endorsed by the officer administering the same, on the commission, and no fee shall be received for administering any such oath or endorsing such certificate. Certificate endorsed on commission.

SEC. 10. All non-commissioned officers of companies shall be appointed by the commandants of their respective companies, but shall not be removed except by the approbation of the commandant of the regiment, or separate battalion to which the said company may belong. Non-commissioned officers, how appointed

SEC. 11. The commanding officers of brigades may accept the resignations of all commissioned officers in their respective brigades; but no resignation of any captain or subaltern shall be accepted until the same shall have been approved of by the commanding officer of the regiment to which the officer so resigning may belong. No officer shall be permitted to resign his commission who shall be under arrest or shall be returned to a court martial for any deficiency or delinquency, and no commanding officer of a brigade, regiment or separate battalion, shall approve or accept any resignation, unless the officer tendering the resignation shall furnish satisfactory evidence that he has delivered all moneys in his hands as such officer, and all books and other property of the Territory in his possession, to his next superior or inferior officer, or to the officer authorized by law to receive the same. Resignations. Not to be accepted in certain cases.

SEC. 12. The commanding officer of a brigade, on accepting any resignation, shall forthwith communicate the same to the commander-in-chief; also to the commandant of the regiment to which the officer resigning may belong; and if any such officer be a subaltern, he shall also communicate the same to the commandant of his company. To notify com. in chief.

SEC. 13. The commander-in-chief may accept the resignation of any officer whose resignation the commanding officer of a brigade is not authorized to accept, and he may also accept the resignation of any officer whose resignation the commanding officer of his brigade shall have refused to accept. Com. in chief may accept resignations.

and cause such vacancies to be filled without delay.

Office how vacated.

SEC. 14. Every officer who shall remove out of the bounds of his command, or who shall be absent from his command twelve months without leave of the commanding officer of his brigade, or regiment, shall be considered as having vacated his office.

Commission how forwarded.

SEC. 15. The commissioned officer who shall receive a commission for any subordinate officer, shall within thirty days thereafter, give notice thereof in writing, by mail or otherwise, to the person entitled to it.

### TITLE III.

#### OF THE ENROLMENT OF PERSONS SUBJECT TO MILITARY DUTY.

Enrolment.

SECTION 1. The commanding officer of each company of infantry shall from time to time enrol all persons within the limits of his company, who may be subject to military duty, and shall without delay notify such persons of their enrolment.

Ib.

SEC. 2. Every notice or warning, to a person so enrolled, to attend a company, battalion or regimental muster or training, pursuant to the provisions of this act, shall be deemed a legal notice of his enrolment.

Duty of persons enrolled.

SEC. 3. Every person duly enrolled, shall be provided, within six months from and after he shall be duly notified of his enrolment, with arms, accoutrements and ammunition, agreeably to the directions of the laws of the United States.

Age and ability.

SEC. 4. The age and ability to bear arms, of every person so enrolled, shall be determined by the commandant of such company, subject to an appeal to the commanding officer of the regiment; but the decision of neither of these officers shall prevent a court-martial from determining whether such person was duly enrolled.

Certificate of surgeon.

SEC. 5. Persons claiming to be exempted from enrolment, by reason of inability to bear arms, may produce the certificate of a surgeon or surgeon's mate, as evidence of such inability; but it shall not be lawful for the surgeon giving the same to take any fee or reward therefor.

Tavern-keepers to give notice.

SEC. 6. All tavern-keepers, keepers of boarding-houses, persons having boarders in their families, and house-keepers, upon their being thereto requested by the commanding officer of the company



within the district of which they reside, shall give to such commanding officer a true account of all persons lodging or boarding with them, and of their names, if known, to the end that such persons as are liable to do military duty may be enrolled according to law.

SEC. 7. If any person of whom such account is so demanded, shall refuse to give an account, he shall forfeit and pay ten dollars for every individual name that may be refused, omitted, concealed, or falsely stated, to be recovered by the commanding officer of the regiment for the use of his regiment. Penalty for refusing.

SEC. 8. Every commandant of a company may enrol as musicians in his company, at least two, and not more than five, persons residing in his district, who are desirous to be so enrolled. Musicians.

SEC. 9. The person so enrolled shall perform the duty of musician in such company instead of serving as privates therein, and shall respectively be entitled to the same privileges and exemptions as non-commissioned officers and privates in uniform companies, and shall be subject to the same fines and penalties for the non-performance of their duty, as non-commissioned officers are liable to for absence from parade. Exemptions.

SEC. 10. No such musician, after being enrolled, shall enlist into another company without the written consent of the commanding officer of the company to which he belongs. Not to enlist in other companies.

OF THE ORGANIZATION, UNIFORM, AND DISCIPLINE OF THE MILITIA.

SECTION 1. The organization of the militia in divisions, brigades, regiments, battalions, and companies shall be conformed to the provisions of the laws of the United States. Militia, how organized.

SEC. 2. Subject to such laws the commander-in-chief may arrange, alter, divide, annex and consolidate the divisions, brigades, regiments, battalions and companies, in such manner as in his opinion the proper organization of the same shall require. Ib.

SEC. 3. The commanding officer of each brigade with the approbation of the commanding officer of his division, may divide, annex or alter the bounds of the several regiments, or separate battalions under his command; and in all cases of alteration in the bounds of any regiment, that part containing the major part of the companies of any one regiment Bounds of regiments, &c. how altered.

shall retain its name, number and rank. The commanding officer of each regiment or separate battalion, with approbation of the commanding officer of his brigade, may divide, annex, or alter the bounds of the several companies under his command.

Alterations to be reported.

SEC. 4. All such alterations shall be forthwith reported to the commander-in-chief, and remain in force until he shall otherwise direct.

When officers deemed to have resigned.

SEC. 5. Every officer rendered supernumerary by any consolidation or alteration of regiments, separate battalions or companies, shall be deemed to have resigned his commission, unless he shall have given written notice of his intention to retain his rank in the line, to the commanding officer of the brigade to which he belonged, within thirty days after such consolidation or alteration shall be published in general orders.

Supernumerary officers to equip, &c.

SEC. 6. Supernumerary officers shall equip themselves and those under rank of colonel shall attend the parades and drill trainings of the officers and non-commissioned officers.

Volunteer companies, how organized

SEC. 7. Whenever thirty persons, subject to military duty, associate together for the purpose of forming a company of mounted riflemen, infantry or artillery, by and with the consent of the commanding officer of their regiments, shall apply to the commander-in-chief to be organized as such, the commander-in-chief may so organize them and such persons as a majority of the applicants shall have designated in their application shall be commissioned as the officers of such company. All artillery companies organized under the provisions of said act shall be liable to do military duty in the same manner as volunteer riflemen until they shall be provided with a suitable piece of artillery.

Ib.

SEC. 8. Every commanding officer of a regiment, before he shall consent to any such application, shall require satisfactory evidence that the persons making the same intend in good faith to serve when organized, and that they are of sufficient ability to equip themselves according to law.

When to be reported, number, &c.

SEC. 9. Every company of artillery, riflemen, light infantry, or mounted riflemen, which shall not at any annual inspection and review have at least thirty privates mounted, or armed and equipped as the law directs, shall be immediately reported by the inspector, or officer acting as such, to the commandant of the brigade to whom such company belongs.



SEC. 10. If thirty privates shall not so appear at such inspection and review, the inspector shall require proof that there are privates belonging to such company properly mounted, or armed and equipped, sufficient to complete the whole number of thirty; such proof may be made by the certificate on honor of a commissioned officer or by the oath of a non-commissioned officer or private.

SEC. 11. The commandant of a brigade to whom a company shall be reported as deficient in number shall thereupon disband the same in orders, unless he shall have reason to believe that such company will have thirty privates present and absent, mounted, or armed and equipped as aforesaid at the next succeeding inspection and review.

SEC. 12. In case such company at the next inspection and review shall have absent and present the number above required, mounted, or armed and equipped, it shall not be disbanded, but if otherwise, the commandant of the brigade shall without delay disband the same.

SEC. 13. All the companies of mounted, riflemen and dragoons in each of the judicial districts of the Territory, shall be formed into separate battalions, and the members of all such companies after they shall have uniformed and equipped, shall be exempt from poll tax to work on the highways in their respective towns.

SEC. 14. All battalions of mounted riflemen or dragoons, not formed into separate regiments, shall for all the purposes of this act be considered as a part of the regiments or separate battalions of infantry in the bounds of which they are situated.

SEC. 15. All regiments and separate battalions of riflemen or artillery, not formed into brigades, shall for the purpose of this act be considered as a part of the brigade of infantry in the hands of which the commanders of such regiment or separate battalion shall respectively reside.

SEC. 16. No non-commissioned officer, musician, or private, belonging to any company of mounted riflemen, artillery, or light infantry, shall leave the company to which he belongs to serve as a fireman in any fire company now raised or hereafter to be raised in any city or county, nor shall he leave such company and enlist in any other, without the written consent of the commandant of the company to



which he belongs, unless he shall have removed out of the district of such company.

Return of enlistment.

SEC. 17. The commandant of every uniform company shall make a return without delay of all persons entitled therein to the commandant of the infantry companies within whose district the persons enlisted respectively reside, and in such return shall specify the date of each enlistment, and the commandant of infantry companies shall strike from their rolls the name of every person thus certified to have been enlisted in any regularly organized uniform company.

To equip.

SEC. 18. All persons enlisted into any uniform company shall within three months from their enlistment furnish themselves with a uniform and other equipage, according to law; for non-compliance they shall be returned to the proper court-martial and fined as hereinafter provided.

Notice of discharge.

SEC. 19. The commandant of any uniform company, whenever he shall discharge an able bodied man, shall give notice thereof in writing to the commandant of the infantry company, within whose district the individual discharged shall reside.

Uniform.

SEC. 20. The uniform of the infantry, or such portion thereof as the commander-in-chief may deem advisable, shall in his discretion be directed to conform with that which is now or may hereafter be established by the army regulations of the United States, and of all other corps for which provision is not made by the laws of the United States, as the commander-in-chief shall from time to time direct.

Discipline.

SEC. 21. The militia of the Territory shall as near as may be conform their system of discipline and exercise to that of the army of the United States, as is now, or shall hereafter be prescribed by the Congress of the United States.

Ib.

SEC. 22. The commander-in-chief shall from time to time direct such book as to him shall appear expedient as a guide for the corps of artillery and mounted riflemen, and shall furnish the same to the field officers and commandants of companies of such corps at the expense of the Territory.

Volunteer companies, how called into service.

SEC. 23. All mounted riflemen and dragoons as well as all other independent or volunteer corps, shall be subject to be called into the service of the United States or of this Territory, by companies, bat-

talions, regiments or brigades, by order of the commander-in-chief, or other proper officer.

ARTICLE SECOND.

*Of the organization of the Staff Department.*

SEC. 24. The commander-in-chief shall be entitled to four aids with the rank of colonel, and a military secretary with the rank of major.

Aids, &c. of com. in chief.

SEC. 25. Each major-general shall be entitled to two aids with the rank of major and each brigadier-general to one aid with the rank of captain.

Aids of major and brigadier-generals.

SEC. 26. The adjutant-general shall have the rank of brigadier general, and in his department there shall be to each division a division inspector with the rank of colonel; to each brigade, a brigade inspector, to serve also as a brigade major, with the rank of major, and to each regiment and separate battalion an adjutant with the rank of lieutenant.

Adjutant general.

Rank of inspectors.

SEC. 27. In the judge advocate's department there shall be a judge advocate with the rank of brigadier general; to each division a division judge advocate with the rank of colonel; and to each brigade a brigade judge advocate with the rank of major.

Judge advocates.

SEC. 28. In the quarter-master general's department there shall be a quarter-master general with the rank of brigadier general; to each division a division quarter-master with the rank of colonel; to each brigade a brigade quarter-master with the rank of captain; and to each regiment and separate battalion, a quarter-master with the rank of lieutenant.

Quarter-master-general and quarter masters.

SEC. 29. In the pay-master general's department there shall be a pay-master general with the rank of colonel; to each division a division pay-master with the rank of major; to each brigade a brigade pay-master with the rank of captain; and to each regiment and separate battalion, a pay-master with the rank of lieutenant.

Paymaster-general and paymasters.

SEC. 30. The commissary-general shall have the rank of brigadier general, and in his department there shall be so many military storekeepers, for the safe keeping and preserving of the arsenals, magazines, fortifications, and military stores belonging to this Territory, as he may find it necessary to appoint, not exceeding one to each arsenal.

Commissary-general.

SEC. 31. In the hospital department there shall be a surgeon-general with the rank of brigadier gen-

Surgeon-general, surgeons, &c.

eral; to each division a hospital surgeon with the rank of colonel; to each brigade a hospital surgeon with the rank of major; to each regiment a surgeon with the rank of captain; and to each regiment or separate battalion a surgeon's mate with the rank of lieutenant; but such rank shall not entitle officers to promotion in the line, nor regulate their pay or rations in the service.

Non-commissioned staff.

SEC. 32. There shall be to each regiment and separate battalion two sergeant-standard bearers, one serjeant-major, one quarter-master-sergeant, one drum-major, and one fife-major, and to each regiment and separate battalion of mounted riflemen, one trumpet-major.

Chief of staff.

SEC. 33. The chief of each staff department shall, under the direction of the commander-in chief, have command over all subordinate officers in his department, and shall from time to time issue orders and instructions for their government and practice.

Forms.

SEC. 34. Each chief of such department shall prepare and transmit, at the expense of the Territory, all blank forms of returns, precepts, warrants and proceedings necessary in his department.

## TITLE V.

### OF THE SEVERAL PARADES AND RENDEZVOUS OF THE MILITIA.

The militia shall rendezvous as follows:

Times of parade.

SEC. 1. By regiments, or separate battalions, once in each year, between the tenth day of September and the fifteenth day of October, at such time and place in their respective districts as the commanding officer of the brigade shall direct, for the purpose of inspection, review and martial exercise.

Ib.

SEC. 2. At such other times and places, either by regiments, battalions or companies, as the case may require, as shall be directed in any order of proper authority, calling into service of the United States, or of this Territory, the whole or any portion of the militia.

Ib. uniform companies.

SEC. 3. It shall be the duty of all uniform companies to meet within [their] respective districts, in addition to the general rendezvous not less than three nor more than eight days in each year, at such time and place as their respective commandants may direct, and as much oftener as a majority of all the members of their company may direct, for the purpose of drill and martial exercise.



SEC. 4. The commandant of each brigade shall give notice to the commandant of the division of the times and places of the annual inspection and review of the several regiments and separate battalions in his brigade. Notice to be given.

SEC. 5. Each commandant of division shall attend the review and inspection of the several regiments and separate battalions of at least one of the brigades in his division in each year; and he shall require the officers of the division staff, armed and equipped as the law directs, to accompany him; he shall also attend such reviews and inspections in each brigade of his division in succession. Commandant of division to attend.

SEC. 6. The commandant of each brigade shall attend, with the officers of the brigade staff, armed and equipped as the law directs, the annual inspection and review of the several regiments and separate battalions in his brigade. lb. of brigade.

SEC. 7. The commissioned and non-commissioned officers and musicians of each regiment and separate battalions, shall rendezvous within their respective districts not less than three nor more than six days successively, between the first day of June and the first day of September in each year, for the purpose of disciplining and improving in martial exercise. The day and place of rendezvous shall be prescribed by the commanding officers of the regiment or separate battalion. Officers to meet for drill.

SEC. 8. Such commandant shall report all absentees and deficiencies to the president of the proper court-martial. To report.

SEC. 9. For the purpose of warning the non-commissioned officers, musicians and privates, to any parade or place of rendezvous, required by law, the commandant of each company shall issue his warrant, under his hand, to his non-commissioned officers, or to such of them as he may deem proper, requiring them respectively to warn all persons subject to military duty within a certain district to be designated in such warrant, or all persons named in the warrant, as such commandant may elect, to appear at such parade or place of rendezvous, armed and equipped as the law directs. Warning.

SEC. 10. Each non-commissioned officer to whom such warrant shall be directed, shall warn every person heretofore enlisted, whom he shall be therein required to warn, by reading the warrant or stating the substance thereof in the hearing of such person; Warning.

or in case of his absence by leaving a notice thereof at his usual place of abode, with some person of suitable age and discretion, or affix the same on the outer door of the house in case no person can be found therein; such notice shall be signed by the non-commissioned officer making the service, and so left or affixed shall have the like effect as if the person to whom the same shall be directed had been personally warned.

Return.

SEC. 11. Such non-commissioned officer shall deliver the warrant to his commandant, with a return, in which he shall state the names of all persons by him warned, and the manner of warning them respectively, and shall make oath to the truth of such return, which oath shall be administered by the commandant, and certified by him on the warrant or return.

To whom delivered.

SEC. 12. Such commandant shall deliver the warrant and return, together with his own return of all the delinquents and delinquencies, to the president of the proper court-martial.

Made evidence.

SEC. 13. The return of such non-commissioned officer, so sworn to and certified, shall be as good evidence on the trial of any person returned as a delinquent, of the facts therein stated, as if such officer had testified to the same before the court-martial on such trial.

By commandant.

SEC. 14. Every commandant of a company shall make the like return upon honor, and with like effect, of every delinquency and neglect of duty of his non-commissioned officers, either in not attending on parade, or not executing or returning a warrant to them directed, or not obeying the orders of their commanding officer.

May warn without warrant.

SEC. 15. Any commissioned officer of a company, may, without a warrant, warn any or all the persons subject to military duty, within the district of the company, to appear at any parade or place of rendezvous; such warning may be given by him, either personally, or by affixing a notice in the same manner as if given by a non-commissioned officer, and his certificate upon honor shall be received by any court-martial as legal evidence of such warning.

Duty of in-keepers.

SEC. 16. All tavern keepers, keepers of boarding houses, persons having boarders in their families, and house-keepers upon their being thereto requested by the commandant of the company within the district

of which they reside, or by the non-commissioned officer of any such company having a warrant from such commanding officer to warn persons to attend any parade, shall give to such commanding officer or non-commissioned officer, a true account of all persons lodging or boarding with them, and of their names, if known, to the end that such persons as are liable to do military duty may be warned to rendezvous according to law.

SEC. 17. If any person of whom such account is <sup>Penalty.</sup> so demanded, shall refuse to give such account and names, or shall wilfully give a false account, he shall forfeit and pay ten dollars, to be recovered by the commandant of the regiment for the use of the regiment.

SEC. 18. For the purpose of preserving order on <sup>Time of</sup> the day of parade, the militia shall be considered to be under arms from the rising of the sun to its sitting, on the same day, and shall be exempted from arrest on civil process during the time.

SEC. 19. Every commandant of a company, in <sup>Who returned</sup> addition to putting under guard as he is hereby <sup>to court-mar-</sup> authorized to do, and the exercise of the usual military power with which he is hereby vested, shall return to the president of the proper court-martial, the names of all persons in the company who shall have discharged any fire arms on such day of parade, without the order or permission of a commissioned officer, or officer acting under such; and also the name of every non-commissioned officer, musician or private, who shall on such day refuse or neglect to obey the order of his superior officer or to perform such military duty or exercise as may be required, or depart from his colors, post or guard, or leave the ranks, without permission from his superior officer.

SEC. 20. The commanding officers of a division, <sup>Power of</sup> brigade, regiment, or separate battalion, present at <sup>commandant.</sup> any parade, may put under guard any by-stander or spectator who shall abuse, molest, or strike any one when on parade or under arms.

SEC. 21. The commanding officer of a regiment <sup>Bounds of pa-</sup> or separate battalion, shall on the day on which any <sup>rade ground.</sup> parade or rendezvous is to be held, and previous thereto, cause the bounds of the parade ground to be designated in such manner as not to obstruct the passage of travellers on any public highway.



Gamblers, &c.  
put under  
guard.

SEC. 22. If any person, during parade, shall encroach on the parade ground previously designated, or shall then and there sell, or offer to sell or give away, any spirituous liquors, without permission of the commanding officer, or shall have in his possession any gambling table or other gambling device, such persons may be put and kept under guard by such commander until the setting of the sun on the same day; and such liquor, gaming table, or other gambling device, may be abated or destroyed as a nuisance, by order of the commandant.

No parade on  
election day.

SEC. 23. No parade or rendezvous of the militia shall be ordered on any day during which a general or special election shall be held, nor within five days previous to such election, except in cases of invasion or insurrection, or of imminent danger thereof; and if any officer shall order any such parade or rendezvous, he shall forfeit and pay to the people of this Territory the sum of five hundred dollars.

Delinquents to  
be reported.

SEC. 24. Every commandant of a company shall, within twenty days after any parade, furnish the president of the proper court-martial with a return of all persons belonging to his company, who shall have been at such parade delinquent in the performance of duty, or deficient in the equipment or uniform required by law, or who by any means shall have incurred any fine or penalties under this act.

Ib.

SEC. 25. The commandant of every regiment or separate battalion, within fifteen days after the regimental or battalion parade or rendezvous of commissioned and non-commissioned officers and musicians, shall furnish the president of the proper court-martial with a return of all delinquents under the rank of a major in the staff or line.

Duty of officers  
in cases of  
invasion.

SEC. 26. In case of any invasion, or of imminent danger thereof, within the limits of any division, brigade, regiment or separate battalion, it shall be the duty of the commandant of such division, brigade, regiment or separate battalion, to order out for the defence of the Territory, the militia of any part thereof under his command.

Ib.

SEC. 27. It shall also be his duty to give immediate notice of such invasion, and of the circumstances attending the same, to his immediate commanding officer, by whom such information shall be transmitted with the utmost expedition to the commander-in-chief.

SEC. 28. The commandant of every regiment or <sup>Ib.</sup> separate battalion within the limits of which an insurrection may happen, shall immediately assemble his regiment or battalion under arms, and with the utmost expedition shall transmit information to the commandant of his brigade, and to the commander-in-chief.

SEC. 29. Every person who, while in the actual service of this Territory, shall be wounded or disabled, in opposing or suppressing any invasion or insurrection, shall be taken care of and provided for at the expense of the Territory. <sup>Persons disabled provided for.</sup>

SEC. 30. Whenever the President of the United States, or the commander-in-chief, shall order a draft for [of] the militia for public service, such draft shall be made in each company in which it is required, by lot to be determined at a company parade ordered for that purpose. <sup>Drafts, how made.</sup>

SEC. 31. Each non-commissioned officer, musician, or private, present at such parade, shall draw to make up the quota required, and each person drawn shall fill such grade in the militia drafted as he was entitled to when drawn in his own company. <sup>Ib.</sup>

SEC. 32. One of the commissioned officers shall draw for every person subject to the draft who shall refuse to draw, or be absent from the parade, and such draft shall have the like effect as if the person so refusing or absent had drawn himself. <sup>Ib.</sup>

SEC. 33. Any person so drafted may offer a substitute at or after the time of rendezvous of the drafted militia, and such substitute, if he be an able bodied man of the age of twenty-one years, and shall consent in writing to subject himself to all the duties, fines, forfeitures and punishments, to which his principal would have been subject had he personally served, shall be accepted by the commandant of the company of drafted militia to which his principal may belong. <sup>Persons may offer substitute.</sup>

SEC. 34. The commander-in-chief shall prescribe such rules, orders and regulations, relative to the distribution of arms, ammunition and military stores, to the militia when called into actual service as he may deem proper. <sup>Distribution of arms.</sup>

SEC. 35. The commandants of companies are hereby authorized to put under guard, or to commit to prison for the day, and to return to the proper court-martial, any non-commissioned officer, musi- <sup>Persons may be put under guard.</sup>

cian or private, who shall appear on parade wearing any false face, personal disguise or other unusual ludicrous article of dress, or any arms, weapons, or other implements or things not required by law, and which are calculated to interrupt the peaceable and orderly discharge of duty.

1b. SEC. 36. Any commissioned officer of division, brigade, regiment, separate battalion or company, present at any parade, is hereby authorized to put under guard, or to commit to prison for the day, any person or persons, who shall upon or near any parade ground, field, public highway, or any other place occupied by the militia under arms, by means of ludicrous disguise, dress, arms and instruments, or by any other means disturb the peaceable and orderly proceedings of those under arms; and the jailor shall receive and confine such persons in the debtors department of the jail, pursuant to the order of commitment which shall be issued and delivered to him in virtue of this or the preceding section.

Description of  
regiment.

SEC. 37. It shall be the duty of each commandant of a regiment or separate battalion, within twenty days after the annual inspection, to furnish the commandant of his brigade a local description of separate regiment or separate battalion, together with a roster of the commissioned officer of such regiment.

Statement of  
review.

SEC. 38. It shall be the duty of each brigade inspector, within thirty days after the annual review, in each year to transmit to the adjutant-general a statement of the review, and inspection of the several regiments and separate battalions in his brigade accompanied by the division and brigade staff armed and equipped as the law directs.

Duty of adju-  
tant-general.

SEC. 39. In case any general officer, or any member of his staff, shall neglect to attend such inspection and review, it shall be the duty of the adjutant-general to require such officer to render an excuse, in writing, to the commander-in-chief, for his delinquency. If the commander-in-chief shall deem such excuse insufficient, he shall order a court-martial to try the delinquency.



## TITLE VI.

## OF COURTS OF INQUIRY AND COURTS-MARTIAL.

## ARTICLE FIRST.

SECTION 1. Courts of inquiry may be instituted by the commander-in-chief, or the commanding officer of division or brigade in relation to those officers for whose trial they are authorized to appoint courts-martial, for the purpose of investigating the conduct of any officer, either by his own solicitation or on a complaint, or charge of improper conduct, degrading to the character of an officer, or for the purpose of settling rank.

SEC. 2. Such courts shall consist of not less than three nor more than five commissioned officers; and the president shall, without delay, report a statement of facts to the officer instituting such court, who may in his discretion thereupon appoint a court-martial for the trial of the officer whose conduct shall have been inquired into.

SEC. 3. Every court-martial for the trial of a major-general shall be ordered by the commander-in-chief, and shall consist of thirteen officers, any nine of whom shall constitute a quorum.

SEC. 4. Every court-martial for the trial of a brigadier-general shall be ordered by the commander-in-chief, and shall consist of nine officers, any seven of whom shall constitute a quorum.

SEC. 5. All other courts-martial, for the trial of other commissioned officers, shall consist of seven officers, any five of whom shall constitute a quorum, and shall be ordered, if for the trial of officers above the rank of captain, by the commanding officer of division, and for all other officers by the commanding officer of brigade.

SEC. 6. No officer arrested shall be brought to trial, unless a copy of the charges and specifications, certified by the officer ordering the arrest, shall be delivered to him, or left at his usual place of abode, within three days after his arrest; nor unless the officer ordering the court-martial shall have ordered the same within thirty days after receiving notice of the arrest and a copy of the charges and specifications; nor until ten days after a copy of a list of the names of the officers detailed to form the court

shall have been delivered to the officer arrested, or left at his usual place of abode.

Vacancies. SEC. 7. The officer ordering the court may at any time supply any vacancy that from any cause may happen therein.

Challenge. SEC. 8. If the officer accused shall have any cause of challenge to the president of such court, he shall, within a reasonable time after receiving a copy of the charges, and a list of the members deliver his cause of challenge, in writing, to the officer ordering such court, who shall thereupon determine as to the validity of such challenge; and if, in his opinion, the causes are sufficient, he shall appoint another president of such court.

Oath. SEC. 9. After the court shall be assembled, and after all challenges if any, are made, shall have been determined, the judge-advocate, whether commissioned or special, shall administer to each member the following oath: "You do swear that you will faithfully discharge the duties of a member of a court-martial now assembled, according to the best of your ability."

Sentence of court, secret. SEC. 10. Every judge-advocate, whether commissioned or special, and every member of a court-martial, shall keep secret the sentence of the court until the same shall be approved, or disapproved, according to law, and shall keep secret the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice.

Limits of sentence. SEC. 11. The sentence of any such court-martial shall be according to the nature and degree of the offence, and according to military usage, but shall not extend further than cashiering the officer convicted, and disqualifying him from holding any office in the militia of this Territory, and imposing a fine not exceeding one hundred dollars.

To whom to be delivered. SEC. 12. The proceedings and sentence of every such court-martial, shall, without delay, be delivered to the officer ordering the court, who shall approve or disapprove thereof within fifteen days thereafter, and shall give notice of his approval or disapproval to the president of such court martial, and to the arresting officer, and he may at his discretion, publish the sentence, as approved or disapproved in orders.

Transmitted to adjutant general. SEC. 13. He shall also transmit such proceedings and sentence, and his approval or disapproval

thereof, to the adjutant-general, to be kept in his office.

SEC. 14. The right of appeal to the commander-in-chief, as it now exists by military usage, is reserved, but no appeal shall be received unless made within twenty days after the decision appealed from is made known to the person appealing. <sup>Appeal.</sup>

## ARTICLE SECOND.

### *Of Regimental and Battalion Courts-Martial.*

SEC. 15. The commandant of each regiment and separate battalion, shall, on or before the first Monday of June, in every year, appoint a regimental or battalion court-martial, to consist of three commissioned officers, one of whom shall be a field officer or captain, and shall be appointed president thereof. <sup>Courts-martial how composed.</sup>

SEC. 16. The officer appointing the court shall fix the day on which it shall convene, and when convened, the court may adjourn from time to time, as shall become necessary for the transaction of business, but the whole session of the court, from the day on which it shall convene, shall not exceed one week. <sup>Time of convening.</sup>

SEC. 17. In case any vacancy shall happen in the court, or a new court shall be required, the officer ordering the court, or his successor in command, may fill such vacancy or order a new court. <sup>Vacancy.</sup>

SEC. 18. The president and each member of such court, before he shall enter on his duties as such, shall take the following oath:

"I do swear, that I will well and truly try and determine, according to evidence, all matters between the people of the United States, and any person or persons which shall come before a regimental (or battalion) court-martial of which I have been appointed president (or a member.)" <sup>Oath.</sup>

SEC. 19. Such oath shall be taken by the president, on or before the day on which the court shall convene, before a justice of the county in which he may reside, or a field officer of his regiment or battalion; and it shall be the duty of such justice, or field officer, to administer the oath without fee or reward. The president shall administer the oath to each of the members. <sup>Ib.</sup>

SEC. 20. The president of the court shall direct a non-commissioned officer, or other fit person or <sup>Delinquents summoned.</sup>



persons, to be by him designated, to summon all delinquents and parties accused, to appear before the court at a time and place to be by him appointed.

Return of  
summons.

SEC. 21. Such non-commissioned officer, or other person or persons so designated shall make the like return and with the like effect as commissioned and non-commissioned officers are authorized and required to make in cases of warning to a company, or regimental parade, and shall be subject to the like penalties for neglect of duty.

Jurisdiction  
of court.

SEC. 22. The court, when organized, shall have the trial of all delinquents and deficiencies in the regiments or battalions for which it shall have been called, and shall have power to impose and direct to be levied all the fines to which commissioned officers of companies, and non-commissioned officers, musicians or privates are declared to be subject in first article of the sixth title of this act.

Officers  
cashiered.

SEC. 23. No fine, imposed by a regimental or battalion court-martial on a commissioned officer, shall prevent such officer, from being tried and cashiered for neglect of duty by a court-martial, ordered by the commandant of his brigade.

Remission of  
fine.

SEC. 24. Every such court martial may mitigate or wholly remit any penalty or fine, directed to be imposed for any deficiency, in arms or equipments of any delinquent in any company of infantry, whom the court shall adjudge to be so poor as not to be able to furnish himself with such arms or equipments.

Appeal.

SEC. 25. From the sentence of any such court imposing a fine for any delinquency an appeal, if made within twenty days, shall be allowed to the officer instituting the court, or to his successor in command who may remit or mitigate such penalty or fine. In case the delinquent was not personally summoned to appear before such court, and did not appear, he shall have ten days, after personal notice of the sentence, in which to appeal from the decision of the officer instituting such court, or of his successor in command. An appeal, if made within ten days after personal notice of such decision, shall be allowed to the commanding officer of the brigade, who may remit or mitigate such penalty or fine.

## ARTICLE THIRD.

*General provisions applicable to all Courts-Martial and  
Courts of Inquiry.*

SEC. 26. The president of every court-martial and of every court of inquiry, both before and after he shall have been sworn, and also the judge advocate, if required, shall issue subpoenas for all witnesses, whose attendance at such court may, in his opinion, be necessary, in behalf of the people of the United States, and also an application for all witnesses in behalf of any officer charged or accused, or persons returned as delinquent, and may direct the commandant of any company to cause such subpoena to be served on any witness residing within his district.

Subpoenas for  
witnesses.

SEC. 27. The president of such court-martial, or court of inquiry, shall have power to administer the usual oath to witnesses, and shall have the same power to compel attending witnesses to be sworn and testify, and to preserve order, as courts of common law jurisdiction; and all sheriffs, jailors and constables are hereby required to execute any precept issued by such president for that purpose.

Oaths to  
witnesses.

SEC. 28. Every witness not appearing in obedience to such subpoena, when duly served, and not having a sufficient or reasonable excuse, shall forfeit to the people of this Territory a sum not less than five or more than fifty dollars; and the president of such court shall from time to time report to the district attorney such offence, the name of all such delinquent witnesses, together with the names and places of residence of the persons serving such subpoena, the better to enable him to prosecute for such forfeiture.

Penalty for  
non-attend-  
ance.

SEC. 29. Any person or persons who shall be guilty of disorderly, contemptuous, or insolent behavior in, or use any insulting or contemptuous, or indecorous language, or expression to, or before any court-martial, or court of inquiry, or any member of either of such courts in open court, may be committed to the jail of the county in which such court shall sit, by warrant under the hand and seal of the president of such court.

Contempts,  
how punished.

SEC. 30. Such warrant shall be directed to the sheriff, or any or either of the constables, or marshals of any such county, or any officer attending the court, and shall command the officer to whom it is

Ib.

directed to take the body of such person and to commit him to the jail of the county thereof, to remain without bail or mainprise in close confinement for a time to be limited, not exceeding three days, and until the officer's fees for committing, and the jailor's fees be paid.

*Ib.* SEC. 31. Such sheriff shall receive the body of any person who shall be brought to him by virtue of such warrant, and keep him until the expiration of the time mentioned in the warrant, and until the officer's and jailor's fees shall be paid, or until the offender shall be discharged by due course of law.

Senior officer  
when to pre-  
side.

SEC. 32. In the absence of the president of any court-martial, or court of inquiry, the senior officer present may preside, with all the powers of the president, and all the members of such courts shall, when on duty, be in full uniform.

Marshals.

SEC. 33. The president of any court-martial, or court of inquiry, may appoint by warrant under his hand and seal, one or more marshals.

Their powers.

SEC. 34. The marshal or marshals so appointed, may not only perform the usual duties of such marshals, but may also execute all process lawfully issued by such president, and perform all acts and duties in this act imposed on and authorized to be performed by any sheriff, marshal or constable.

Evidence on  
appeal.

SEC. 35. Whenever the sentence of any court-martial shall be appealed from, the officer hearing the appeal shall require the president of the court-martial to furnish him forthwith with a statement of the case, and of the evidence touching the same, which statement and evidence shall in case of an appeal to the commanding officer of the brigade, be forthwith, on notice of such appeal, transmitted to him.

*Ib.* SEC. 36. Such statement being furnished, the officer hearing the appeal may hear such further evidence by affidavit or otherwise, as the nature of the case may require, and for that purpose he shall have the power to administer the usual oaths to witnesses produced before him, except in cases where trials may have been had upon charges preferred.

Evidence on  
appeal.

SEC. 37. The two last sections shall extend to appeals made from the order of an officer approving the sentence of a court-martial.



## TITLE VII.

## OF PENALTIES, FINES, FEES AND EXPENDITURES.

## ARTICLE FIRST.

SECTION 1. Every commissioned officer, for disobedience of orders, neglect of duty, unofficer-like conduct, or disrespect to a superior officer, or for neglecting to furnish himself with a uniform and equipments, within twelve months after receiving his commission, shall be arrested and brought to trial before a court-martial, who may, on conviction, sentence him to be cashiered, incapacitated from holding any military commission, and fined to an amount not exceeding one hundred dollars, or may sentence him to any part of such penalties, or to be reprimanded in their discretion. Penalty on officers.

SEC. 2. Every commissioned officer refusing to pay over moneys in his hands as is directed in the second article of this title, shall be liable to be tried and cashiered, or otherwise punished therefor by a court-martial. ib.

SEC 3. Every commissioned officer of a company, and every non-commissioned officer, musician and private, shall, on due conviction, be subject for the following offences to the fines thereto annexed. Officers and non-com. officers liable to fines.

1st. Every non-commissioned officer, musician and private for non-appearance when duly warned or summoned at a company parade, a fine of one dollar; at a regimental or battalion parade, or rendezvous of officers, not less than two nor more than four dollars; and at a place of rendezvous when called into actual service, a sum not exceeding fifty dollars. Non-attendance.

2d. Every commissioned officer under the rank of colonel, for non-attendance at any parade, and every such officer, non-commissioned officer, musician, or private, for neglecting, or refusing to obey the orders of his superior officers on any day of parade, or to perform such military duty or exercise as may be required, or departing from his colors, post or guard, or leaving his place or rank without permission, a fine not more than fifteen nor less than five dollars. Desertion, &c.

3d. For neglecting or refusing to obey any order, or warrant, to him lawfully given or directed, or to make a proper return thereof, if such return be necessary, or making a false return or neglecting or Disobedience.

refusing when required to summon a delinquent before a court-martial, or duly to return such summons, a fine not more than twenty five nor less than five dollars.

Ib. 4th. Every commissioned officer for neglecting or refusing to act as such, when duly appointed, shall be sentenced to pay a fine not exceeding fifty dollars, and not less than five dollars. Every non-commissioned officer for neglecting or refusing to act as such when duly appointed, shall be sentenced to pay a fine not exceeding twenty dollars nor less than five dollars; and every non-commissioned officer for neglect of duty, or unofficer-like conduct, in addition to other penalties, may be reduced to the ranks by the commandant of the company with the approbation of the commandant of the regiment or battalion.

Unofficer-like  
conduct.

Discharging  
arms.

5th. Every non-commissioned officer, musician or private, who shall unlawfully discharge any fire-arms on the days of company or regimental muster, shall be sentenced to pay a fine of one dollar.

Want of equip-  
ments.

6th. Every non-commissioned officer and private appearing without being armed and equipped as the law directs, at any parade or rendezvous, shall be sentenced to pay the following fines, namely: for want of sufficient sword and belt, if belonging to the artillery, and for want of a sufficient musket with a steel rod, or rifle, if belonging to a company of infantry, one dollar; for want of a sufficient bayonet and belt, twenty-five cents; for want of a pouch with a box therein sufficient to contain twenty-four cartridges, suited to the bore of his musket, twenty-five cents; for want of two spare flints and knapsack, twenty-four cartridges, shot-pouch, powder-horn, twenty balls, and a quarter of a pound of powder, twenty-five cents each; but the whole number of spare flints, of cartridges and of balls shall be considered each only one deficiency.

Ib. 7th. The penalty imposed for want of bayonet, belt and cartridge-box, shall not apply to any non-commissioned officer or private of a rifle company, or to any private of any other company having a powder-horn and pouch.

Ib. 8th. Each non-commissioned officer and private in the mounted rifle corps shall be sentenced to pay as fine, for want of sufficient horse two dollars; for want of a sufficient rifle and sling, one dollar; for want of sufficient pistol and belt, one dollar; for

want of a sufficient saddle, bridle, breast-plate, valise, or cartridge-box, twenty-five cents each.

9th. The court-martial by which any delinquent is tried, may excuse such delinquent if it shall be made satisfactorily to appear to the court that he has a reasonable excuse for such delinquency. Excuse.

10th. Any commissioned officer who shall retain a commission received by him for any subaltern, for more than thirty days without giving notice by mail or otherwise, to the person entitled to it, shall be liable to pay a fine not exceeding twenty-five dollars, to be imposed, in case of a commissioned officer of a company, by a regimental or battalion court martial, on the complaint of any officer interested, and in case of a general or field officer, by a general court-martial, which shall be ordered on the like complaint. In addition to the penalties imposed by any of the provisions of this act, every commissioned and non commissioned officer, musician and private of a company, who shall appear on parade wearing any personal disguise, or other unusual or ludicrous article of dress, or any arms, weapons, or other implements not required by law, and calculated to excite ridicule, or to intercept the orderly and peaceable discharge of duty by those under arms, shall be liable to a fine of not more than twenty five nor less than five dollars, to be imposed by the proper court martial. Penalty for retaining commission.

SEC. 4. No action shall be maintained against any member of a court-martial, or officer, or agent acting under its authority, on account of the imposition of a fine, or the execution of a sentence on a person not liable to military duty, if such person shall have been returned as a delinquent, and duly summoned, and shall have neglected to show his exemption before such court. Disguise, &c.

## ARTICLE SECOND.

*Of the collection and application of penalties, fines and commutation money.*

SECTION I. All fines that shall be imposed by any regimental or battalion court-martial shall be reported by the president of the court to the officer ordering it, or to his successor in command, within twenty days after such fines shall have been imposed; and the officer ordering the court, or his successor Action against member of court-martial.

Fines to be reported.



in command, shall immediately after the time shall have elapsed in which appeals are allowed from his decision to the commandant of the brigade, give written notice to the president of the court of the penalties and fines which shall have been by him remitted or mitigated, and of the appeals which shall have been made from his decision to the commandant of the brigade.

How collected.

SEC. 2. For the purpose of collecting fines the president of the court shall, within ten days after the receipt of the written notice aforesaid, make a list of all persons of whom fines are to be collected, designating the company to which they respectively belong, the sums imposed as fines on each person, and the person who shall have appealed to the commandant of the brigade; and shall draw his warrant under his hand and seal directed to any constable of any city or county, as the case may be, thereby commanding him to levy such fine or fines, together with his costs, of the goods and chattels of such delinquents; and if any such delinquent shall be under age, and live with his father or mother, master or mistress, then to levy such fine or fines, and the costs of the goods and chattels of such father or mother, master or mistress, as the case may be; and in case the goods and chattels of any delinquent over the age of twenty-one years cannot be found wherewith to satisfy the same, then to take the body of such delinquent and convey him to the jail of the city or county wherein he shall reside.

SEC. 3. It shall be the duty of the jailor to whom such delinquent shall be delivered, to keep him closely confined without bail or mainprise, for four days, for any fine not exceeding two dollars, and one additional day for every dollar above that sum, unless the fine, together with the costs and jailor's fees shall be sooner paid.

Fines, how collected.

SEC. 4. Every such constable to whom such list and warrant shall be directed and delivered, may execute the same by levying and collecting the fines or by taking the body of the delinquent, in any city, town or county in this Territory, and shall make return thereof within forty days from the receipt of such warrant to the president who issued the same; the execution of said warrant shall be suspended as to those persons who shall have appealed to the commandant of the brigade until the further order of such commandant.

SEC. 5. If the constable shall not be able to collect the fines or take the bodies within the forty days aforesaid, then the president issuing the warrant may at any time thereafter, within two years from the time of imposing the fines, issue a new warrant from time to time, as may be necessary. Fines, how collected.

SEC. 6. Any warrant for the collection of fines, issued by virtue of this act, shall and may be renewed in the same manner that executions issued from justices' courts may by law be renewed. Ib.

SEC. 7. The moneys arising from fines imposed by any regimental or battalion court-martial, shall be paid by the officers collecting the same to the president of the court. The sureties which shall hereafter be given by any constable elect, shall be deemed liable to pay to the president of the court all such sums of money as the said constable may become liable to pay on account of any warrant which shall be delivered to him for collection. To whom paid.

SEC. 8. Such president, after deducting and paying the costs and fees properly chargeable on the fines so recovered by him, shall pay the surplus of such fines to the officer by whom the court shall have been ordered. Surplus.

SEC. 9. Every such president shall from time to time, as often as he shall be required, furnish to the officer ordering the court or to his successor in command, a correct statement of all moneys received by him on account of fines, and of all fines imposed; and it shall be the duty of the officer instituting every such court, or his successor in command, to make such request within thirty days after any such court shall be held. Money to be accounted for.

SEC. 10. Whoever shall wilfully neglect or refuse to comply with such request for the space of ten days, shall be liable to be tried and cashiered therefor. Penalty.

SEC. 11. It shall be the duty of the respective presidents of courts-martial to prosecute in their own names any marshal or constable who shall incur any penalty for neglect in the execution or return of any warrant, or in paying over moneys collected by him. Marshals to be prosecuted.

SEC. 12. The moneys arising from such penalties when collected, shall be paid over and applied as other moneys payable to the commandants of regiments and separate battalions are directed to be paid over and applied in this article. Money how applied.

Fines how collected.

SEC. 13. All penalties and fines imposed by courts-martial upon commissioned officers, shall be collected by the attorney-general, or by the district attorneys of the counties in which the persons fined may reside, and be paid by the officer collecting the same into the treasury.

Fines how expended.

SEC. 14. All moneys received by each commandant of a regiment or separate battalion, shall be expended under the direction of the field officers and commandants of companies in such regiment or battalion, and shall be applied in the first place to the purchase and repair of colors, and instruments of music and the residue in disciplining and improving such regiment or battalion in such manner as a majority of the field officers and commandants of companies shall direct.

Accounted for.

SEC. 15. It shall be the duty of each commandant of a regiment or separate battalion to keep an accurate account of all moneys by him received and expended for the use of the regiment or battalion, and to exhibit such account on request to any commissioned officer of his regiment or battalion; and to deliver it over to his successor in office.

Accounts to be examined, &c.

SEC. 16. Each commandant of brigade shall examine and adjust the accounts of the commandants of regiments and separate battalions in his brigade, on or before the first day of May in each year.

Proceedings in case of neglect.

SEC. 17. If the commandants of any regiment or separate battalion, shall neglect or refuse to pay moneys belonging to the regiment or battalion, as the field officers and commandants of companies shall have directed, the commandant of brigade shall sue in his own name for such moneys and apply the same when recovered to the use of the regiment or battalion.

- 1b. SEC. 18. It shall be the duty of the several officers to whom moneys are in this article directed to be paid, in case of the refusal or neglect of the person directed to account for and pay over such moneys, to sue for the same in their own names, but to the uses before specified, in an action for money had and received.

Expenses of suits.

SEC. 19. Every officer so using may retain out of the money he shall collect, all necessary and reasonable expenses he may incur in such suits.



SEC. 20. It shall be no objection to any person called as a witness, or to serve as a juror in any action authorized in this article, that he is a member of the regiment or battalion that may be affected by such action.

Jurors and witnesses.

### ARTICLE THIRD.

*Of the compensation and fees of the members of courts-martial, and other officers.*

SEC. 21. There shall be allowed and paid out of the treasury:

Compensation.

1st. To each division and brigade judge-advocate, and to each president and member of any court of inquiry, or court-martial for the trial of officers, two dollars for each day actually employed on duty; and the like compensation to any marshal or marshals appointed by any such court, for every day employed in the execution of the duties required of him:

Judge-advocate, &c.

2nd. To each brigade-inspector, for inspecting a regiment or separate battalion, eight dollars; for attending each parade of commissioned and non-commissioned officers and musicians, which he is required by law to attend, eight dollars; for making out and transmitting to the adjutant-general an inspection return of his brigade, eight dollars:

Brigade-inspector.

3rd. To each military store-keeper, such sum, not exceeding twenty dollars, as the commander-in-chief shall think proper to allow.

Military store-keepers.

SEC. 22. No payment shall be made to any brigade-inspector until he shall have furnished evidence to the auditor of his having made out and transmitted the inspection return of his brigade to the adjutant-general, and a copy thereof to his division-inspector; nor shall any payment be made to a division-inspector until he shall have furnished like evidence of his having made out and transmitted his division return to the adjutant-general, and the commandant of his division.

Inspector when paid.

SEC. 23. There shall be allowed and paid out of the fines imposed by each regimental or battalion court-martial, and received by the president thereof:

Compensation of members of courts-martial

1st. To the president, one dollar and fifty cents for each day he may be actually employed in holding the court or engaged in the business thereof.

2nd. To each member of the court one dollar and fifty cents for each day he may sit as such

member, or may be engaged in travelling to and from the court, allowing twenty miles for a day's travel:

3rd. To the non-commissioned officer or other person who shall have summoned delinquents to appear before the court, one dollar and fifty cents for each day he may have been so necessarily employed, and the same sum for each day of his attendance on the court.

No other charges.

SEC. 24. No other sums or expenses whatever shall be charged on the fines received by the president of any such court, but the president, members and officers shall defray the expenses out of the fees allowed to them respectively.

Fees of constables.

SEC. 25. Each constable to whom a warrant for the collection of fines may be directed, shall be entitled to the same fees, and be subject to the same penalties for any neglect, as are allowed and provided for on executions issued out of justices' courts.

Of sheriffs.

SEC. 26. For all other service and commitments under this act, the sheriff, jailor and constables executing the same, shall be entitled to the like fees as for similar services in other cases.

Accounts audited.

SEC. 27. The accounts of all persons who, under this article, are entitled to be paid out of the treasury, shall be audited by the auditor; and of all persons who are to be paid out of the fines imposed by a regimental or battalion court-martial, by the officer ordering the court.

Duty of auditor.

SEC. 28. The auditor, on the application of the governor, may draw his warrant on the treasurer for such sum of money as may be requisite in the execution of the provisions of this act, and may require the chief of each staff department to account quarterly for all moneys received by him for purposes connected with his department.

## TITLE VIII.

OF THE DUTIES OF CERTAIN STAFF OFFICERS, AND OF VARIOUS MATTERS CONNECTED WITH THEIR RESPECTIVE DEPARTMENTS.

### ARTICLE FIRST.

#### *Of the Adjutant-General.*

To keep roster. SECTION 1. The adjutant-general shall keep a roster of all the officers of the militia of this Territory, containing the corps to which they belong, the

division, brigade, and regiment of such corps, and the places of their residence, as accurately as can be ascertained, which roster shall be revised and corrected every year.

SEC. 2. He shall also enter in a book to be kept for that purpose, a local description of the several regiments, brigades, and divisions of infantry, artillery and riflemen.

SEC. 3. It shall be the duty of the commandants of divisions and brigades to furnish the adjutant-general with a roster of their officers, containing the facts requisite to enable him to comply with the provisions of this article, and also a description of the regiments and brigades.

SEC. 4. The books required by the adjutant-general to comply with this article shall be furnished him at the expense of this Territory, and shall go to his successor in office.

SEC. 5. It shall be the duty of the brigade inspectors to transmit a copy of the inspection return annually to the adjutant-general and duplicate of the same to the division-inspector, within thirty days after the inspection shall be made.

SEC. 6. The adjutant-general shall procure, at the expense of the Territory, a seal with some proper device thereon, which shall be the seal of his office, and shall from time to time be delivered to his successor in office; and all copies of records or papers in his office duly certified and authenticated under the seal, shall be evidence in all cases in like manner as if the originals were procured.

SEC. 7. The adjutant-general shall receive for his services, one hundred and fifty dollars per annum.

## ARTICLE SECOND.

### *Of the Commissary-General.*

SEC. 8. The commissary-general shall keep in good repair the arsenals and magazines of the Territory, and attend to the due preservation and safe keeping, cleaning and repairing of the ordnance, arms, accoutrements, ammunition, munitions of war and implements of every description, the property of this Territory; and he shall at all times have the control and disposition of the same for that purpose.

SEC. 9. He shall dispose, to the best advantage, of all damaged powder, and of all arms, ammuni-



tion, accoutrements, tools, implements and warlike stores of every description whatsoever, that shall be deemed unsuitable for the use of the Territory.

**Ib.** SEC. 10. He shall from time to time render a just and true account of all sales made by him, with all convenient speed, to the governor, and shall pay the proceeds of such sales into the treasury.

To furnish colors, &c.

SEC. 11. Whenever the commanding officer of a brigade shall certify that a stand of colors, or any drums, fifes or bugles, are necessary for any battalion in his brigade, the commissary-general, with the approbation of the commander-in-chief, shall furnish such battalion with a stand of colors, and a sufficiency of drums, fifes and bugles, at the expense of the Territory; but no such drums, fifes or bugles shall be furnished to any brigade at an expense greater than the sum that shall have been theretofore actually paid into the treasury for fines in such brigade.

Powder and balls.

SEC. 12. The commissary-general shall issue the general allowance of powder and balls to artillery companies for practice, and the several commanders of artillery companies shall annually report to the commissary-general the situation and state of the pieces of ordnance, arms, implements and accoutrements, the property of the Territory entrusted to their charge, respectively.

Annual report.

SEC. 13. The commissary-general shall report annually to the commander-in-chief, whose duty it shall be to transmit the same to the legislature, a true and particular statement, showing the actual situation and disposition of all the ordnance, arms, ammunition and other munitions of war, property and things, which in anywise appertain to, or respect the department confided to his keeping.

Account of expenses.

SEC. 14. He shall keep a just and true account of all the expenses necessarily incurred in and about his department; and once at least in every six months, deliver the same to the auditor, who shall thereupon examine and audit the same, and shall draw his warrant on the treasurer for such sum as he shall audit and certify to be due.

SEC. 15. The organization of the militia into divisions, brigades, regiments and companies, under the act to organize, discipline and govern the militia, approved January 4, 1838, shall remain unchanged, except by order of the commander-in-chief, or in accordance with the provisions of this act.

SEC. 16. This act shall take effect from and after its passage, and all laws contravening the same are hereby repealed. Act to take effect.

APPROVED, July 31, 1840.

[Chap. 33.]

AN ACT to provide for the expression of the opinion of the people of the Territory of Iowa as to taking preparatory steps for their admission into the Union.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa, That* for the purpose of obtaining the wishes of the people of the Territory of Iowa, as to preparatory steps for admission into the Union as a State, a poll shall be opened at each electoral precinct in this Territory at the time of holding the next general election for Delegate to Congress, members of the Council, and House of Representatives, &c. To obtain expression of the people. State government. Polls to be opened.

SEC. 2. That it shall be the duty of the judges of election at every precinct in this Territory, at the time in the first section provided, to receive the ballots of all persons authorized by the laws to vote for Delegate to Congress, and safely deposit the same in a separate box for that purpose. Duty of judges.

SEC. 3. That those voters who wish to call a convention to frame a constitution for their future government, will say on their ballot "convention," and those opposed to taking any preparatory steps will say "no convention." Form of ticket.

SEC. 4. That immediately after the polls are closed, it shall be the duty of the judges aforesaid to open and examine the ballots given as aforesaid, and upon a separate piece of paper set down truly and distinctly the number of votes given for and against the convention, and certify the same as judges of election for the precinct and county where the same are given. Judges to open and examine ballots.

SEC. 5. That it shall be the duty of the judges of election aforesaid to carefully seal up said list of votes, certified as aforesaid, and safely send the same, with the returns of the general election, to the clerk of the county commissioners court of the proper county endorsed, "returns for and against convention." Judges to certify and return votes to clerk of county commissioners.

SEC. 6. That it shall be the duty of said clerk, by whom said returns shall be received, within five days Duty of clerk.

Secretary of Territory to open and count returns in presence of the Governor.

Governor to issue proclamation.

Time of opening returns.

after their reception, (without breaking the seals,) to transmit them safely to the Secretary of the Territory of Iowa, who, in the presence of the Governor, shall break the seals of said returns, and examine and count the same, and then carefully file them in his office, and the Governor shall issue his proclamation declaring the number of votes given for and against the convention.

SEC. 7. The opening and examination of the said returns shall take place on the first Monday of November, in the year of our Lord eighteen hundred and forty.

APPROVED, July 31, 1840.

[Chap. 34.]

AN ACT to grant certain lots of land in Iowa City, for Church and Literary purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That in consideration of the conditions hereinafter provided, that any religious denomination of Christians now known as such in the United States, shall be entitled to one half of any lot of land contained in either of the blocks numbered thirteen, fifty-one, sixty-six or sixty-seven, of the town plat of Iowa city, and designated as church reserves, each of said reserves being divided by a line north and south, or parallel with the eastern and western boundary of said town plat.

Lots granted for churches.

Denominations making application.

To enter into bonds.

Commissioner to give certificate.

SEC. 2. That in case any denomination of christians, included in the first section of this act, shall make application to the acting commissioner of public buildings at Iowa city for either of the lots or parcels of land designated in the said first section, and shall enter into good and sufficient bonds, to be approved by the acting commissioner and filed in the office of the Secretary of the Territory, conditioned that they will erect and finish on said lot a meeting house or place of public worship within three years from the passage of this act, the aggregate cost of which, when finished, shall not be less than one thousand dollars, and upon the fulfilment of the conditions of said bond, then the said commissioner shall give to said denomination, or their authorized agent or agents, an official certificate of their claim to said lot of ground, and on the presen-



tation of said certificate to the Secretary of the Territory it shall be the duty of said Secretary to file the same in his office and make out and deliver to said authorized agent or agents a deed of conveyance of the premises described in said certificate, in accordance with the rules and discipline of said denomination, which deed shall be executed as other deeds of conveyance to lots sold in said city and shall be of equal force and validity; *Provided*, That the deed of conveyance from the Secretary of the Territory shall contain a clause requiring that the lot so donated shall be occupied and used for religious and literary purposes alone, according to the discipline and regulations of the respective denominations: *And provided further*, That any denomination of christians included in the first section of this act, who shall first comply with the conditions herein contained shall be entitled to the choice of said lots.

Secretary to  
make deed of  
conveyance.

Proviso.

Proviso.

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

APPROVED, July 31, 1840.

[Chap. 35.]

AN ACT to prevent the exercise of foreign jurisdiction within the limits of the Territory of Iowa.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That if any person shall exercise, or attempt to exercise, any official functions, or shall officiate in any office or situation within any part of the present jurisdiction of this Territory, or within the limits of any of the counties therein as at this time organized, by virtue of any commission or authority not derived from this Territory or under the laws of this Territory, or under the government of the United States, every person so offending shall, for every such offence, on conviction thereof before any court of record, be punished by a fine not exceeding one thousand dollars, or by imprisonment at hard labor not exceeding five years, or both at the discretion of the court.

Exercise of  
foreign juris-  
diction how  
punished.

SEC. 2. That if any person residing within the limits of this Territory shall accept of any office or trust from any state or authority other than the government of the United States or the Territory of Iowa, every person so offending shall be fined not exceeding one thousand dollars or imprisoned five

Accepting of-  
fice from any  
authority oth-  
er than Iowa  
or U. S.—how  
punished.

years, at the discretion of the court before which any conviction may be had. This act to take effect and be in force from and after its passage.

APPROVED, July 31, 1840.

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[Chap. 36.]

AN ACT to authorize the clerks of the District Courts of the Territory of Iowa to appoint deputies.

Power to appoint deputies.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the clerks of the several district courts in this Territory shall have power to appoint deputies to discharge the duties of their office.

Clerk liable for acts of deputy.

SEC. 2. That every clerk appointing a deputy under the provisions of this act shall be liable for all the official acts of said deputy clerk. This act to take effect from and after its passage.

APPROVED, July 31, 1840.

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[Chap. 37.]

AN ACT to authorize the Secretary of the Territory to pay certain claims therein contained.

Money appropriated.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the Secretary of the Territory be, and he is hereby authorized to pay out of any funds in the treasury, which may not be appropriated to defray the expenses of the present session of the legislative assembly, the following sums.

To whom appropriated.

SEC. 2. To Levi Hager the sum of one hundred and twenty four dollars and fifty cents. To the Secretary of the Territory, for actual expenses incurred by him in drawing the draft for arrearages of last session, to be paid out of said draft, forty dollars. To Samuel R. Murray, for services rendered after the adjournment of the House of Representatives at the last session, by order of said House, twenty dollars. To John N. Hetzel, for services rendered after the adjournment of the Council, by order of the Council, thirty dollars. To Morgan Reno, the sum of twenty dollars, for his services in assisting the enrolling clerk of the Council at last session. To William J. A. Bradford for eight days, to John Garrigus for three days, to Morgan Reno one day, to John B. Russell for three days services at the last

session of the legislature, four dollars per day each. To A. L. McCrea and J. N. Hetzel, five dollars each for assisting in engrossing the militia act. To Anthony W. Carpenter the sum of one hundred and twenty-four dollars and fifty cents. To Morgan Reno, librarian, for incidental expenses of the territorial library, the sum of twenty-four dollars and ninety cents. To Joseph T. Fales, thirty-six dollars, for six days services after the adjournment of the House of Representatives at the last session by order of the House, and for transcribing, indexing and superintending the printing of the journals of the House of the last session 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. To B. F. Wallace, for transcribing, indexing and superintending the printing of the journal of the Council of the last session, the sum of two hundred dollars, 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.

SEC. 3. To the editors of the Iowa Sun, Iowa<sup>th</sup> News, Iowa Territorial Gazette and Hawkeye and Iowa Patriot, seventy five dollars each, for publishing the laws of the last session in their respective papers.

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

APPROVED, August 1, 1840.

[Chap. 38.]

AN ACT to provide for the compensation of the Printers, Members, and Officers of the Extra Session of the Legislative Assembly, and for other purposes.

SECTION I. *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 money in the hands of the Secretary of the Territory for defraying the expenses of the extra session, to wit: Money appropriated.

SEC. 2. For the pay and milage of the members of the House of Representatives the sum of two thousand one hundred and seventy-two dollars and twenty-five cents. Pay of members of H. of R.

SEC. 3. For the pay of the officers of the House of Representatives five hundred and eighty dollars. Pay of officers of H. of R.



- Members and President of Council. SEC. 4. For pay and mileage of the members of the Council and President eleven hundred and seven dollars and thirty cents.
- Officers of Council. SEC. 5. For the pay of the officers of the Council, five hundred and eighty dollars.
- J. G. Edwards, for printing. SEC. 6. To James G. Edwards, for furnishing newspapers, the sum of one hundred and fifty dollars; for furnishing daily journal, bills and reports for Council, five hundred and eighty-three dollars.
- Levi Hagar, for fixing house. SEC. 7. To Levi Hagar for fixing the House for the Legislative Assembly, and removing furniture, the sum of thirty dollars.
- Trustees of methodist church, for rent. SEC. 8. To the trustees of the methodist church, for rent of the same during the present session, one hundred dollars.
- Enos Lowe, for postage. SEC. 9. To Enos Lowe, postmaster, for postage for letters, papers and documents, during the present session, one hundred and four dollars and eighty-five cents.
- J. H. McKenny, for printing. SEC. 10. To John H. McKenny, for furnishing newspapers, the sum of one hundred and fifty dollars; for printing bills, memorials, resolutions, one hundred and ninety dollars; for printing journal of the House of Representatives three hundred and ninety-nine dollars and twenty-five cents; for printing five hundred messages of Governor, thirty dollars.
- Secretary of Territory for stationery, &c. SEC. 11. To the Secretary of the Territory, to pay for stationery, and other articles used by the present legislature, as per bills rendered, one hundred dollars. To the Secretary of the Territory, for distributing the laws of the present session, one hundred and fifty dollars.
- For distributing laws. SEC. 12. To Edward Johnston, as Speaker of the House, the sum of sixty dollars.
- E. Johnston as Speaker of House. SEC. 13. To Jesse Williams, for maps for the Council, thirty two dollars and fifty cents.
- Jesse Williams for maps. SEC. 14. To Francis Gehon, Marshal, for services in making returns of census to the legislature at this session, two hundred and fifty dollars.
- Francis Gehon for making returns of census. SEC. 15. To William W. Wayman, for services in taking census of Clayton county, one hundred dollars.
- Wm. Wayman for taking census of Clayton county. SEC. 16. To Secretary of the Territory, for supervising the printing of the laws passed at the present session, seventy-five dollars.
- Secretary supervising laws

SEC. 17. To Christian Berger, twenty-five dollars for sawing fourteen cords of wood, and furnishing three cords ash wood for Territorial Library.

C. Berger, for furnishing wood, &c.

APPROVED, August 1, 1840.

[Chap. 39.]

AN ACT supplementary to an act to amend an act to provide for the appointment of Justices of the Peace, &c. approved January fourteenth, eighteen hundred and forty.

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 several clerks of the boards of county commissioners within the Territory to furnish one of the judges of election in each precinct within their respective counties two additional poll books for conducting the election for justice of the peace previous to the time of holding elections under the fourth section of the act to which this is supplementary.

Duty of clerk of board of county commissioners.

SEC. 2. That it shall be the duty of the judges of elections in each precinct to provide a separate box in which they shall deposite the votes polled for justice of the peace, and immediately after they shall have completed the canvass of votes cast in the general election, they shall proceed in like manner to canvass the votes cast for justices of the peace, and said election shall be conducted, and returns made, according to existing laws on the subject.

Duty of judges of election.

SEC. 3. That the persons duly elected and qualified agreeably to the provisions of this act, and the act to which this is a supplement, shall hold their offices two years and until their successors are chosen and qualified.

SEC. 4. That the precinct in which Mount Pleasant in Henry county is situated be allowed to elect three justices for said precinct.

Mount Pleasant precinct to elect three justices of peace.

That so much of the act to which this is a supplement as comes within the perview of this act is hereby repealed.

Part of act repealed.

This act to take effect and be in force from and after its passage,

APPROVED, August 1, 1840.

## [Chap. 40.]

AN ACT supplemental to "An act to establish the Seat of Justice of Scott county," approved July, 1840.

**Time of election.** SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the election for county seat, in first section mentioned, of said act, shall take place on the fourth Monday of August next, and that the qualified electors of said county shall vote at said election for Davenport or Rockingham, or for the northwest fractional quarter of section number thirty, township number seventy-eight, north, of range four, east of the fifth principal meridian.

**Places to be voted for.**

**Qualification of electors.**

SEC. 2. That to constitute a qualified elector at any election in said county for county seat, he shall be a citizen of the United States, twenty-one years of age, and shall have resided in said county sixty days next preceding said election.

**Section amended.**

SEC. 3. That the fifth section of said act shall be so amended as to require the judge of election, when examining the returns in presence of the clerk of the district court, on being satisfied that one of the three places mentioned has a majority of legal votes over the other two places, to declare said place the seat of justice of Scott county.

**No one place having a majority of votes, another election to be had.**

SEC. 4. That if said judges shall declare that no one place has a majority of legal votes over the other two, then they shall require said clerk to give proper notice that another election will be held on the third Monday of September next, at which election the voters of said county, as qualified in the second section of this act, shall vote for one or the other of the two places mentioned, which, at said first election, shall have received the highest number of votes. Said election shall be conducted, returns made and examined, &c. as at the first election.

**How conducted.**

**How to be construed.**

SEC. 5. This act, and the one to which this is a supplement, shall be so construed as to carry out the design of the legislature to have said county seat located fairly, and to punish all unlawful conduct.

SEC. 6. This act to take effect and be in force from and after the fourth day of August, 1840; and so much of the act to which this is a supplement as contravenes this act is hereby repealed.

APPROVED, August 1, 1840.



# JOINT RESOLUTIONS.

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[No. 1.]

JOINT RESOLUTION, authorizing the Acting Commissioner of Public Buildings to improve Iowa Avenue in Iowa City.

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That the Acting Commissioner of Public Building at Iowa city is hereby authorized to expend any sum not exceeding three hundred dollars, of the public funds arising from the sale of lots in said city, in improving Iowa Avenue so as to render the same safe and convenient for carriages: *Provided,* That said improvement be made before the next sale of lots.

APPROVED, July 28, 1840.

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[No. 2.]

JOINT RESOLUTIONS providing for the printing of the Laws.

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That John H. McKenny be the printer of the laws of the present session, and that he enter into bonds immediately with the Governor in the sum of five thousand dollars, with sureties to be approved of by the Governor, conditioned that the said McKenny 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 at the present session by the Legislative Assembly, with an index thereto, and deliver said copies to the Secretary of the Territory within sixty days next after the adjournment of the present session.

J. H. McKenny  
made printer.

To give bond.

Conditions.

*Resolved, further,* That said Secretary is hereby required to pay said printer for doing said work, the like prices allowed for similar work by Congress,

Compensation.

Secretary to  
distribute  
laws.

and that he distribute the laws in like manner as the laws of the last session were required to be distributed.

Secretary to  
furnish print-  
er with copies,  
and prepare  
index.

*Resolved further*, That the Secretary of the Territory is hereby required to prepare for publication and to supervise the printing of the laws of the present session of the Legislative Assembly, and make an index thereto, and that he be allowed for said service the sum of seventy-five dollars; and that he furnish the printer with copies thereof as soon as practicable in the order in which they are approved by the Governor or became laws: *Provided*, That the joint resolutions be printed in their order at the end of the acts.

PRESENTED, July 29, 1840.

[No. 3.]

JOINT RESOLUTION, to compensate Dr. James Davis for services rendered as commissioner, &c.

WHEREAS, Dr. James Davis was, on the first day of September, 1838, by his Excellency Gov. Lucas, appointed commissioner on the part of the Territory of Iowa, in conformity with an act of Congress, approved June 18, 1838, entitled "an act to authorize the President of the United States to cause the southern boundary line of the Territory of Iowa to be ascertained and marked;" and

WHEREAS, he proceeded immediately, in company with Major A. M. Lee, commissioner on the part of the United States, to the performance of the duties of said appointment, and that on the 15th of January, 1839, he made a satisfactory report of the proceedings of the commissioners to his Excellency Governor Lucas of the Territory of Iowa; and

WHEREAS, the said James Davis is entitled to pay for one hundred and thirty-seven days services as commissioner, by virtue of the aforesaid appointment; therefore

Secretary to  
include in  
estimate.

*Be it resolved by the Council and House of Representatives of the Territory of Iowa*, That the Secretary of the Territory be instructed to include and recommend in his estimates for the expenses of the Legislative Assembly for the year 1841, the appropriation of one thousand dollars, to compensate Dr. James Davis, commissioner on the part of the Terri-

tory, for assisting in running and ascertaining the southern boundary of the Territory, &c.

*And be it further resolved*, That His Excellency the Governor forward one copy of the preamble and resolutions to the Hon. Levi Woodbury Secretary of the Treasury of the United States.

APPROVED, July 31, 1840.

[No. 4.]

JOINT RESOLUTIONS to provide for publishing the reports of the Supreme Court, and for other purposes.

*Resolved by the Council and House of Representatives of the Territory of Iowa*, That five hundred copies of the reports of the decisions of the supreme court of the Territory of Iowa shall be published annually for the use of the Territory. Reports of decisions to be published annually.

*Resolved*, That for preparing, printing and delivering said reports to the Secretary of the Territory, the reporter of the decisions of the supreme court shall be allowed the sum of four hundred dollars per annum. Pay for same.

*Resolved*, That the Secretary of the Territory, in his estimates to the Secretary of the Treasury of the United States of the necessary sum to defray the expenses of the Legislative Assembly, he shall include the said amount allowed to the reporter. Secretary to include in estimate.

*Resolved*, That said reports shall be distributed and disposed of in manner following, that is say, to the Governor and Secretary of the Territory, judges of the supreme court, members of Council and House of Representatives, district attorneys, judges of probate in this Territory, one copy each; to the board of county commissioners, in each county, one copy; to the territorial library one hundred copies, and the remainder of said reports to be sold by the Secretary of the Territory to those who may wish to purchase the same, at no less than one dollar and fifty cents per copy, and the proceeds thereof shall be deposited by the Secretary in the territorial treasury for the use of the Territory. Reports—how distributed and disposed of.

*Provided, however*, That nothing in these resolutions shall be so construed as to give the reporter any lien on the Territory, nor in any wise to bind any future legislature of the Territory or State to pay the expenses that may occur by the passage of these resolutions. Proviso.

APPROVED, August 1, 1840.





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