

and on the north by the northern line of the masonry of the northern abutment of said bridge, so as to include the ground on which the abutment stands.

Provided, however, that so much of said public streets as are occupied by said wagon approach shall be forever kept and maintained as a public highway without expense to the said city of Davenport; and: *Provided further*, That this act shall not be held or construed to add to, diminish or prejudice any rights or privileges now held by any railroad company to use said approach for the purposes of a railroad track.

Nor shall the jurisdiction hereby conceded be held or construed to impair, prejudice or *effect* [affect] the right of the city of Davenport, or any other taxing power, to assess and collect taxes upon any franchise, right-of-way, or other property, or privilege, which any railroad company may now or hereafter have, hold or possess in said bridge.

Approved, March 26, 1878.

CHAPTER 164.

ACKNOWLEDGMENTS OF DEEDS BY CERTAIN OFFICERS.

H. F. 411. AN ACT to Legalize the Acknowledgments of Deeds by Deputy Clerks of Court, County Auditors and Deputy County Auditors.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That all acknowledgments of deeds, heretofore taken and certified by any deputy clerk of court, county auditor or deputy county auditor within this state, be and the same are hereby declared to be legal and valid in law and equity.

Approved, March 26, 1878.

CHAPTER 165.

RE-ESTABLISHING CAPITAL PUNISHMENT.

H. F. 193. AN ACT to Repeal Section 3849, Chapter 2, Title 24, of the Code, and to Enact a Substitute Therefor, and to Restore Capital Punishment.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That section 3849, chapter 2, title 24, of the Code, be and the same is hereby repealed, and the following enacted in lieu thereof, to-wit:

Code, § 3849 repealed.

Section 3849. All murder which is perpetrated by means of poison, or lying in wait, or any other kind of willful, deliberate

and premeditated killing, or which is committed in the perpetration or attempt to perpetrate any arson, rape, robbery, mayhem or burglary, is murder in the first degree, and shall be punished with death "or imprisonment for life at hard labor, in the state penitentiary, as determined by the jury."

Murder in first degree.

Death or imprisonment for life.

SEC. 2. Upon trial of an indictment for murder, the jury, if they find the defendant guilty, must designate in their verdict whether he shall be punished by death or imprisonment for life at hard labor in the penitentiary.

Verdict must designate punishment.

SEC. 3. When a verdict of death has been agreed to by a jury, the court pronouncing judgment shall fix the day of the execution thereof, which shall not be less than one year after the day on which the judgment is rendered, and not longer than fifteen months, during which time the defendant, against whom judgment of death has been pronounced, shall be imprisoned in the penitentiary of the state.

Judgment, and execution.

SEC. 4. Immediately after the entry of the judgment of death, the court rendering such judgment must transmit by mail to the governor of the state, a copy of the indictment, plea, verdict, judgment, and of the testimony in the case.

After judgment, copy of papers shall be sent the governor.

SEC. 5. When a judgment of death is pronounced, a certified copy of the entry thereof in the record book must be furnished to the officer whose duty it is to execute the same, who shall proceed and execute accordingly, and no other warrant or authority is necessary to require or justify the execution.

Warrant of execution.

SEC. 6. The only officer[s] who shall have power to reprieve or suspend the execution of a judgment of death, are the governor and the sheriff, as provided in the next section, unless in case of an appeal to the supreme court, as provided in section 18 of this act.

Reprieve: Who may.

SEC. 7. When the sheriff is satisfied that there are reasonable grounds for believing that the defendant is insane or pregnant, he may summon a jury of twelve persons on the jury list, to be drawn by the clerk, who shall be sworn by the sheriff well and truly to inquire into the insanity of [or] pregnancy of the defendant and a true inquisition return, and they shall examine the defendant and hear any evidence that may be presented, and by written inquisition, signed by each of them—find as to the insanity or pregnancy, and unless the inquisition find the defendant insane or pregnant, the sheriff shall not suspend the execution. But if the inquisition find the defendant insane or pregnant, he shall suspend the execution and immediately transmit the inquisition to the governor.

Insanity or pregnancy: Shall suspend sentence.

SEC. 8. Whenever a judgment of death has not been executed on the day appointed by the court therefor, from any cause whatever, the governor, by a warrant under his hand and the seal of the state, shall fix the day of execution, which warrant shall be obeyed by the sheriff, and no one but the governor can then suspend its execution.

In case execution is delayed or suspended.

SEC. 9. A judgment of death must be executed by the sheriff on the day fixed in the judgment, between sunrise and sunset, by hanging the defendant by the neck until he is dead.

Time and manner of execution.

- Place of execution.** SEC. 10. A judgment of death must be executed within the walls of the jail of the county in which the judgment was rendered, or within a yard or enclosure adjoining thereto, unless as provided in the next two sections.
- Same.** SEC. 11. If there be no jail in the county in which the judgment was rendered, or if it becomes unfit or unsafe for the confinement of prisoners, or be destroyed by fire or otherwise, and the jail of any other county has been legally designated for the imprisonment of the defendant until the day fixed for his execution, the judgment must be executed within the walls of the jail of the county so designated, or within a yard or enclosure adjoining the same, and by the sheriff of such county.
- Same.** SEC. 12. If there be two or more jails or prisons in the same county, a judgment of death shall be executed within the walls of either of such jails or prisons, or within an enclosure adjoining thereto, as the court rendering such judgment shall therein direct.
- Witnesses at execution.** SEC. 13. The sheriff executing a judgment of death, must at least, three clear days before inflicting the punishment of death, notify the judge of the district court of his county, the district attorney, the clerk of the district court, together with two physicians and twelve respectable citizens of his county, to be selected by him, and the sheriff of the county in which the trial was had, and the offense committed (if it be in a different county,) to be present as witnesses of such execution. He must also at the request of the defendant permit one or more ministers of the gospel, whom the defendant shall name, and any of his relations to attend the execution, and also such magistrates, peace officers, and guards as the sheriff shall deem proper, but no person other than those mentioned in this section can be present at the execution, nor shall any person under age, be permitted to witness the same.
- Certificate of sheriff and judges.** SEC. 14. The sheriff or his deputy executing the judgment of death, and the judges attending the execution must prepare and sign with their name of office, a certificate, setting forth the time and place of the execution, and that judgment was executed upon the defendant according to the foregoing provisions, and must cause the certificate to be signed by the public officers, and at least twelve (12) persons not relations of the defendant who witnessed the execution.
- Must be filed and published.** SEC. 15. The sheriff or his deputy executing such judgment of death, must cause the certificate to be filed in the office of the clerk of the district court of the county in which the judgment was rendered, and a copy thereof to be published in a newspaper printed at the capital of the state, and in one, if any, published in his county.
- Appeal shall stay execution.** SEC. 16. An appeal by the defendant to the supreme court from a judgment of death shall stay the infliction of that punishment, but the defendant is to be retained in custody to abide the judgment on the appeal.
- Appeal: Proceedings in case of.** SEC. 17. When an appeal is taken from a judgment of death it shall be the duty of the clerk of the district court in which the judgment was rendered to give forthwith to the defendant, his

agent, or attorney, a certificate under his hand and the seal of the county, stating that an appeal has been taken in the case, and the sheriff or other officer having the custody of the defendant, must upon the delivery of such certificate to him refrain from the infliction of the punishment of death upon the defendant, and retain him in custody to abide the judgment of the appeal.

SEC 18. When a judgment of death has been affirmed, the supreme court must cause a copy of the entry of judgment to be remitted to the governor, to the end that a warrant of the execution may be issued by the governor. The governor shall send his warrant of execution by a special messenger, or by mail, to the proper officer, and shall name therein the day and time of execution, but shall not appoint an earlier day than that fixed by the judgment of the district court. The officer receiving the same shall execute the warrant of the governor as therein directed and shall report his action both to the governor and the district court which rendered the original judgment. If for any cause the execution does not take place on the day appointed by the governor, the governor may from time to time appoint another day for the execution until the judgment is carried into effect.

Appeal: Proceedings in case judgment is affirmed by supreme court.

SEC. 19. All indictments pending in any court of this state for any crime committed in violation of said section 3849 of the Code shall be prosecuted to final judgment, and all crimes that have been committed in violation of said section shall be subject to indictment, trial and punishment in the same manner as they would have been had said section not been repealed.

Indictments pending shall be prosecuted to judgment under Code, § 3849.

SEC. 20. All acts and parts of acts inconsistent with this act are hereby repealed.

Repealing clause.

Approved, March 26, 1878.

CHAPTER 166.

TUITION OF PAUPER CHILDREN.

AN ACT to amend Section 1381, Chapter 1, Title XI., of the Code, providing for the Payment of the Tuition of Pauper Children. S. F. 329.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That section 1381 of the Code is hereby amended by adding at the end of the section: The expense of the poor-house shall include such an amount of tuition for the instruction of the pauper children as the whole number of days' attendance of such pauper children is to the total number of days' attendance in the school at which such pauper children attend, and such amount shall be paid into the treasury of the district where said children attend.

Code, § 1381: amended. How paid

SEC. 2. This act, being deemed of immediate importance, shall