

## COUNTY COMMISSIONERS.

AN ACT to legalize the acts of County Commissioners.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all the Acts of county commissioners heretofore performed, shall be deemed legal and valid in law, so far as the same were not done in violation of some prohibitory law of this Territory, or of the Congress of the United States. Acts of county commissioners heretofore performed to be valid Proviso.

SEC. 2. That a transcript from the records or books of said board of county commissioners, signed by the clerk of their board, with the seal of the said board of commissioners to the same annexed, shall be legal evidence of the action of the respective boards of commissioners in any court of record or before any judicial tribunal in this Territory. Transcripts from their records to be evidence in the courts.

APPROVED, January 25, 1839.

## COURTS.

AN ACT to fix the time for the first session of the Supreme Court of the Territory of Iowa, and for other purposes.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the first session of the supreme court of the Territory shall be held at the city of Burlington, on the twenty-eighth day of November one thousand eight hundred and thirty-eight. First session of the supreme court.

SEC. 2. *Be it enacted by the authority aforesaid,* that all and every such attorneys and counsellors at law as are or may be duly and regularly admitted to practice law in the several district courts within this Territory, shall be and are hereby authorized to do and perform all and every such act or acts as are or may be necessary in law, to commence and carry on any proceeding within the jurisdiction of the supreme court of the Territory of Iowa: *Provided,* Attorneys of district courts authorized to practice in supreme court. Proviso. *nevertheless,* that every such attorney shall, before he shall be allowed to appear in person to do and perform the office of an attorney or counsellor at law in open court, during the sessions of the same,

upon motion, be qualified and admitted, if such attorney shall be otherwise entitled to admission.

APPROVED, November 28, 1838.

## COURTS.

AN ACT to repeal an act of the Legislative Assembly of the Territory of Wisconsin, approved January 19th, 1838.

Supreme and district courts. An act of Wisconsin concerning the same repealed.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That "An act to amend an act, entitled an act concerning the supreme and district courts, and defining their jurisdiction and powers," approved January 19th, 1838, concerning the commencement of actions in the district courts, be and the same is hereby repealed.

APPROVED, December 14th, 1838.

## COURTS.

AN ACT regulating Criminal Proceedings.

Code of criminal procedure established.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That, from and after the first day of January next, the following code of criminal procedure shall be the established law of the Territory.

### CHAPTER I.

Chap. I. containing a description of proceedings to prevent the commission of offences.

*Proceedings to prevent the Commission of Offences.*

Affidavit.  
Warrant.

SEC. 1. Whenever, by affidavit, it shall be rendered probable to any justice of the peace, of the proper county, that any person has threatened to commit any considerable offence against the person or property of another, such justice shall issue his warrant to bring such accused person forthwith before him.

Witnesses.  
Examination of the accused.

SEC. 2. Witnesses may be subpoenaed and examined as in other cases. The examination of the accused may also be taken, but not under oath.

To enter into recognizance.

SEC. 3. If the justice becomes satisfied, by such investigation, that there is sufficient reason to apprehend the commission of the offence stated in the complaint, he shall require him to enter into a recog-

nizance, with sufficient surety, conditioned according to the form appended to this code.

SEC. 4. When any person is committed to jail for not entering into recognizance, as required by any law of this Territory, the amount of bail required shall be specified in the mittimus. Any justice of the peace may discharge the prisoner upon his giving the bail required.

Amount of bail to be specified in mittimus.

Discharge of prisoner on giving bail.

SEC. 5. The sheriff, in all such cases, upon the application of the prisoner for that purpose, shall take him before some justice of the peace of the county, that he may enter into the required recognizance.

Duty of sheriff.

SEC. 6. A transcript of the proceedings of any justice of the peace, as provided for in this and the succeeding chapter, together with the recognizance, (if one be taken) shall, by such justice, be filed in the office of the clerk of the district court of the proper county, on or before the first day of the ensuing term of said court. For a failure to do so, he shall be liable to indictment, and may be fined in any sum not exceeding two hundred and fifty dollars.

Transcript of proceedings, &c., to be filed in clerk's office.

Failing to do so, liable to indictment.

SEC. 7. The district court, at the term to which the proceedings of the justice of the peace shall be returned as above required, shall proceed to investigate the matter by hearing testimony, and may release the prisoner, discharge the recognizance, or require a new one for a time not exceeding one year.

District court to investigate the matter.

## CHAPTER II.

### *Preliminary proceedings when offences have been committed.*

Where offences have been committed.

SEC. 8. Whenever, by affidavit, it shall be rendered probable to a justice of the peace that an indictable offence has been committed within the county, he shall, by his warrant, forthwith cause the accused person to be brought before him.

Affidavit.

Warrant.

SEC. 9. The officer having the warrant, or any other person engaged in the pursuit, shall be thereby authorized to arrest the accused any where within this Territory, and bring him forthwith before the magistrate who issued the warrant, or (if he cannot attend the examination) before some other justice of the same county.

Officer, &c., to arrest the accused.

SEC. 10. Such officer shall have the same powers, in making the arrest in any other county, as in his

Powers of the officer in any other county.

own, and may retain the prisoner in custody, and lodge him for the night in jail, in any county through which he may have to pass, on his return to his own county.

**Search warrant may be issued.** SEC. 11. When the affidavit shall state that property has been stolen or embezzled, and that affiant suspects such property is concealed in any particular house or place, the justice, if he think there is sufficient ground for such suspicion, shall issue his warrant to search for such property. But such warrant shall not authorize the officer to make the search in the night time, unless positive proof has been given to the justice that the property is concealed in such house or place.

**Persons in possession of stolen property to be brought before justice.** SEC. 12. If the property be found, the officer shall bring the person, having it in possession, forthwith before the justice who issued the warrant.

**Property to be given up to owner.** SEC. 13. Upon satisfactory proof of ownership, the justice shall direct any stolen property to be given up to the claimant thereof.

**Accused person may be searched.** SEC. 14. When, in any case, it shall be sufficiently shown that the prisoner has been in possession of counterfeit money or bank notes, or has stolen property capable of being concealed about his person, the justice, before whom he is brought, may direct the officer having him in custody to search the person of the accused.

**Statement of prisoner not to be under oath.** SEC. 15. The prisoner shall be allowed to make his own statement, but not under oath. After which the witnesses on both sides, shall be sworn and examined.

**Testimony may be reduced to writing.** SEC. 16. The magistrate may direct any portion of this statement or testimony to be reduced to writing, and signed by the person making the same, which shall be returned with the other proceedings as directed in the previous chapter.

**Witnesses may be ordered to withdraw.** SEC. 17. The magistrate may direct any of the witnesses to be removed from court, during the examination of the prisoner, or of any other witness.

**Recognizance of prisoner.** SEC. 18. If there appears sufficient grounds of suspicion of the prisoner's guilt, the magistrate shall (in bailable cases) require him to enter into recognizance, with sufficient surety, conditioned as prescribed in the form appended to this code.

**Of witnesses.** SEC. 19. Any of the witnesses may be bound by recognizance to appear and testify in the proper court, and in case of homicide they may be required to find sureties in such recognizance.

SEC. 20. If the witness be an infant, or a married woman, some other person shall enter into the recognition for their appearance as aforesaid.

If the witness be an infant, or married woman.

SEC. 21. If the offence be not bailable by a justice of the peace, and there are probable grounds to suspect guilt, the prisoner shall at once be committed. But he may be afterwards bailed by a judge of the supreme court.

Commitment of prisoner.

Judge of sup. court may bail.

### CHAPTER III.

#### *Of the Grand Jury.*

SEC. 22. All qualified voters of the Territory, except persons of unsound mind, and those who have been convicted of a felony, shall be competent jurors in their respective counties.

Who shall be competent jurors.

SEC. 23. The following persons shall be excused from serving on juries, to wit: All officers appointed by the President of the United States, and their deputies, officers of the court, and their deputies, county officers, ministers of the gospel, practising attorneys, physicians, surgeons, and teachers in colleges, academies, and schools.

Persons excused from serving on juries.

SEC. 24. The county commissioners of each organized county shall, at least thirty days previous to any term of the district court for their county, make out and deliver to the clerk of the said court, a list of twenty-three persons qualified to serve as grand jurors therein.

County Com. to select grand jurors, and deliver list to clerk of dist. court.

SEC. 25. The said clerk shall forthwith issue a *venire*, and deliver it to the sheriff of the county, commanding him to summon the persons so selected to appear in said court at eleven o'clock A. M. on the first day of the next term thereof, to serve as grand jurors. This *venire* shall be served at least five days before the first day of the term, by giving personal notice to said jurors, or by leaving a written notice at their respective places of abode. The sheriff shall return said *venire* to the proper court, on the first day of the next term thereof, at its opening, and shall specify the manner in which each person was served.

Clerk to issue *venire*.

When return to be made by sheriff.

SEC. 26. If a sufficient number of the regular panel of grand jurors shall not appear at the proper time, or if, from any cause, after being empaneled, the number shall be less than sixteen, the court may direct the sheriff to return without delay such num-

Deficiency in the regular pannel.

ber as may be deemed requisite, who shall serve as such jurors.

**Foreman to swear witnesses.**

SEC. 27. The court shall appoint one of the grand jury to be the foreman thereof, who shall have power to swear or affirm all witnesses to testify before said jury. Whenever an indictment is found, he shall endorse thereon "A true bill," and shall subscribe his name thereto as foreman.

**16 jurors to constitute a jury.**

SEC. 28. Sixteen grand jurors shall constitute a sufficient jury, and twelve of their number must concur in finding an indictment.

**Names of witnesses, &c., to be endorsed on indictment.**

SEC. 29. The foreman shall endorse upon the indictment the names of the witnesses upon whose testimony the same was found, as well as the name of the private prosecutor, (when there has been one) who shall be liable for the costs in case the defendant is acquitted on the trial.

**Fine for non-attendance as grand juror.**

SEC. 30. The court may impose a fine, not exceeding twenty dollars, for each day that any person, duly summoned as a grand juror, shall fail to attend, but the court shall suspend such fine until the defaulting person shall be notified to appear, either forthwith, or at the next term, (as the court shall direct) and show cause why he should not be fined for his default. In such cases, the delinquent may purge the contempt by his own oath.

**District attorney to attend grand jury.**

SEC. 31. The district attorney may attend the grand jury at all times, except while they are expressing their opinions, or giving their votes, in relation to any matter before them, at which times no one but the jurors themselves shall be allowed to be present.

**Compensation of jurors.**

SEC. 32. The clerk of the district court, upon the application of any juror who served in said court, shall give him a certificate, stating the number of days of such juror's attendance, and the compensation due therefor, which amount shall be allowed by the county commissioners: *Provided*, that no juror shall receive pay from the county for any day's attendance, for which he may have been entitled to compensation, as a juror of the district court of the United States.

**Proviso.**

**Grand jurors may be required to testify.**

SEC. 33. Members of a grand jury may be required by a court of justice to testify as to the evidence given by a witness before said jury, but in no case shall they be called on to reveal the votes or opinions of any member of such grand jury.

## CHAPTER IV.

*Of Indictments, and proceedings thereon.*

SEC. 34. Indictments found by a grand jury shall be presented to the court in presence of said jury, shall be filed, and remain as public records, but such as are found against any person for a felony, who is not in custody, shall not be open to the inspection of any person but the district attorney, until the defendant therein shall have been arrested, after which it shall be entered on the minutes of the court.

Indictments to be filed, & remain as public records.

SEC. 35. Any grand juror, or officer of the court, who shall be convicted of disclosing the fact of an indictment having been found against any person for a felony, not in actual confinement or arrest on such indictment, shall be punished by fine, not exceeding one thousand dollars, or by imprisonment, not exceeding six months, or by both such fine and imprisonment. *Provided*, such disclosure do not necessarily take place in the discharge of some official duty.

In what case the fact of indictment found shall not be disclosed by jurors, &c. Fine, &c. Proviso.

SEC. 36. Judges shall give the preceding section in charge to all grand juries.

Preceding section to be given in charge. Limitation of indictments.

SEC. 37. Indictments for murder may be found at any time after the death of the person killed, in all other cases of felony they must be found, if at all, within four years after the commission of the crime, for all offences less than felony, within two years thereafter, but the time, during which the defendant shall not have been usually a resident within the Territory, shall form no part of the said limitation.

SEC. 38. Where a person steals, or becomes the receiver of stolen property, he may be indicted in any county where he stole, received, or was in possession of any of the property stolen or received.

Where a person may be indicted for stolen property.

SEC. 39. Where a person shall commit an offence within this Territory, on board of any vessel or float, he may be indicted for the same in any county through any part of which such vessel or float may have passed on that trip or voyage.

For offences on board of vessels.

SEC. 40. Where an offence shall have been committed within five hundred yards of the boundary line of two counties, the offender may be indicted in either of such counties.

Within a certain distance of county lines

- On the property of joint owners.** SEC. 41. Where an offence shall be committed upon, or in relation to, the property of several joint owners, the indictment for such offence shall be sufficient if it allege such property to belong to any one or more of such owners, without naming them all.
- Crime committed in one co. and consummated in another.** SEC. 42. Where a criminal act has been committed in one county, and the crime consummated in another, (as where the mortal blow was given in one county, and the death took place in another) the offender may be indicted in either county.
- Offence indictable to a particular co.** SEC. 43. Whenever by law an offence is indictable in any particular county, it may be charged in the indictment to have been committed within that county.
- Accessaries.** SEC. 44. Accessaries before the fact shall be deemed principals, and may be charged in the indictment with having committed the principal offence. The indictment of such accessory may be found, either in the county where his own crime was perpetrated, or in that where the principal offence was committed.
- When they may be tried.** SEC. 45. Accessaries may be tried and punished, although the principal has not been arrested or tried, and although he may have been pardoned, or otherwise discharged.
- Charges and specifications in an indictment.** SEC. 46. The body of an indictment shall be considered as made up of charges and specifications, and no indictment shall be quashed if an indictable offence is clearly charged therein, nor shall any motion be entertained with a view to arrest, reverse, or set aside any judgment on account of a defect in the indictment, if the charge, upon which the offender was tried, be so explicitly set forth, that judgment can be rendered thereon.
- When mistakes or omissions may be amended.** SEC. 47. All mistakes or omissions in the commencement, or in the formal parts of an indictment, may be amended, on motion of either party, at any time before the rendition of judgment.
- What need not be stated.** SEC. 48. Nothing need be stated in the body of an indictment, which is not required to be proved upon the trial in support of the charge.
- What evidence necessary.** SEC. 49. The same evidence, governed by the same rules, shall be necessary to sustain the charges in an indictment, as has heretofore been required, except so far as herein otherwise provided.
- Clerical errors amendable.** SEC. 50. All clerical mistakes, in an indictment, shall be amendable at the discretion of the court.



SEC. 51. A *capias*, for the arrest of any person indicted, may be issued by the court, returnable either forthwith, or at the next term of the court. In the latter case, the judge shall, in bailable cases, direct the amount in which the defendant shall be held to bail, which shall be endorsed upon the *capias*. In cases of felonies, this shall not be done in open court.

*Capias*, when it may be returnable. Amount of bail to be endorsed.

SEC. 52. Such *capias* may be directed to the sheriff and constables of any county in the Territory, whose duty it shall be to arrest the defendant. They may pursue him into any part of the Territory, and, having arrested him, may exercise all power necessary to secure the prisoner, and return him to the proper county.

To whom *capias* as may be directed.

SEC. 53. In bailable cases, when the *capias* is returnable to the next term of the court, the prisoner may at any time be released upon entering into a recognizance, with good security, in the amount endorsed upon the *capias*, conditioned as prescribed in the form appended to this code. The officer making the arrest, the sheriff, or any justice of the peace of the county where the indictment was found, may take such recognizance, and shall file the same in the office of the clerk of said county, before the next ensuing term of the district court to be held therein, and for default in so doing, shall be deemed guilty of a contempt of court.

When prisoner may be released by entering into recognizance.

To be filed in clerk's office.

SEC. 54. The court, where the indictment was found, shall have power to take the recognizance of the prisoner, with sureties for his appearance from day to day, or for his appearance at the next ensuing term of said court.

Court may take recognizance. ;

SEC. 55. Upon the application of any person indicted, the clerk of the court shall, without fee, issue the necessary subpoenas for his witnesses.

Subpoenas on the part of the person indicted.

SEC. 56. Subpoenas for witnesses, on the trial of any indictable offence, may be served in any part of the Territory, by a sheriff or constable of any county therein.

Where subpoenas may be served, and by whom.

SEC. 57. Any officer in whose hands a *capias* or subpoena, issued as above prescribed, shall be placed, who shall fail to make due return to the court from whence such process issued, and any witness who shall fail to obey such subpoena, shall, unless good excuse be rendered, be deemed guilty of a contempt of court, and may be fined in any sum, not exceeding two hundred and fifty dollars.

Officer failing to make return of process.

Witness failing to obey subpoena.

Fine.

**Dilatory pleas.** SEC. 58. All dilatory pleas to an indictment must be verified by affidavit.

**Defendant's rights touching a commission for testimony.** SEC. 59. After an issue in fact is found on an indictment, the defendant, at the discretion of the court, shall be entitled to the same right of issuing a commission to take testimony out of the Territory, or of taking depositions conditionally, as is provided for parties in civil cases.

#### CHAPTER V.

#### *Of the trial, and its incidents.*

**Court may direct a change of venue.** SEC. 60. All issues of fact, joined upon any indictment, shall be tried by a jury of the courts where such was found, provided, however, that the court may, for good cause shown, direct a change of venue to some other county.

**Trial.  
Jury to be drawn as in civil cases.** SEC. 61. Such trial shall be had before the jury returned to serve in civil cases. If the defendant, or district attorney, shall require it, the whole number of twenty-four jurors, either of the regular pannel or talesman, shall be present in the jury box, twelve of whom shall then be drawn as in civil cases.

**Challenge of jurors.** SEC. 62. The defendant, on his trial, if indicted for a capital crime, may challenge peremptorily twelve jurors, and no more; if indicted for any other felony, he shall challenge only six, in the same manner; and if for an offence less than felony, only two. In each case, the district attorney shall have the right to challenge peremptorily one half as many as the defendant is entitled to.

**Same right of challenge to the array, &c., as in civil cases.** SEC. 63. In all criminal cases, either party shall have the same right of challenge, for cause shown, either to the array, or to individual jurors, as is permitted in civil cases.

**The prisoner to have counsel.** SEC. 64. The court shall assign counsel to defend the prisoner, in case he cannot procure counsel himself.

**Persons not to be tried for felony unless personally present.** SEC. 65. Persons indicted for felony shall not be tried, unless personally present at the trial. For other offences they may be tried, if present either personally, or by attorney duly authorized for that purpose: he must be present when the sentence is pronounced, however, in all cases where imprisonment may form a part of the punishment.

**Accused to have copy of** SEC. 66. Any person indicted for a capital crime shall, if he require it, be furnished with a copy of

the indictment, and a list of the jury summoned to try him, at least twenty-four hours before his trial.

SEC. 67. In capital cases the defendant shall be admitted to bail, unless indicted and tried by the end of the term next succeeding his arrest. In cases of other offences, under like circumstances, he shall be discharged absolutely. *Provided* that, in any of the above cases, the delay of indictment or trial has not been occasioned by defendant himself.

SEC. 68. Where two or more persons are jointly indicted, and the evidence against one of them is insufficient to put him upon his trial, the court may order him to be discharged before the evidence shall be deemed closed.

SEC. 69. Where two or more persons are jointly indicted for a felony, either of them may, at his option, be tried separate. In cases of lesser offences, defendants jointly indicted shall be tried jointly, or separately, at the discretion of the court.

SEC. 70. On the trial of indictments, exceptions may be taken by either party to the decision of the court for the same reasons as in civil actions, but judgment shall not be stayed, unless the court will give a certificate stating that there is probable cause for taking said exceptions, or so much doubt as to render it expedient to take the opinion of the supreme court thereon: *Provided*, that where the exceptions have been taken by the district attorney, no further proceedings shall be had thereon, except in cases where the judgment has been stayed as aforesaid.

SEC. 71. If the exceptions have been taken on the part of a defendant, he shall remain in custody in the mean time, unless he will enter into recognizance, with sufficient surety, before the court, or the judge in vacation, conditioned that he will appear before said court at such time as the supreme court shall direct, or that he will obey any order the said supreme court shall make in the premises, which recognizance shall be filed with the clerk of the district court.

SEC. 72. If the exceptions are taken by the district attorney, the same proceedings shall be had, only the defendant need not find sureties in his recognizance.

SEC. 73. When judgment shall have been stayed upon an indictment as above provided, the district

Indictment, &c.  
if required.

When defendant to be admitted to bail.  
In what cases to be discharged.  
Proviso.

Two or more jointly indicted, and evidence against one insufficient.

In what case a separate trial may be had.

Exceptions may be taken to the decision of the court.

If taken by district attorney.

If on the part of defendant, what proceedings to be had.

When defendant need not find sureties.

Writ of certiorari.

- attorney shall forthwith sue out a writ of *certiorari*, returnable to the supreme court.
- Clerk to make return thereto.** SEC. 74. The clerk of the court where the cause was tried, upon being served with such writ, shall forthwith make returns thereto, containing a transcript of said indictment, bill of exceptions, and certificate staying the judgment.
- Power of supreme court.** SEC. 75. The supreme court shall have power to direct a new trial, discharge the defendant, pass sentence, or remit the proceedings to the district court, with directions to proceed and render judgment.
- Writ of error.** SEC. 76. After judgment rendered on an indictment, except as provided in the last section, a writ of error may be brought thereon by the defendant.
- In what cases not permitted.** In capital cases this shall not be permitted, except upon the allowance of a judge of the supreme court, and after sufficient notice to the prosecuting attorney of the time and place of making the application.
- In other cases to issue as a matter of course.** SEC. 77. In all other than capital cases, writs of error shall issue as a matter of course, upon a mere application to the clerk of the supreme court, in term or vacation, but the writ shall not operate as a stay of proceedings, unless allowed in the manner provided in the preceding section.
- Applications for the writ.** SEC. 78. Applications for such allowance shall, in all cases, be formed upon a transcript of the indictment and bill of exceptions, or other record upon which error is alleged, under the seal of the court where the indictment was tried.
- Clerk to make returns thereto.** SEC. 79. Upon filing the writ of error and the allowance of the judge (if such allowance has been made) with the clerk of the court where the indictment was tried, he shall forthwith make returns thereto, containing a like transcript as is required in the last preceding section.
- Stay of proceedings.** SEC. 80. If a stay of proceedings be allowed, the sheriff, upon being served with the district clerk's certificate thereof, shall cease all further proceedings in execution of the sentence, but shall retain the defendant in custody, and at his request take him before one of the judges of the supreme court for the purpose of giving bail.
- Defendant admitted to bail.** SEC. 81. Such judge may admit the defendant to bail by recognizance, with sufficient surety, conditioned and filed as above provided in cases of *certiorari*.
- If judgment affirmed.** SEC. 82. If the judgment below be affirmed, the sentence there pronounced shall be executed ac-

cordingly. If it be reversed, the supreme court may If reversed.  
 grant a new trial, or discharge the defendant  
 altogether. In either case, the certificate of the  
 clerk of the supreme court, under the seal of said  
 court, shall be sufficient authority for the court be-  
 low and its officers to act in the premises.

SEC. 83. Arrests of judgment and new trials, when Arrests of judg-  
ment and new  
trials.  
 moved for by the defendant, may be allowed by the  
 court. In such cases, the same rules as are pursued  
 in civil cases shall be followed as nearly as practi-  
 cable.

SEC. 84. No judgment shall be arrested, revised, Judgment not  
to be arrested  
for defect in  
indictment.  
 or in any way affected, in consequence of any defect  
 in the indictment, which might have been amended,  
 or to which a plea in abatement would have lain  
 upon the trial.

SEC. 85. A copy of the indictment, together with Certified copy  
of proceedings  
to be evidence.  
 a minute of the acquittal or conviction, and the  
 judgment or sentence of the court thereon, the  
 whole duly certified by the clerk of the proper court  
 under his seal of office, shall be evidence, in all  
 courts and places, of such conviction or acquittal.

SEC. 86. Where in case of conviction upon indict- Where a fine is  
part of the sen-  
tence.  
 ment a pecuniary fine constitutes any portion of the  
 sentence, the court may direct the defendant to  
 stand committed until the fine is paid, or the fine  
 may be collected by execution as in civil cases.

SEC. 87. Where any latitude is left as to the In what cases  
jury to fix  
amount of pun-  
ishment.  
 amount of punishment for any offence, the jury who  
 try the offender shall in all cases fix the amount of  
 punishment.

SEC. 88. The court may allow the jury to separate Jury allowed to  
take refresh-  
ment.  
 for the purpose of obtaining sleep and refreshment,  
 having first charged them to hold no conversation  
 relative to the pending trial.

SEC. 89. Offenders who are found guilty shall be Offenders lia-  
ble for costs.  
 liable for all the costs of the trial, including the fees  
 of the witnesses on the part of the prosecution.

SEC. 90. Witnesses in criminal cases shall be en- Compensation  
of witnesses.  
 titled to the same compensation as in civil actions.  
 Where the prosecution fails, the costs, including the  
 fees of the defendant's witnesses, shall be paid by When costs to  
be paid by co.  
 the county. The witnesses in these cases shall  
 prove their attendance, and obtain from the Attendance of  
witnesses to be  
certified by  
clerk.  
 clerk of the court a certificate thereof, and the  
 amount of compensation due them, which shall be  
 allowed by the county commissioners. Where, from Omissions from  
inadvertence.  
 inadvertence, a point material to the prosecution or

defence of a cause has been omitted to be proved, the court may direct witnesses to be called to prove that point, at any time before the jury retire to consider their verdict.

## CHAPTER VI.

### *Miscellaneous Provisions.*

**What certain words in legislative acts shall be deemed to include.** SEC. 91. In all legislative acts and proceedings in this Territory, words indicative of the masculine gender shall be deemed to include the feminine, and the singular number shall be deemed to include the plural, wherever the circumstances of the case will admit. Thus, where, in any legislative provision, the word "person" is used, the law shall be equally applicable to cases where several persons are concerned, and the words "he" or "him" being used, the law shall apply to cases where a female, or several persons together, have been concerned.

**What the term "felony" shall be understood to mean.** SEC. 92. The term "felony" shall be understood to mean any crime for which the offender may be punished with death, or with imprisonment at hard labor, or in the penitentiary.

**In what case process shall not be deemed void. Proviso.** SEC. 93. No process or proceeding shall be deemed void or invalid, on account of non-compliance with any directory statute on the part of some public officer, unless positively declared so by law: *Provided*, that the process or proceeding can be so amended as not to oppress or surprise the party moving to quash or set them aside.

**Failing to enter into recognizance, delinquent to be committed.** SEC. 94. Where a person required to enter into recognizance for his appearance or good behaviour, shall fail to comply, the court, or magistrate having cognizance of the case, shall commit the delinquent to jail until he comply, or until the expiration of the time for which such recognizance would have been in force.

**May be discharged upon entering into such recognizance.** SEC. 95. The person thus committed may be discharged by the court or magistrate so committing him, or by any justice of the peace of the county, upon his entering into a recognizance in the manner required.

**What the *mittimus* shall state.** SEC. 96. When a person is committed for want of bail, the *mittimus* shall state that fact, and also the amount of the bail required.

**Bail in capital cases.** SEC. 97. Where there is a reasonable presumption that a capital crime has been committed, the

offender can only be admitted to bail by a judge of the supreme court. In all other cases, a justice of the peace shall have power to let to bail. In other cases.

SEC. 98. Where a person committed to jail shall be brought up on *habeas corpus*, the judge or court, before whom he may be brought, shall have power to recommit, discharge, let to bail, or mitigate the bail already required. Persons brought up on habeas corpus. Power of the judge and court.

SEC. 99. Recognizances in open court need not be reduced to writing at full length, but merely a minute thereof entered upon the record of the court. In other cases, they shall be written out and subscribed by the parties to be bound thereby. Recognizances in open court, &c.

SEC. 100. The governor may affix what conditions, limitations, or restrictions he may think proper to any pardon he shall grant, leaving the convict the privilege of accepting or refusing the pardon upon these terms. Governor may affix conditions, &c., to any pardon.

SEC. 101. Upon the breach of any of the essential conditions of a recognizance, the county commissioners of the proper county may institute a suit thereon, in the district court of their county, for the whole penalty specified in such recognizance, and the amount, when recovered, shall be appropriated to the use of the county. But judgment shall not go against the defendant, or any of his sureties, for non-appearance at any court, if the jury, before whom the cause is tried, shall find that there is sufficient excuse therefor. On breach of a recognizance, county com. may institute a suit. Proviso touching judgment for non-appearance.

SEC. 102. All criminal process, issued by justices of the peace, shall be directed to the sheriff or any constable of the proper county, or it may be directed to any private person therein named. Criminal process may be directed to officers, or to private persons.

SEC. 103. In cases of bail, the securities may surrender their principal to the sheriff, in exoneration of themselves, at any time before a breach of the conditions of the recognizance. When bail may surrender their principal.

SEC. 104. The judgments and orders of justices of the peace, in criminal cases, shall be executed by any sheriff or constable of the county, who may be called on for that purpose. Sheriff or constable to execute orders, &c. of justices of the peace in criminal cases.

SEC. 105. Persons injured by the commission of any crime may maintain a civil action for that injury, notwithstanding the offender may have been convicted for the same in a criminal prosecution. Parties injured not barred from maintaining civil action.

SEC. 106. For this purpose, where the offender is sentenced to imprisonment for more than six months, or when he cannot be found, the action may be commenced by attachment. In what cases action may be commenced by attachment.

menced by attachment, and conducted as in other cases. If found, he may be arrested on *capias*, and held to bail at any time after conviction in the criminal trial.

Service of process.

SEC. 107. In serving any process, the officer shall read the same to the person on whom it is to be served, or inform him of its contents, and, if required, furnish him with a copy thereof, after having informed him of his right in this particular.

Several defendants tried jointly, one or more may bring writ of *certiorari*, &c.

SEC. 108. Where several defendants are tried jointly, any one or more of them may bring a writ of *certiorari*, or of error, or move in arrest of judgment, or for a new trial. But those of their co-defendants who refuse to join in such motions shall reap no benefit therefrom.

Power and practice of courts in criminal matters.

SEC. 109. The power and practice of the courts in criminal matters shall (except so far as herein modified) remain the same as they have heretofore been, and shall, as far as practicable, be made to coincide with the corresponding practice in civil cases.

Certain sections of an act, passed by the territorial government of Michigan, repealed.

SEC. 110. The second, third, fourth, and fifth sections of the act passed by the governor and judges of the Territory of Michigan, entitled "An act for the limitation of suits on penal statutes, criminal prosecutions, and actions at law," adopted May 15, 1820, are hereby repealed.

## CHAPTER VII.

### *Forms to be used in criminal proceedings.*

SEC. 111. The following, or other equivalent forms, shall be deemed sufficiently technical and correct in all cases to which they apply.

### *In proceedings to prevent the commission of offences.*

## AFFIDAVIT.

Affidavit.

SEC. 112. Territory of Iowa — county ss. A. B., being duly sworn, says that M. N., of said county, has threatened to kill him, the said deponent, [or if the threat were to commit any other offence, either against A. B. or his property, or against any other person, or his property, let it be stated accordingly] and that he the said A. B. verily believes that, unless measures are taken to prevent him, there are suffi-



cient grounds to apprehend that he will carry those threats into execution.

Sworn to and subscribed this — day of — A. D. 18— before me.

E. F. Justice of the peace.

A. B.

## WARRANT.

SEC. 113. Territory of Iowa ——— county ss. Warrant.

To the sheriff or any constable of said county.—It having been made satisfactorily to appear to me, by the affidavit of A. B., [and C. D. (if other affidavits were taken)] that M. N. has threatened to [here describe the offence threatened] and there is sufficient reason to apprehend that, unless restrained, he will carry those threats into execution. These are therefore, in the name of the United States, to command you that you arrest the said M. N., if he be found in your county, and bring him forthwith before me at my office in —, or before some justice of the county aforesaid, to answer the charges against him.

Given under my hand, this — day of — 18—.

E. T. Justice of the peace.

## RECOGNIZANCE.

SEC. 114. Be it remembered that, on the — day of — A. D. 18—, before me personally came M. N. and J. S., and acknowledged themselves to owe to the United States — dollars each. Recognizance.

The condition of this recognizance is such, that if the said M. N. shall personally appear at the district court of said county, on the first day of the next term thereof, and abide the judgment of said court, and not depart without the leave of the same, and in the mean time shall keep the peace towards A. B. of said county, and in particular shall not commit [here state the crime threatened as sworn to in the affidavit] then this recognizance to be void, otherwise of force.

M. N.	[ L. S. ]
J. S.	[ L. S. ]

Taken and acknowledged before me, this — day of — A. D. 18—.

E. F. Justice of the peace.

## MITTIMUS OR COMMITMENT.

Mittimus.

SEC. 115. Territory of Iowa ——— county ss.

To the keeper of the jail of said county: It having been sufficiently proved to me, that M. N. has threatened to kill one A. B. [or whatever else the crime threatened may chance to be] and that there is reason to apprehend that, unless effectually restrained, he will carry his threat into execution, the said M. N. was directed by me to find security for his good behaviour, in the sum of — dollars, which he has failed to do. These are therefore, in the name of the United States, to command you to receive the said M. N. into your custody, in the jail of the county aforesaid, there to remain until discharged by due course of law.

Given under my hand, this — day of — A. D. 18—.

E. F. Justice of the peace.

## SUBPŒNA.

Subpœna.

SEC. 116. Territory of Iowa ——— county ss.

To the sheriff or any constable of the county aforesaid: In the name of the United States of America, you are hereby commanded to summon G. H. and J. K. to appear before me, at ——— forthwith, [or on — next] to give testimony concerning a complaint made, on behalf of the United States, against M. N., who is charged with [here state the offence] Hereof fail not, and have you then and there this writ.

E. F. Justice of the peace.

*In proceedings where offences have been committed.*

SEC. 117. The affidavit in this case should be the same as in section 113, except that it should charge the offence to have been committed by the person accused, within the county aforesaid, as deponent verily believes.

## WARRANT.

Warrant.

SEC. 118. Territory of Iowa ——— county ss.

To the sheriff or any constable of said county: It having been shown to me, by the affidavit of A. B.

&c., that M. N. is guilty of murder, as deponent verily believes, by killing G. H., in the county aforesaid, These are therefore, &c. [as in sec. 114.]

SEC. 119. In case of search warrants, the officer should be directed to enter the house, described in the affidavit, "in the day time," except in a case where it is positively sworn that the property is concealed there, when he should be directed to enter "at any time whether by day or night."

SEC. 120. [Commencement the same as in section 115. Then proceed] The condition of this recognizance is such, that if the said M. N. shall personally appear, at the district court of said county, on the first day of the next term thereof, and abide the judgment of said court, and not depart without the leave of the same, then this recognizance to be void, otherwise of force.

M. N.            [ L. S. ]  
J. S.            [ L. S. ]

Taken and acknowledged this \_\_\_\_\_ day of \_\_\_\_\_  
18— before me.

E. F. Justice of the peace.

[The same form, with slight alteration, will answer in case of a recognizance taken by the sheriff, or other officer, making an arrest in vacation, after an indictment has been found.]

### MITTIMUS.

SEC. 121. Territory of Iowa, ——— county ss.

To the keeper of the jail of said county: It having been sufficiently proved to me, that M. N. has committed murder, by killing one G. H., in the county aforesaid, [or whatever else the crime may be. In bailable cases state "the said M. N. was directed to find security for his good behaviour, in the sum of ——— dollars, which he has failed to do,"] These are therefore [the same as in section 115.]

### INDICTMENT.

Territory of Iowa, ——— county ss.

District court for said county,— term, A. D. 18—. The grand jurors, duly empaneled, in and for said county, upon their oath, present that M. N. [giving a more particular description if necessary] has com-

mitted the crime of murder, \*[or whatever else the crime may be] in the county aforesaid, for that the said M. N., on or about the ——— day of ———, A. D. 18 —, in said county, with malice aforethought, did kill one G. H., by poisoning him [or state any other means by which death has been produced.]

W. H. S. District Attorney.

\*Instead of describing the crime by name as in this form, it would be sufficient to charge as follows, "has been guilty of a violation of the section of the act, entitled [describe the act, and the time of its approval.]" or the offence might be charged in language corresponding to that used in the statute where the same is described.

APPROVED, January 4, 1839.

## COURTS.

AN ACT to authorize a special term of the District Court in Muscatine county.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be held on the 16th day of the month of January, A. D. 1839, at Bloomington, in Muscatine county, a special term of the district court, for the trial of such criminal causes and informations as are, or may be, depending in the district court of said county. Special term of district court in Muscatine county; when to be held. For what purposes

SEC. 2. It shall be the duty of the sheriff of said county to summon the legal number of jurors, in such cases, to be in attendance on said court, giving them at least two days notice of the time and place where they are required to meet. Duty of sheriff. Notice to jurors.

APPROVED, January 12th, 1839.

## COURTS.

AN ACT for establishing Courts of Probate.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be established, in each organized county, in this Territory, a court of record, to be styled the court of probate, to be held at the several seats of justice, of their respective counties; the jurisdiction whereof shall be co-extensive with the limits of the county, in which the judges shall be respectively appointed. Courts of probate established in the several organized counties.

SEC. 2. There shall be appointed, in each of the organized counties in this Territory, some fit person, as judge of said court, who shall hold his office for the term of three years. And the said judges of probate shall severally have such jurisdiction over the estates of testators, or intestates, and such other matters, as they may be, or now are, invested with by law; and they shall, before entering on the duties of their respective offices, take an oath to support the constitution of the United States of America, and faithfully and impartially to discharge the duties required of them by law; and it shall be the duty of such judge of probate, before he shall enter on the duties of his office, to cause a record of said oath, Judges to be appointed. Term of service. Jurisdiction Oath to be taken, And recorded.

- and by whom administered, to be filed in the office of the clerk of the district court, of the proper county.
- Courts to be held monthly.** SEC. 3. The said courts shall sit, in their respective counties, on the first Mondays in every month, and at such other times, as extraordinary circumstances may require, and continue open until the business before them shall be disposed of. The said courts shall have a seal, and may issue all process necessary, under the hand and seal of the judge, and all such process shall bear date when issued.
- Seal.** The said judge shall record all his proceedings, at length, in a book, or books, by him for that purpose
- Process.** furnished: for all necessary books, so furnished, and for such seal, the county commissioners, of the respective counties, shall allow the judge of probate a reasonable compensation, to be paid out of the county treasury.
- Proceedings to be recorded.** SEC. 4. All matters of law and of fact, shall be determined by said court, when properly before it, and, in all cases, an appeal, or writ of error, shall lie to the district court of the county, to be prosecuted in the same manner as appeals and writs of error are, or hereafter may be directed to be prosecuted, from the decisions of justices of the peace; and writs of error may also be prosecuted from the decisions of the district court to the supreme court, as in other cases.
- Allowance from county treasury for books and seal.** Writs of error from district court to supreme court.
- Appeal or writ of error to district court.** SEC. 5. When any judge of probate shall die, resign, refuse to qualify, or be removed from office, or the office shall be otherwise vacated, during the recess of the legislative assembly, the governor shall commission some fit person to fill such vacancy, and the person so commissioned shall continue in office, until the end of the next session of the legislative assembly thereafter.
- Writs of error from district court to supreme court.** SEC. 6. The said judges of probate shall be entitled to such fees and compensation as now are, or, hereafter may be, provided by law.
- Appointments to be made by the governor during the recess of the assembly.** SEC. 7. That, until proper seals are provided, by the commissioners, a temporary seal may be used as a seal of said court.
- Fees and compensation.** TEMPORARY SEAL.
- Temporary seal.** APPROVED, January 17, 1839.

## COURTS.

AN ACT fixing the terms of the Supreme and District Courts of the Territory of Iowa, and for other purposes.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be two terms of the supreme court held annually, at the seat of government of said Territory, commencing on the first Mondays in July and December, respectively.

Supreme court.  
Two terms in each year.  
When and where to be holden.

SEC. 2. The terms of the district courts, in each of the organized counties of this Territory, shall commence as follows, in each year.

Terms of district court in each county, when to commence.  
Henry.

In Henry county, on the first Mondays of April and August.

Van Buren.

In Van Buren county, on the second Mondays of April and August.

In Lee county, on the fourth Mondays of April and August.

Lee.

In Des Moines county, on the first Mondays of May and September.

Des Moines.

In Johnson county, on the second Mondays of May and September.

Johnson.

In Cedar county, on the third Mondays in May and September.

Cedar.

In Scott county, on the fourth Mondays in May and September.

Scott.

In Muscatine county, on the first Mondays in June and October.

Muscatine.

In Louisa county, on the second Mondays in June and October.

Louisa.

In Slaughter county, on the third Mondays in June and October.

Slaughter.  
(now Wash-  
ington.)

In Clayton county, on the first Mondays of April and September.

Clayton.

In Jackson county, on the second Mondays of April and September.

Jackson.

In Du Buque county, on the third Mondays of April and September.

Du Buque.

SEC. 3. The counties of Henry, Van Buren, Lee, and Des Moines, shall compose the first judicial district, and Charles Mason is assigned to the same as district judge thereof.

First judicial district. Composed of what counties.

The counties of Louisa, Muscatine, Cedar, Johnson, and Slaughter, shall compose the second judicial district, and Joseph Williams is hereby assigned to the same as district judge thereof.

Chief justice Mason.  
Second judicial district. Composed of what counties.

Mr. Justice  
Williams.  
Third judicial  
district. Com-  
posed of what  
counties.  
Mr. Justice  
Wilson.  
Counties at-  
tached to other  
counties for ju-  
dicial purposes.  
Judges may  
exchange dis-  
tricts by agree-  
ment.  
Absence or  
sickness of  
judge provided  
for.  
Duties.  
Proviso.  
Absence of  
judge.  
Adjournments  
thus occasion-  
ed.  
Limitation.  
Process and  
proceedings.  
Not to be void.

When made  
returnable to  
the next term,  
&c.

Jurors, witnes-  
ses and other  
persons,

Bound to ap-  
pear, &c.

Special terms.  
Discretion of  
judges.

The counties of Jackson, Du Buque, Scott, and Clayton, shall compose the third judicial district, and Thomas S. Wilson is assigned to the same as district judge thereof.

SEC. 4. For judicial purposes, the county of Linn is hereby attached to the county of Johnson, the county of Jones to the county of Cedar, and the county of Clinton to the county of Scott.

SEC. 5. The chief justice and the associate judges may exchange districts as often as they may agree to do the same, and in case of the absence of one of the judges from the Territory, or sickness, it shall be competent for either of the judges to perform district duties in the place, and during the absence, of the proper judge of said district, *provided* the same does not conflict with, or interfere with, the proper duties of his own district.

SEC. 6. If the judge fails to appear on the first day of the term of the court, in any of the before-mentioned counties, the court shall be adjourned, from day to day, not exceeding three days.

SEC. 7. No suits, writs, indictments, recognizances, informations, declarations, plea, or other process or proceedings, returnable to the supreme or any of the district courts of this Territory, shall abate, be made void, or in any wise affected, in consequence of any change of time of holding any of the said courts by the provisions of this act; but when the same may have issued, or may have been made returnable to any day, in accordance with the time of holding courts, before the fourth of July, A. D. 1838, or when they shall have been made returnable generally to the next term of the court, in any of the said counties, on the return day, or the term left blank, they shall be considered returnable to the term of the courts respectively named in this act, as the time for holding said court in said county; and all jurors, witnesses, and other persons bound in any way, or summoned to appear before the courts, in and for and of the beforementioned counties, at the next term thereof, shall be bound to appear at the time specified by this act, as the time for holding said court.

SEC. 8. Whenever the judge of any of said districts shall consider it necessary that a special term of the court should be held, in any of the counties in his district, for the trial of either criminal or civil causes, he shall notify the sheriff of



said county of the same, and it shall be the duty of said sheriff to put up, at each of the precincts in said county, a notice of the time when said court will commence, at least three weeks previous to said special term of the court: *Provided, however,* that said special term shall not conflict or interfere with the regular term of court, in any other county in said district. Jurors shall be chosen, and notified, as at the regular term of the courts.

SEC. 9. This act to be in force, and take effect, from and after its passage.

APPROVED, January 21st, 1839.

## CHANCERY.

AN ACT relative to Proceedings in Chancery.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the several district courts, within the different counties of this Territory, shall have exclusive original jurisdiction of all matters in Chancery properly arising within their respective counties, in which a plain, adequate, and complete remedy cannot be had at law.

SEC. 2. Either of said district courts at any stated time thereof may appoint as many special chancery terms at any place within the proper district as they may deem expedient, and at such special terms may entertain jurisdiction of any case pending in any court within said district.

SEC. 3. The proceedings in said courts, where they are not regulated by the statutes of this Territory, shall be as prescribed by the judges thereof, but shall in all matters of principle be made to conform to the known usages of courts of equity, except as otherwise provided by law.

SEC. 4. All applications to the chancery side of either of said courts shall be by petition, setting forth the nature and grounds of such application, which shall be filed in the office of the clerk of such court.

SEC. 5. Said clerk shall thereupon issue a summons to the defendants named in such petition, commanding them to appear at the next term of the court and answer the petition of the complainant.

If the petition be filed in term time, the summons may be made returnable forthwith.

Its form, service, and return.

SEC. 6. In other respects the said summons shall as far as practicable be made to conform to that authorized for commencing proceedings at law, as well to its form as to its service and return, and the proper officer shall be subject to the same liability for not duly serving it.

Where suit may be instituted when there are several defendants.

SEC. 7. Where there are several defendants, the suit may be instituted in the courts where either of them resides, and the clerk of the court in said county may issue process directed to any other county, which shall be served by the proper officer there and returned in the same manner as aforesaid.

In what case service of process to be shown by affidavit.

SEC. 8. Such process may be so served by any person whatever within this Territory, but if served by any other person than the proper officer, and within his own county, such service must be shown by affidavit.

Notice of petition to be published when defendants cannot be found.

SEC. 9. Where any of the defendants cannot be found to be served as aforesaid, the plaintiff may cause notice of the pendency of the petition, containing a brief statement of the object and prayer thereof, to be published for six weeks successively in some newspaper printed in the county where the petition is filed, if there be one, and if not, then in some newspaper printed at the seat of government of this Territory. Such notice shall be equivalent to a personal service, except as hereinafter otherwise declared.

Case in which a defendant may have costs of plaintiff.

SEC. 10. The complainant may insert as many defendants in his petition as he may think proper, though they claim under different titles; but if any of such defendants disclaim, he shall have his costs of the plaintiff, except when the court for special reasons shall otherwise decree.

Proceedings against heirs.

SEC. 11. Where the heirs of any decedent are made defendants, any of whose names are unknown to the complainant, they may be proceeded against without being named individually, and the court may make such order in relation to notice as they may deem proper.

Court may fix the time within which plea or answer to be filed.

SEC. 12. Where service shall have been affected by either of the methods aforesaid, the defendant shall be considered in court, and the court may by rule establish the times within which the answer or any other pleas of either party shall be filed.

SEC. 13. If the defendant shall not file his plea, If def't fail to file his plea, &c., court may make decree. answer, or demurrer within the time limited as aforesaid, the said court may at their discretion render a decree thereon, or order the complainant to prove the allegations of his bill, and such decree may then be made as the court shall think fit.

SEC. 14. Where the complainant conceives the plea of the defendant to be good, though not true, Complainant may reply to defendant's plea and take issue. he may reply to, and take issue thereon, and proceed as in case of an answer.

SEC. 15. If the defendant file a demurrer and answer, the complainant shall not proceed on the answer until the demurrer shall have been argued and disposed of. Of demurrer and answer.

SEC. 16. If the plea or demurrer of the defendant be overruled, no other plea or demurrer shall be thereafter received, but the complainant's petition may be taken as confessed, and the court shall proceed to decree thereon; or in their discretion they may receive an answer on affidavit of merits and that such plea or demurrer was not filed for the purpose of delay. If plea or demurrer of def't overruled.

SEC. 17. If the said plea or demurrer be allowed, Costs. the complainant shall pay costs; and if overruled, the defendant shall pay them.

SEC. 18. If the plaintiff do not file his replication or exceptions within the time fixed by the rules of court aforesaid, the cause shall stand for hearing on petition and answer. Replication or exceptions.

SEC. 19. Where exceptions shall be filed to an answer, an order may be entered of course by the clerk, either in term time or in vacation, to refer the same to a master in chancery, or the court itself may decide upon the sufficiency of the answer, and an appeal shall in all cases be allowed from the master's report to the court. Order to refer to a master in chancery. Appeal from master's report.

SEC. 20. The costs of the reference to the master shall be paid by the complainant or defendant, according as the exceptions are overruled or the answer be adjudged insufficient. Costs of reference

SEC. 21. Any defendant may swear or affirm to his answer before any master in chancery, or other person authorized to administer oaths in the county where the suit may be pending. Before whom defendant may be sworn.

SEC. 22. Where it is necessary for the defendant to bring a new party before the court, he shall state it in his answer, and may insert therein interrogations for him to reply to; and thereupon a summons What shall be stated in def't's answer relative to a new party.

may be issued and other proceedings had as in case of other defendants.

Def't, after filing his answer, may exhibit interrogatories:  
Complainant failing to answer, petition to be dismissed.

SEC. 23. The defendant in chancery, after filing his answer, may exhibit interrogations to the complainant, which shall be answered by him on oath or affirmation, which answer shall have the same credit and effect as the like answer of a defendant. If the complainant shall not answer within the time fixed by the rules of the court, his petition shall be dismissed with costs.

Cross petition.

SEC. 24. If a cross petition shall be filed by any defendant, he must put in his answer to the first petition before the defendant to the cross petition shall be compelled to answer.

Orders, common or special, to be entered with the clerk.

SEC. 25. All orders common or special, by the consent of parties or their solicitors, shall be entered of course with the clerk, whether in term time or in vacation.

Amendments.

SEC. 26. All amendments shall be made with or without costs, and upon such equitable terms, as the court shall direct.

When cause shall be deemed at issue.  
When answer shall be taken to be true on all points.

SEC. 27. Every cause in a court of chancery shall be deemed at issue on filing a replication.

SEC. 28. If a complainant proceed to a hearing on the petition and answer only, the answer shall be taken to be true on all points, and no evidence shall be received to contradict the same, unless it be matter of record to which the answer refers and is provable by the said record.

Courts may direct an issue for trial by a jury.

SEC. 29. If there be an issue as to any matter of fact which shall render the intervention of a jury necessary, the courts may direct an issue for the trial of the same, and the verdict may be entered of record and made use of at the hearing of the cause.

Pleadings to be served on the opposite party.

SEC. 30. All pleadings subsequent to the original petition shall be served on the opposite party, or one of them where there are several. If such party shall have appeared by a solicitor, the said service shall be made upon such solicitor.

Depositions.

SEC. 31. Depositions may be taken in cases in chancery, under like circumstances and in the same manner as is provided in cases at law.

Witnesses.

SEC. 32. The court may examine witnesses orally, or may direct a master to take depositions in writing in such manner as they shall by rule prescribe.

Compl't failing to attend, bill to be dismissed.

SEC. 33. If the complainant or his solicitor shall not attend at the time appointed for the hearing of the cause, his bill shall be dismissed with cost.

SEC. 34. If the defendant shall not attend at the time appointed for the hearing of the cause, the bill, answer, replication, documents, and proofs shall be read, the witnesses examined, and the court thereupon shall make such decree as they shall think equitable and just.

Def't failing to attend, court to make decree.

SEC. 35. Any person having the possession of land, and claiming title thereto, may institute a suit against any other person setting up a claim thereto, for the purpose of determining who is the real owner thereof.

Suits concerning land may be instituted.

SEC. 36. If the petitioner shall substantiate his title to such land, the defendant shall be decreed to release to the complainant all claim thereto, and to pay the costs of the whole proceeding. But if the defendant by his answer shall disclaim all the title to such land and give a release to the petitioner, the defendant shall be entitled to costs unless the court shall otherwise order and decree.

Case in which defendant shall be charged with costs.

When entitled to costs.

SEC. 37. Where a decree shall be made against any defendant, upon whom the summons shall not have been personally served, the court, before issuing process to compel the performance of such decree, may require the petitioner to give security, in such sum as they may direct, conditioned that the said petitioner will abide and perform any order or decree of the court, obtained by said defendant in the manner hereinafter provided.

Petitioner may be required to give security in certain cases.

SEC. 38. If no security be given as aforesaid, the estate and effects of such defendant may, by order of the court, be sequestered under the direction of the court, to abide such order as they may think proper respecting the same, in case the said defendant do not improve the opportunity provided in the next succeeding section.

If no security given, property of def't may be sequestered.

SEC. 39. In case such defendant, his heirs, devisees, executors, administrators, or assigns, as the case may require, shall within six months after being notified of the decree aforesaid, and within two years after such decree shall have been made, petition the court to set aside said decree, and pay or secure to be paid such costs as the court may think proper to direct, then in such case the person so petitioning may be permitted to appear and answer the complainant's original petition, and such proceedings shall thereupon be had as if said defendant had appeared in due season and no decree had been made; but the title to any real or personal estate the subject of the former decree, which by it, or in consequence of it,

Def't, his heirs, &c., may be permitted to answer original petition. Subsequent proceedings.

Title of a bona fide purchaser not to be affected.

shall have passed into the hands of a *bona fide* purchaser, shall not be affected by any proceedings under this section.

**Def't may file his petition for an account, &c.** SEC. 40. Or such defendant may, within the times aforesaid, file his petition in the said court for an account and settlement of the amount which was really due and owing to the complainant at the time of the decree, and to compel the said complainant to refund what he may wrongfully have recovered and received, together with interest from the time of the receipt thereof with costs of suit. In either of the cases mentioned in this or the preceding sections, the court may make such final decree in the premises as justice requires.

**Def't failing to adopt either measure, decree to be confirmed.** SEC. 41. In case neither of the measures provided in the two preceding sections be adopted and pursued by the defendant within the times therein prescribed, the decree shall be confirmed, which confirmation shall relate back to the time of making such decree, and such decree shall be executed and performed as in cases where the defendant shall have duly appeared.

**Decree to have the force of a judgment at law.** SEC. 42. A decree of a court of chancery shall have the same operation, force, and effect, from the time of its being pronounced, as a judgment at law.

**Petition, answer, and all other proceedings to be filed in clerk's office.** SEC. 43. It shall not be necessary to enroll any decree or dismissal in a court of chancery, but immediately after any decree shall have been pronounced the petition, answer, and all other proceedings in the cause shall be attached together by the clerk of the court and filed in his office, together with a fair engrossed copy of such decree or dismissal, and also the report and decretal order therein, but without any recital of the pleadings; and after the same is signed by the court, the clerk shall annex it to the petition, answer, and pleadings, which shall be of the like effect as if the same had been enrolled.

**Party failing to comply with decree for conveyance, release or acquittance.** SEC. 44. When a decree shall be made for a conveyance, release, or acquittance in any court of chancery, and the party against whom the said decree shall pass fails to comply therewith by the time appointed, such decree shall be considered and taken in all courts of law and equity to have the same operation and effect and be as available as if the conveyance, release, or acquittance had been executed conformably to such decree.

SEC. 45. Where a decree in chancery is made in relation to any real estate lying in a different county from that wherein such decree was rendered, said decree, in order to operate as a lien upon such real estate, must be recorded in the office of the register of deeds in the county where the real estate shall be situated.

Where decree to be recorded to operate as a lien.

SEC. 46. Whenever a bill shall be filed for a foreclosure of a mortgage, the court may decree a sale of the mortgaged premises, or such part thereof as may be sufficient to satisfy the mortgage.

Decree for sale of mortgaged premises.

SEC. 47. All sales of real estate under the decree of a court of chancery shall be made by the sheriff of the county where the premises lie, unless otherwise directed in said decree.

Sales of real estate to be made by sheriff.

SEC. 48. Deeds shall thereupon be executed by the person conducting such sale, which shall be valid and binding against all persons who are bound by the decree of the court.

By whom deeds shall be executed.

SEC. 49. The proceeds of such sale, after payment of the debt and costs, shall be brought into court for the use of the person who may be entitled thereto, subject to the order of the court.

Proceeds to be brought into court.

SEC. 50. If such proceeds shall be insufficient to satisfy said debt and costs, the person conducting such sale shall return that fact to the court, and thereupon execution may issue against any property of the defendant as in actions at law.

If proceeds insufficient execution may issue.

SEC. 51. No suit in chancery shall abate by reason of the death of some of the complainants or defendants, where the cause of action will admit of survivorship; but in case the death of such persons shall be suggested and satisfactorily shown to the court, the said suit shall proceed in favor of or against the survivors as the case may require.

Suit not to abate by death of parties if cause of action survive.

SEC. 52. If the cause of action will not admit of survivorship, the suit (in case of the death of a defendant) shall abate only as to the persons so dying as aforesaid, and the complainant may proceed without reviving the suit against the representatives of the deceased, or against any other person who shall have become interested therein by reason of such death, but no order or decree of the court shall bind a person not a party thereto.

Proceedings when cause of action will not admit of survivorship.

SEC. 53. But if the complainant prefers making the representatives of the deceased party, or any other person who shall have become interested in consequence of such death, a party to such suit, no

In what case court may order suit to stand revived.

petition of revivor shall be necessary, but the court may order the suit to stand revived.

Parties in interest failing to appear, and the effect thereof.

SEC. 54. If the representatives of the deceased party, or the parties in interest by reason of such death, shall not appear and put in their answer, or signify their disclaimer of the suit within the time to be fixed by the court, the complainant may cause their appearance to be entered, and in such case the answer of the deceased party, if one shall have been put in, shall be deemed the answer of the new parties aforesaid, and if no such answer shall have been put in, the petition of the complainant shall be taken as confessed against such new parties as aforesaid.

When persons interested may be entered as complainants.

SEC. 55. If any of the complainants shall die pending a suit wherein the cause of action shall not survive, the persons interested by such death may, on affidavit thereof and motion in open court, be entered as complainants in the suit, and may be permitted to amend the petition as their interests may require upon the payment of the costs occasioned by such amendment. To this amendment the defendants shall answer, and the suit shall proceed as in ordinary cases.

Failing to do so, surviving complainant how to proceed.

SEC. 56. In case the persons interested, in consequence of the death of one of the complainants aforesaid, shall not within ninety days after such death cause themselves to be entered as complainants, as provided in the preceding section, then the surviving complainant, if there be one, may insert his name as complainant in the suit and the cause shall proceed as in ordinary cases.

Rules for proceedings, and in what cases

SEC. 57. The courts may make rules for proceedings in taking a petition as confessed, and also for the proceedings necessary to entitle either party to a decree or order of such court against the opposite party by default, in every case not otherwise provided for by law.

Power to make, amend, or revoke rules of practice.

SEC. 58. The court from time to time may make, alter, amend, or revoke any rule of practice so as to obviate doubts, advance justice, and expedite suits, in the said court, provided the same be not contrary to law.

Orders of reference to a master in vacation. Notice to the opposite party.

SEC. 59. Any judge in vacation may make orders of reference to a master in any cause depending in chancery which is ready for such reference, but the party applying for such order must have given reasonable notice to the opposite party, or his solicitor,



of the time and place at which the application for such order will be made.

SEC. 60. The said courts shall have power to enforce their decrees and orders by attachment, sequestration, or by such final process against the property or person of the defendant as may be had on a judgment at law. Power to enforce decrees by attachment, &c.

SEC. 61. Such process shall be obeyed, executed, and returned, by the sheriff or other officer to whom it shall have been directed, in like manner and under the same penalties as is provided in cases of process issuing from a court of law. In what manner process to be executed and returned.

SEC. 62. In all cases where judgments at law or decrees in chancery may have been obtained and rendered against any person, who shall not have property subject to levy on execution sufficient to satisfy such judgment or decree, but who may have any equitable interest in real estate, or any interest or stock in any incorporated company, or any money, contracts, judgments, decrees, debts, or choses in action, due to him, or which may become due, or moneys, goods, and effects in the hands or possession of any person or body corporate, the same may be subjected in chancery to the payment of such judgment or decree. What interests may be subjected to the payment of judgments or decrees

SEC. 63. Applications may be made to the court, in the county where such judgment or decree was rendered, or where said lands lie, to subject all or any of the interests enumerated in the preceding section to the payment of the judgment or decree aforesaid, according to the usual course of proceeding and known usages of courts of chancery. Applications to court for that purpose.

SEC. 64. The said courts shall decree sales and enforce all necessary transfers and conveyances to vest in any person, purchasing or taking under such decree, all the right, title, and interest of the said debtor in the interests sold or the subject of the decree, at the time of the service of process in such case, to be held in the same manner such debtor held the same. Courts to decree sales and enforce the necessary transfers, &c.

SEC. 65. The sale of all equitable interests in real estate shall be conducted as far as practicable in the same manner as is provided by law for the sale of real estate. Sales of equitable interests.

SEC. 66. Where a suit in chancery is brought for the recovery of any money or damages, a writ of attachment may be issued under the same circumstances and upon like conditions as in actions at Writ of attachment.

law; and the proceedings against garnishees and in all other respects shall, as far as the nature of the case will admit, be made to conform to the corresponding proceedings in actions at law.

Party aggrieved may appeal to supreme ct.

SEC. 67. Any party complaining of any decree made by a district court, may appeal therefrom to the supreme court within thirty days from the time such decree shall have been entered in the minutes of the court.

Notice to opposite party, and clerk.

SEC. 68. Every such appeal shall be made by serving notice thereof on the solicitor of the opposite party, and on the clerk of the court where the decree was entered.

Clerk to certify forthwith.

SEC. 69. Upon being served with such notice, said clerk shall forthwith certify up to the clerk of the supreme court all the papers and proofs in the cause, which may be in his possession together with a transcript of the record in the cause.

Not to stay proceedings unless appellant give security.

SEC. 70. Such appeal shall not operate as a stay of proceedings upon the decree, unless the appellant will give security in such sum as a judge of the supreme court shall direct, conditioned to pay, satisfy, and perform the decree or final order of the supreme court, and all costs, in case the decree or final order of the district court shall be affirmed.

If decree affirmed, court may award damages.

SEC. 71. If such decree or final order shall be affirmed as aforesaid, the supreme court may award such damages against the appellant as they may think proper, not exceeding twenty-five per cent on the amount of the money or other subject matter of such decree.

No lien to be vacated by such appeal.

SEC. 72. No lien created by the decree of a district court shall be vacated or removed by the appeal aforesaid, but shall remain until the final adjudication of the cause in the supreme court.

Petitions for a rehearing.

SEC. 73. Petitions for a rehearing shall be signed by counsel and preferred within thirty days after the making of an order on the hearing; and the prayer of such petitions shall be allowed at the discretion of the court that made the said order, or of a judge thereof if in vacation.

Petition for review within five years.

SEC. 74. Any person who was a party to a decree of a court of chancery, his heirs, executors, or administrators, may file a petition for a review of the proceedings in which such former decree was rendered, at any time within five years next after rendering such decree.

SEC. 75. If the petition for a review be brought upon errors of law appearing in the body of the decree or proceedings themselves, it may be filed as an original proceeding in chancery as a matter of course. Case in which it may be filed as original.

SEC. 76. But if the petition for review be brought upon the discovery of new matter since the hearing on the former decree, it shall only be filed with the leave of the court to which the same is exhibited. In which it may be filed with leave of court.

SEC. 77. In either case the court, on motion, may at their discretion stay their proceedings on the former decree until the further order of the court, or until a final decree is made on the petition for review. Court may stay proceedings.

SEC. 78. The motion to stay proceedings must be made at the term at which the petition for review is exhibited and (with leave) filed, or if filed in vacation, then at the next succeeding term. When motion to be made for that purpose.

SEC. 79. If proceedings are decreed to be stayed, the court shall require security to be first given as in case of appeals. If stayed, security to be given.

SEC. 80. If proceedings are not stayed by order of the court, the party against whom such former decree was rendered shall fully comply therewith, and the court may, if they deem it necessary, require security for costs to be given on the petition for review. If not stayed, former decree to be complied with. Costs on petition for review.

SEC. 81. The several district courts, or any judge of the supreme court, in vacation, may grant writs of injunction in cases allowed by the general usages of courts of equity. Writs of injunction.

SEC. 82. In all cases the person making application for an injunction must give sufficient security in such amount as the court or judge shall direct, conditioned that the complainant will compensate the defendant for all damages he may sustain in consequence of the injunction having been granted without sufficient cause. Security to be given by applicant.

SEC. 83. If the injunction be to stay proceedings at law, the bond, in addition to the requirements of the preceding section, shall be conditioned to pay all money and costs due or to become due to the plaintiff at law. If to stay proceedings at law, condition of bond.

SEC. 84. The writ of injunction may be directed and tested like a summons, and served by the proper officer in the same manner as a summons. Test and service of writ.

SEC. 85. If such injunction be disobeyed, the court or judge by whom it was granted may direct an attachment to be issued to bring the person guilty of contempt. Attachment may issue for contempt.

- of the contempt forthwith before the said court or judge; and unless sufficient cause to the contrary be then shown, the offending party may be punished by fine not exceeding two hundred and fifty dollars, and by imprisonment until the offender shall give to said court or judge satisfactory security that he will do so, or until he be otherwise legally discharged.
- Fine and imprisonment.** SEC. 86. After filing his answer, the defendant at any general or special term may move for a dissolution of the injunction, or he may move to dismiss the proceedings without filing such answer.
- Motion to dissolve injunction or to dismiss proceedings.** SEC. 87. The court upon the motion to dissolve may receive affidavits on the part of the complainant, and may make such order in the premises as they may deem proper.
- Affidavits by complainant.** SEC. 88. The court in continuing or dissolving the injunction may require such security from either party, or impose such other terms and conditions, as may be deemed just and equitable.
- Court may require security from either party.** SEC. 89. Either of the district courts, or any judge of the supreme court, may grant writs of *ne exeat* to prevent the departure of any defendant out of this Territory, until security be given to perform the decree in the cause then pending: the amount and sufficiency of such security to be determined by any such court or judge.
- Writs of ne exeat.** SEC. 90. No such writ shall be granted but upon petition filed, with an affidavit annexed of the truth of the allegations contained in said petition.
- Petition and affidavit.** SEC. 91. This writ being in the nature of equitable bail, shall not in general be granted upon a legal demand, nor under circumstances dissimilar to those which would entitle the plaintiff to bail at law.
- In what cases writ to be granted.** SEC. 92. If the defendant by his answer shall satisfy the court or judge aforesaid that there is no reason for his restraint, or if he shall give security to perform the decree, the writ may be discharged, otherwise he shall be committed to jail in the same manner as when arrested by virtue of a *capias*.
- Writ may be discharged if def't give security, &c.** SEC. 93. Petitions in chancery for the purpose of perpetuating testimony shall set forth specially the subject matter relative to which such evidence is to be taken, and the names of the parties if known to the complainant, but if not known they shall be described as accurately as possible. Such parties shall be brought into court like defendants in other cases.
- Petitions to perpetuate testimony.** SEC. 94. Previous to the order for taking depositions to perpetuate testimony, the party applying
- Names and interrogatories to be filed.**

therefor shall file with the court the names of the witnesses and the interrogatories to be propounded to each. The other party may file cross interrogatories. All which shall be forwarded to the person who is to take the depositions, and returns made in the same manner as provided for taking depositions in suits at law already pending.

Cross interrogatories may be filed.

SEC. 95. The original depositions, or a certified copy thereof, shall be evidence in any suit in law or equity which may be thereafter litigated between the parties to such petition, or their privies, relative to the subject matter thereof, provided the deponent cannot be obtained to testify.

Depositions to be evidence.

SEC. 96. After filing a petition in chancery to perpetuate testimony, or otherwise, and upon proof that either party will be in danger of losing the testimony of any witness by death, removal, or bodily infirmity, and also that the other party has received reasonable notice of the time and place of making the application, the court, or any judge thereof in vacation, may make and cause to be filed among the records in such cause an order for taking the deposition thus sought for and deemed necessary, in such manner as the said court or judge shall deem proper; and in case such witness cannot be procured at the regular time of taking testimony in the cause, or if he shall then be incapable of testifying on account of mental or bodily infirmity, such deposition shall have the same force and effect as though it had been taken in the ordinary manner.

Further proceedings in relation to depositions.

APPROVED, January 23, 1839.

## COURTS.

AN ACT to authorize the holding of the District Courts in the county of Jefferson.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the time of holding the district courts, in the county of Jefferson, shall commence on the Thursdays preceding the times of holding the district courts in the county of Henry.

District courts in Jefferson co. Time of holding the same prescribed.

APPROVED, January 25, 1839.

## COURTS.

An Act defining Crimes and Punishments.

*Be it enacted by the Council and House of Representatives of the Territory of Iowa, That the following shall, from and after the first day of June next, constitute the code of criminal jurisprudence of the Territory of Iowa.*

Code of criminal jurisprudence established.

## FIRST DIVISION.

*Offences against the persons of individuals.*

## MURDER.

**Definition.** SEC. 1. Murder shall consist in the unlawful killing of a human being in the peace of the United States, with malice aforethought either expressed or implied. The unlawful killing may be perpetrated by poisoning, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome and death thereby occasioned.

**Express malice defined.** SEC. 2. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. The punishment of any person convicted of the crime of murder shall be death.

**Punishment.** SEC. 3. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

**Malice implied.**

## MANSLAUGHTER.

**Definition.** SEC. 4. Manslaughter shall consist in the unlawful killing of a human being without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible, or involuntary, in the commission of an unlawful act or a lawful act without due caution or circumspection.

**Voluntary manslaughter.** SEC. 5. In cases of voluntary manslaughter there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite

an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

SEC. 6. The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible, for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder. Must be the result of violent passion.

SEC. 7. Involuntary manslaughter shall consist in the killing of a human being without an intent so to do, in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner. *Provided always,* That when such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged to be murder. Involuntary manslaughter defined.

SEC. 8. That in order to make the killing either murder or manslaughter, it is requisite that the person die within a year and a day after the stroke received or the cause of death administered; in the computation of which time, the whole of the day on which the hurt was done or cause of death administered shall be reckoned the first. Every person convicted of the crime of manslaughter shall be punished by imprisonment for a term not exceeding five years, and fined not exceeding one thousand dollars. What shall constitute the killing either murder or manslaughter. Punishment for manslaughter.

## JUSTIFIABLE HOMICIDE.

SEC. 9. Justifiable homicide shall consist in the killing of a human being in necessary self defence, or in defence of habitation, property, or person, against one who manifestly intends or endeavors by violence or surprise to commit a known felony, such as murder, rape, robbery, burglary, and the like, upon either person or property, or against any person or persons who manifestly intend or endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein. Definition.

Bare fear not  
sufficient to  
justify the act.

SEC. 10. A bare fear of any of these offences, to prevent which the homicide is alledged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge.

Killing another  
in self defence.

SEC. 11. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also, that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given.

In what case an  
officer shall be  
justified.

SEC. 12. If an officer, in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take any person or persons charged with murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting, or other crime denominated felony by the common law, and he or they be resisted in the endeavor to take the person or persons accused, and to prevent the escape of the accused by reason of such resistance he, she, or they be killed, the officer or private person so killing shall be justified: *Provided*, That such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused without success, and that from all probability there was no prospect of being able to prevent injury from such resistance and the consequent escape of such accused person or persons.

Unavoidable  
necessity.

SEC. 13. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer, who in the execution of public justice puts a person to death in virtue of a judgment of a competent court, shall be justified. *Provided*, That the officer in the performance of his duty must proceed according to the sentence of the court and the law of the land.

## EXCUSABLE HOMICIDE.

Definition.

SEC. 14. Excusable homicide, by misadventure, is when a person is doing a lawful act without any in-



tention of killing, yet unfortunately kills another; as where a man is at work with an axe, and the head flies off and kills a bystander; or where a parent is moderately correcting a child, or master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it shall be only misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quality of punishment, and death ensue, it will be manslaughter, or murder, according to the circumstances of the case.

SEC. 15. All other instances, which stand upon the same footing of reason and justice as specified in section fourteenth of this act, shall be considered as excusable homicide. As to other instances.

SEC. 16. The homicide appearing to be justifiable or excusable, the person or persons indicted shall, upon his, her, or their trial, be fully acquitted and discharged. If homicide excusable, person to be acquitted.

### DUELLING.

SEC. 17. If any person shall challenge another to fight a duel, or shall accept of a challenge to fight a duel, or shall knowingly be the bearer of a challenge for the purpose aforesaid, or shall be a second to any person who fights a duel, or shall aid, assist or promote any duel, every such person so offending, upon conviction thereof, shall forfeit and pay a sum not exceeding two thousand dollars, nor less than five hundred dollars, and shall moreover be rendered incapable of holding or being elected to any office of profit, trust, or emolument, either civil or military, in this Territory, or of voting at an election within the same. Giving, accepting, or bearing a challenge, &c. Punishment.

### ATTEMPT TO POISON.

SEC. 18. Every person who shall wilfully and maliciously administer, or cause to be administered to or taken by any person, any poison or other noxious or destructive substance, with the intention to cause the death of such person, and being duly convicted thereof, shall be punished by imprisonment for not less than two years, nor more than twenty years; and every person who shall administer, or cause to be administered or taken, any such Poisoning. Punishment.

When done to procure miscarriage. poison, substance, or liquid, with the intention to procure the miscarriage of any woman being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and fined in a sum not exceeding one thousand dollars.

Punishment.

### MAYHEM.

Mayhem. SEC. 19. If any person or persons within this territory, on purpose, shall unlawfully cut or bite off the ear or ears, or cut out or disable the tongue, put out an eye, or slit, cut, or bite off the nose or lip, or in anywise injure either of the members aforementioned, with intent to maim or disfigure such person, or shall cut, bite, or disable, any limb or member of any person, or shall shoot at, or stab with any weapon, with voluntary purpose to maim or injure such person in any member before mentioned, then and in every such case the person or persons so offending, their counsellors, aiders, or abettors, knowing of and privy to the offence aforesaid, shall, on conviction, be imprisoned not exceeding ten years, and fined not exceeding three thousand dollars.

Punishment.

### RAPE.

Rape in the case of a child. SEC. 20. Every male person of this territory of the age of fourteen years and upwards, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged guilty of the crime of rape, and upon conviction thereof, shall be punished by imprisonment for a term of not less than twenty years, and may extend to life.

Punishment.

Rape in the case of a woman. SEC. 21. Any person above the age of fourteen years, who shall have carnal knowledge of any woman forcibly and against her will, shall be deemed guilty of a rape, and, upon conviction thereof, shall be punished by imprisonment not exceeding ten years, and fined not exceeding five hundred dollars.

Punishment.

### CRIME AGAINST NATURE.

Crime against nature. SEC. 22. The crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment for not less than two years, nor more than twenty years.

Punishment.

## ASSAULT WITH INTENT TO COMMIT MURDER, &c.

SEC. 23. If any person or persons in this territory shall make an assault upon another with an intent to commit murder, rape, mayhem, robbery, or larceny, he, she, or they, so offending, on conviction thereof, shall be punished by imprisonment not exceeding twenty years, and fined not less than fifty dollars, nor more than two thousand dollars. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a high misdemeanor, and any person who shall be duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, and imprisoned for a term not exceeding three years.

*Assault with intent to murder, &c.*  
*Punishment.*  
*With intent to inflict bodily injury.*  
*Punishment.*

## FALSE IMPRISONMENT.

SEC. 24. False imprisonment shall consist in an unlawful violation of the personal liberty of another, by confinement or detention without sufficient legal authority. Any person, convicted of false imprisonment, shall be fined in any sum not exceeding two thousand dollars, and imprisoned not exceeding two years.

*Definition.*  
*Punishment.*

## KIDNAPPING.

SEC. 25. If any person or persons shall forcibly steal, take, or arrest any man, woman, or child, in this territory, and carry him, or her, into another country, state, or territory, or who shall forcibly take or arrest any person or persons whatsoever with a design to take him, or her, out of this territory, without having legally established his, her, or their claim according to the laws of this territory, or of the United States, shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars, and by imprisonment not exceeding ten years.

*Kidnapping.*  
*Punishment.*

## SECOND DIVISION.

*Crimes and offences against habitations, &c.*

## ARSON.

- Burning or causing to be burnt, &c.** SEC. 26. If any person or persons shall wilfully and maliciously burn or cause to be burned, or shall wilfully and knowingly aid or assist in burning or causing to be burned, any dwelling house, malt house, office, shop, barn, stable, storehouse, stillhouse, factory, mill, pottery, or other building, the property of any other person, or any church, meeting house, school house, state house, court house, work house, jail, or other public building, or any boat or other water craft, or any bridge on any public highway, or erected across any of the waters of this territory, such person or persons, upon conviction thereof, shall be punished by imprisonment for a term not exceeding ten years, and shall be fined not exceeding ten thousand dollars.
- Punishment.**
- Setting fire with intent to burn.** SEC. 27. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same, shall be guilty of a high misdemeanor, and, upon conviction thereof, shall be imprisoned for a term not exceeding five years, and be fined in any sum not exceeding one thousand dollars; and should the life of any person or persons be lost in consequence of any such burning as aforesaid, or by intent to burn as specified in this section, such offender or offenders shall be deemed guilty of murder, and shall be indicted and punished accordingly.
- Punishment.**
- If death ensue, offender deemed guilty of murder.**

## BURGLARY.

- Burglary.** SEC. 28. If any person or persons shall, in the night time, wilfully and forcibly break open and enter, or wilfully and maliciously without force (the doors or windows being often left open), enter into any dwelling house, kitchen, office, shop, storehouse, warehouse, stillhouse, mill, factory, water craft, church, or meeting house, with intent to commit murder, robbery, rape, mayhem, larceny, or other felony, he, she, or they, so offending, shall be deemed guilty of burglary, and, on conviction thereof, shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding seven years.
- Punishment.**

SEC. 29. If any person or persons, so breaking or entering any dwelling house, or any of the buildings or vessels specified in the foregoing section, shall actually steal therefrom any money, goods, or chattels, he, she, or they, so offending, shall, on conviction thereof, moreover be fined in treble the value of the property stolen, one-third part of which shall go to the party from whom the same was stolen, and the other two-thirds to the use of the territory, and be imprisoned not exceeding seven years.

If property be stolen by burglar.

Punishment.

SEC. 30. If the person or persons, so breaking and entering any dwelling house or houses and places aforesaid, shall commit, or attempt to commit, any personal abuse, force, or violence, or shall be armed with any dangerous weapon or weapons, as clearly to indicate a violent intention, he, she, or they, so offending, upon conviction thereof, shall moreover be imprisoned not exceeding seven years, in addition to the former punishment.

If personal violence be committed.

Punishment.

SEC. 31. And if the death of any innocent person shall ensue from the breaking and entering any house or water craft as aforesaid, in any of the instances as aforesaid, the perpetrators, and the accessaries before the fact, shall be deemed guilty of murder, and punished with death.

If death ensue.

Punishment.

### THIRD DIVISION.

#### *Crimes and offences relative to property.*

#### ROBBERY.

SEC. 32. If any person or persons shall feloniously and forcibly take any money, goods, chattels, or effects, from the person of another, in the field or highway, or any other place, he, she, or they, so offending, shall be deemed guilty of robbery, and, upon conviction thereof, shall be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding twenty years, and the property, if found, shall be restored to the person or persons, from whom it was taken.

Robbery.

Punishment.

SEC. 33. Whosoever shall commit such robbery with personal abuse or violence, or be armed at the time with any dangerous weapon, so as clearly to indicate an intention of violence, he, she, or they, so offending, upon conviction thereof, shall be imprisoned not

Robbery with personal abuse, &c.

Punishment.

exceeding five years, in addition to punishment in section thirty-two.

**SEC. 34.** And if the death of any innocent person should ensue from such robbery, the perpetrators thereof, and the accessaries before the fact, shall be deemed guilty of murder, and punished with death.

## LARCENY.

**Larceny.** **SEC. 35.** If any person or persons shall steal from any other person or persons, or from the dwelling house or other houses, or from any boat or water craft, of any person or persons, any money, goods, wares, or merchandize, or any other personal property or thing whatsoever, he, she, or they, so offending, shall be deemed guilty of larceny, and, upon conviction thereof, shall, for the first offence, restore to the owner the thing or things stolen, and pay to him the value thereof, and, if the thing stolen be not restored, shall pay to him, her, or them, double the value thereof, and shall be fined in any sum not exceeding double the value of the thing stolen, and shall be imprisoned for a term not exceeding five years, nor less than one year.

**Punishment.**

## HORSE STEALING.

**Horse stealing.** **SEC. 36.** If any person or persons shall steal from any other person or persons within this Territory, any horse, mare, gelding, mule, or ass, he, she, or they, so offending, shall, on conviction thereof, be fined not exceeding five hundred dollars and moreover shall be imprisoned for a term not exceeding ten years.

**Punishment.**

## HOG STEALING.

**Hog stealing, altering marks, &c.** **SEC. 37.** Any person who shall steal any hog, shoat, or pig, or mark or alter the mark of any hog, shoat, or pig, with an intention of stealing the same, for every such offence, upon being thereof duly convicted, shall be fined in any sum not exceeding one hundred dollars, and moreover shall be imprisoned for a term not exceeding five years: *Provided*, nevertheless, That nothing herein contained shall be so construed as to prevent any person from marking or killing his own unmarked hogs which may be running at large with others in his own mark.

**Punishment.**

**Proviso.**

## RECEIVING OR PURCHASING STOLEN GOODS.

SEC. 38. Every person who for his own gain, or to prevent the owner or owners from again possessing his property, shall buy, receive, or harbor stolen goods, or anything the stealing of which is larceny, or property obtained by robbery, or burglary, knowing the same to have been so obtained, shall, upon conviction thereof, be punished by imprisonment for any term not less than one year, nor more than ten. No person convicted of larceny, or of buying, harboring, or receiving goods or other things obtained by larceny, burglary, or robbery, shall be condemned to imprisonment, unless the money or property stolen, bought, or received, shall amount to five dollars: *Provided*, That it shall be the duty of the court in all such cases, where the amount of property stolen, bought, or received, shall be less than five dollars, to condemn the prisoner or prisoners guilty of such stealing, buying, harboring, or receiving, to be imprisoned for a term not exceeding two years.

Receiving stolen goods.

Punishment.

Where the property stolen shall be less than five dollars.

SEC. 39. All property obtained by larceny, robbery, or burglary, shall be restored to the owner or owners, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action not only against the felon, but against any person in whose possession he, she, or they may find the same.

Property obtained by larceny, &c., to be restored

## OFFICERS EMBEZZLING MONEY, &c.

SEC. 40. Every servant, officer, or person employed in any public department, station, or office, of the government of this Territory, or any county therein, or in any office of a corporate body, who shall embezzle, steal, or secrete, or fraudulently take and carry away, any money, goods, chattels, effects, book or books of record, or accounts, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money or property, of whatever description it may be, it being the property of said Territory, county, or corporate body, shall, on conviction, be punished by imprisonment for a term not less than one year nor more than ten years, and shall be fined not exceeding two thousand dollars.

Officers embezzling money, &c.

Punishment.

## DESTROYING AND EFFACING DEEDS, &amp;c.

Fraudulently  
destroying pa-  
pers, &c.

SEC. 41. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any other writing sealed, or any bank bill or note, check or warrant for the payment of money, or other writing or security for the payment of money, or the delivery of goods, or any certificate or other public security of this Territory, or of the United States, or any of them, for the payment of money, or any receipt, acquittal, release, defeasance, or discharge, of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney or other power, or any day-book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and be imprisoned for a term not less than one year, nor more than five years.

Punishment.

## REMOVING LAND MARKS.

Altering or re-  
moving land  
marks.

SEC. 42. Every person who shall knowingly, maliciously, and fraudulently, cut, fell, alter, or remove any certain boundary tree, or other allowed land mark, to the wrong of his neighbor or any other person, shall, on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned for a term not exceeding three months.

Punishment.

## CLERKS AND APPRENTICES SECRETING PROPERTY, &amp;c.

Secreting prop-  
erty with in-  
tent to defraud.

SEC. 43. If any clerk, apprentice, or servant, whether bound or hired, to whom any money, bank bill or note, goods or chattels, shall be entrusted or delivered by his or her master or mistress, and go away with the said money, bank bill, note, goods or chattels, or any part thereof, with intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust or confidence in him or her reposed by his or her said master or mistress, or, being in the service of his or her said master or mistress, shall embezzle the said money, bank bill, note, goods or chattels, or any part thereof, or other,



wise shall convert the same to his or her own use with like purpose to steal the same, every such person, guilty of so offending, shall be deemed guilty of larceny and be punished accordingly.

### BAILEE CONVERTING PROPERTY TO HIS USE.

SEC. 44. If any bailee of money, bank bills, goods or chattels, shall convert the same to his or her use, with an intent to steal the same, he or she shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and, on conviction thereof, shall be punished as in case of larceny. Bailee converting money, &c., to his own use.

### LODGERS EMBEZZLING PROPERTY.

SEC. 45. If any lodger shall take away, with intent to steal, embezzle, or purloin, any bedding, furniture, goods or chattels, which may be furnished in or with his or her lodgings, he or she shall be deemed guilty of larceny, and, on conviction, shall be punished accordingly. Lodgers embezzling goods.

### MISPRISION OF FELONY.

SEC. 46. If any person or persons, having knowledge of the actual commission of the crime of wilful murder, or other felony, within this Territory, shall conceal, and not as soon as may be disclose or make known the same to some judge or justice of the peace within the said Territory, on conviction thereof, such person or persons shall be adjudged guilty of misprision of felony, and shall be imprisoned not exceeding three years, and fined not exceeding five hundred dollars. Punishment for misprision of felony.

### FOURTH DIVISION.

#### *Forging and Counterfeiting.*

SEC. 47. If any person or persons within this Territory shall falsely make, forge, or counterfeit, or willingly aid or assist in falsely making, forging, or counterfeiting, any record or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, Forgery.

testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, power of attorney, county order, or any accountable receipt, or any order or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acceptance, release, or discharge, for any debt, account, action, suit, demand, or other thing personal or real, or shall counterfeit, or forge the seal or handwriting of another, with intent to damage and defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this Territory or not, or shall utter, publish, pass, or attempt to pass as true and genuine, any of the above named false, altered, forged or counterfeited writings, specified and described, or any other false, altered, forged or counterfeited writing, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this Territory or not, every person so offending shall be deemed guilty of forgery, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and be imprisoned not exceeding ten years.

Punishment.

### COUNTERFEITING COIN.

Gold or silver coin.

SEC. 48. Every person who shall counterfeit any of the species of gold or silver coin now current, or that hereafter may be current in this Territory, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be altered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be fined in any sum not exceeding two thousand dollars, and be imprisoned not less than three years, nor more than ten years.

Punishment for counterfeiting, &c.

### PERSONS WITH COUNTERFEIT NOTES IN POSSESSION.

Having in possession coun-

SEC. 49. Every person in this Territory who shall have in his or her possession, or shall receive from

any other person, any forged promissory note or notes, or bank bill for the payment of money, with intention to utter or pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body corporate or politic, whether such person or persons, body corporate or politic, reside in or belong to this Territory or not, knowing the same to be forged or counterfeited, or shall have or keep in possession any blank or unfinished note, or bank bill, made in the form or similitude of any promissory note or bill for payment of money, made to be issued by any incorporated bank or banking company in this Territory, or elsewhere, with intention to fill up and complete such blank and unfinished note or bill, or to permit or cause or procure the same to be filled up and completed in order to utter or pass the same, or to permit or cause or procure the same to be uttered or passed to defraud any person or persons, body politic or corporate, whether in this Territory or elsewhere, upon conviction thereof, shall be fined in a sum not exceeding one thousand dollars, and imprisoned at hard labor not exceeding the term of five years.

terfelt notes or bills with intent to utter or pass the same.

Punishment.

### HAVING IN POSSESSION FICTITIOUS NOTES, &c.

SEC. 50. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this Territory or elsewhere, or with the like intention shall attempt to pass, utter, or publish any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument of writing, for the payment of money or property, of some bank, corporation, co-partnership, or individuals, where in fact there shall be no such bank, corporation, co-partnership, or individual in existence, the said person, knowing the said bill, note, check, or instrument of writing, for the payment of money or property, to be fictitious, shall be deemed guilty of the crime of forgery, and, on conviction thereof, shall be fined not exceeding five hundred dollars, and be imprisoned not exceeding five years.

Making, passing, &c., fictitious bills, notes, &c.

Punishment.

## HAVING IN POSSESSION DIES FOR COUNTERFEITING.

**SEC. 51.** If any person or persons in this Territory shall make, or knowingly have in possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting the coin now or hereafter to be made current in this Territory, or in counterfeiting bank notes or bills, whether such bank be situate in this Territory or not, upon conviction thereof, shall be fined not exceeding three hundred dollars, and imprisoned not exceeding two years, nor less than one year, and all such dies, plates, apparatus, paper, metal, machines, intended for the purpose aforesaid shall be destroyed.

**Making or having apparatus for counterfeiting.**

**Punishment.**

## COUNTERFEITING PUBLIC SEALS.

**SEC. 52.** If any person or persons shall fraudulently forge, deface, corrupt, or counterfeit, the great seal of this Territory, the seal of any court or public officer by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully and corruptly, and with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in possession or custody any such counterfeited seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall be duly convicted thereof, shall be fined not exceeding five hundred dollars, and be imprisoned not exceeding seven years.

**Defacing or counterfeiting public seals.**

**Punishment.**

## TESTIMONY.

**SEC. 53.** On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

**SEC. 54.** Persons of skill shall be competent witnesses to prove that such bill, or note, or other writing, is forged or counterfeited.

**In trials for forgery proof by charter not necessary.**

**Competent witnesses.**

## FIFTH DIVISION.

*Crimes and offences against public justice.*

## PERJURY AND SUBORNATION OF PERJURY.

SEC. 55. If any person shall wilfully and corruptly Perjury. commit perjury, or shall by any means procure any person to commit corrupt and wilful perjury, on his or her oath or affirmation, in any suit, controversy, matter, or cause depending in any of the courts of this Territory, or in any depositions taken pursuant to the laws of the same, every person so offending, and being thereof convicted, shall be imprisoned not Punishment. exceeding five years, and fined not exceeding one thousand dollars, and be thereafter rendered incapable of giving testimony in any of the courts of this Territory.

## PERJURY CAUSING DEATH.

SEC. 56. If any person or persons shall by wilful When procur- and corrupt perjury, or subornation of perjury, pro- ing conviction cure the conviction of any innocent person charged of innocent with murder, he, she, or they, so offending, shall be persons to be deemed guilty of murder, and upon conviction there- deemed mur- of, shall suffer the punishment of death.

## BRIBERY.

SEC. 57. If any person or persons shall directly or Bribe to any indirectly give any sum of money, or any other bribe, judge, justice present, or reward, or any other thing to obtain or or member of procure the opinion, judgment, or decree of any the legislative judge, or justice of the peace, acting within this Terri- assembly. tory, or to corrupt, induce, or influence such judge, or justice of the peace, to be more favorable to one party than to the other, in any suit, matter, or cause, depending or to be brought before him or them, or shall directly or indirectly give any sum of money, present, or reward, or any promise, contract, obligation, or security, for the payment or delivery of any money, present, or reward, or other thing, to procure or influence the vote of any member of the legislative assembly of this Territory, or to induce or influence any member of the legislative assembly to be more favorable to one side than the other, on any question, election, matter, or thing, pending or to be brought before the legislative assembly, or either

**Punishment.** house thereof, the person so giving any bribe, present, or reward, promise, contract, obligation, or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly, who shall in anywise accept or receive the same, shall be deemed guilty of bribery, and, on conviction, shall be fined not less than one hundred dollars, nor more than one thousand dollars.

**Bribe to procure appointment to office, &c.** SEC. 58. If any person shall directly or indirectly give any sum of money, or any bribe, present, or reward, or any promise, contract, obligation, or security, for the payment of any money, present, or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general for the Territory, district attorney, member of the legislative assembly, or other officer ministerial or judicial (but such as are allowed by law), with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to office, or exercised any power in him vested, or perform any duty required, with partiality or favor, or otherwise contrary to law, the person so giving, and the officer so receiving, any money, bribe, present, reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and, on conviction thereof, shall be fined not less than two hundred dollars, nor more than five hundred dollars, and moreover shall be imprisoned not more than three years.

**Punishment**

### ATTEMPT TO BRIBE.

**Attempt to bribe.** SEC. 59. If any person or persons shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, or other ministerial or judicial officer of this Territory, in any of the cases mentioned in either of the two preceding sections, and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district attorney, or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases above mentioned in either of the two pre-

ceding sections, shall, on conviction thereof, be fined Punishment.  
in a sum not exceeding five hundred dollars, nor less  
than one hundred dollars.

SEC. 60. If any judge, justice of the peace, sheriff, Officers embezzling or falsifying records, &c.  
coroner, clerk, recorder, or other public officer, or  
any person whomsoever, shall steal, embezzle, alter,  
corrupt, withdraw, falsify, or avoid, any record, pro-  
cess, charter, gift, grant, conveyance, bond, or con-  
tract, or shall knowingly and wilfully take off, dis-  
charge, or conceal, any issue, forfeited recognizance,  
or other forfeiture, or shall forge, deface, or falsify  
any document or instrument recorded, or any regis-  
try, acknowledgement, certificate, or shall alter, de-  
face, or falsify any minute, document, book, or any  
proceeding whatsoever, of or belonging to any pub-  
lic office within this Territory, the person so offend-  
ing, and being thereof duly convicted, shall be fined Punishment.  
in any sum not exceeding three thousand dollars,  
and imprisoned not exceeding three years: *Provided*, Proviso.  
That such imprisonment shall be left at the discre-  
tion of the court.

## JAILOR WHEN GUILTY OF OPPRESSION.

SEC. 61. Every jailor, when guilty of inhumanity Oppression by  
or oppression to any prisoner under his care or cus- jailor.  
tody in this Territory, upon conviction thereof, shall  
be fined in any sum not exceeding five hundred dol- Punishment.  
lars, and be removed from office.

## OBSTRUCTING EXECUTION OF PROCESS.

SEC. 62. If any person or persons shall knowingly Resisting offi-  
and wilfully obstruct, resist, or oppose any officer of cer in discharge  
this Territory in serving or attempting to serve or of his duty.  
execute any mesne process, or warrant, or any rule  
or order of any of the courts of this Territory, or  
any other legal or judicial writ or process whatso-  
ever, or shall assault, beat, or wound any officer or  
other person, duly authorized, in serving or execut-  
ing any writ, rule, order, process, or warrant afore-  
said, every person so offending in the premises shall,  
on conviction thereof, be imprisoned not exceeding Punishment.  
two years, and fined not exceeding three hundred  
dollars: *Provided*, If any officer or person whomso- Proviso.  
ever shall assault or beat any individual under color  
of his commission or authority, without lawful neces-  
sity for so doing, he shall, on conviction, suffer the  
same punishment.

## RESCUE AFTER CONVICTION.

**Rescue of convicted persons.** SEC. 63. If any person or persons shall, by force or otherwise, set at liberty or rescue any person who shall have been found guilty or convicted of any crime the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment not exceeding five years, nor less than one year; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of any crime the punishment of which is imprisonment, whether such person be in custody of an officer or in jail, the person so offending on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued

**Punishment.**

**Where the convicted person would have suffered imprisonment.**

## RESCUE BEFORE CONVICTION.

**Before conviction.** SEC. 64. If any person or persons in this Territory shall set at liberty or rescue any person who before conviction stands charged or committed for any capital offence, or any crime punishable by imprisonment, such person so offending shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, and imprisoned for a term not exceeding three years.

**Punishment.**

## RESCUE FROM CIVIL PROCESS.

**From civil process.** SEC. 65. If any person or persons shall rescue or set at liberty any person, in legal custody on civil process, such person shall, on conviction, be fined in any sum not exceeding double the sum for which said civil process issued.

**Fine.**

## ASSISTING PERSONS IN JAIL TO ESCAPE, &amp;c.

**Aiding prisoners to escape.** SEC. 66. If any person shall aid or assist a prisoner, lawfully committed or detained in any jail for any offence against this Territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from jail, though no escape be actually made, or if any person shall convey or cause to be delivered to such prisoner any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, any person so offending, although no escape or attempt to escape be actually made,



shall, on conviction, be punished by fine not exceeding five hundred dollars, nor less than one hundred dollars, and imprisoned for a term not exceeding two years. Punishment.

### AIDING IN AN ATTEMPT TO ESCAPE.

SEC. 67. If any person or persons shall aid any person to attempt to escape, or shall rescue or attempt to rescue any prisoner from the custody of the sheriff, deputy sheriff, coroner, constable, officer, or other person, who shall have the lawful custody of such prisoner, every person so offending shall, on conviction thereof, be fined not exceeding one thousand dollars, and imprisoned not exceeding one year. In attempt to escape.

### OFFICER SUFFERING PRISONER TO ESCAPE BEFORE CONVICTION.

SEC. 68. If any sheriff, coroner, jailor, keeper of a prison, or, other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily or negligently suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, and imprisoned in the county jail for any term not exceeding six months. Escape before conviction.

### OFFICER REFUSING TO ARREST, &c.

SEC. 69. If any sheriff, coroner, keeper of a jail, constable, or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, then such sheriff, coroner, jailor, constable, or other officer, shall, on conviction, be fined not exceeding two hundred dollars, nor less than fifty dollars, and imprisoned not exceeding six months in the common jail. Punishment of officer for refusing to arrest, &c.

### COMPOUNDING CRIMINAL OFFENCES.

SEC. 70. If any person shall take money, goods, chattels, lands, or other reward, or promise thereof, to compound any criminal offence, such person or persons, on conviction thereof, shall be fined in double the sum or value of the thing agreed for or taken; but no person shall be debarred from taking his goods or property from the thief or felon, or Compounding for offences.

receiving compensation for the private injury occasioned by the commission of any such criminal offence.

### CONSPIRACY.

**Conspiracy.** SEC. 71. If two or more persons shall conspire or agree, falsely and maliciously to charge or indict any person for any criminal offence, each of the persons so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

**Punishment.**

### EMBRACERY.

**Attempt to influence jurors corruptly.** SEC. 72. If any person in this Territory shall procure any juror to take money, gain, or profit, or shall corruptly influence any juror by persuasion, promises, entreaties, or by any other improper means, or shall threaten or menace any juror for the purpose of influencing him corruptly to one side, such person, on conviction thereof, shall be fined not exceeding five hundred dollars, and imprisoned not exceeding two years. And any juror convicted of taking money, gain, or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as a juror in this Territory.

**Punishment.**

### COMMON BARRATRY.

**Encouraging suits or quarrels.** SEC. 73. If any person or persons in this Territory shall wickedly and wilfully excite and stir up any suits or quarrels between the people of this Territory, either at law or otherwise, with a view to promote strife and contention, every such person so offending shall be deemed to have committed the crime of common barratry, and, upon conviction thereof, shall be fined in any sum not exceeding three hundred dollars, and if he be an attorney and counsellor at law, he shall be suspended from the practice for any time not exceeding six months.

**Punishment.**

### EXTORTION.

**Extortion.** SEC. 74. If any judge, justice of the peace, sheriff, coroner, constable, clerk, or other officer of this Territory, ministerial or judicial, shall wilfully or corruptly receive or take any fee or reward to execute or do his duty, except such as is or shall be allowed

by law, or if any such officer shall wilfully or corruptly ask or demand, as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and on conviction thereof, shall be fined in any sum not exceeding two hundred dollars.

## SENDING THREATENING LETTERS, &c.

SEC. 75. If any person shall knowingly send or deliver any letter or writing threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, or kill, or to burn or destroy his or her house or other property, or to accuse another of his or her infirmities or failings, though no money, goods, chattels, or valuable thing be demanded, such person or persons so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding one year.

### SIXTH DIVISION.

*Offences against the public peace and tranquillity.*

## DISTURBING THE PEACE.

SEC. 76. If any person, at late or unusual hours of the night time, maliciously or wilfully disturb the peace or quiet of any neighborhood or family by loud or unusual noises, or by tumultuous and offensive carriage, threatening, traducing, quarrelling, challenging to fight, or fighting, every person convicted thereof shall be fined not exceeding one hundred dollars, or imprisoned not exceeding six months, or both, at the discretion of the court.

PERSONS ASSEMBLING TO DISTURB THE  
PEACE. &c.

SEC. 77. If two or more persons assemble for the purpose of disturbing the peace, or committing any unlawful act, and do not disperse, on being desired or commanded so to do by a judge, justice of the

**Punishment.** peace, sheriff, coroner, constable, or other public officer, every such person so offending shall be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding six months, or both by fine and imprisonment, at the discretion of the court.

### AFFRAY.

**Persons guilty of an affray to be fined.** SEC. 78. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this Territory, the person or persons so offending shall be deemed guilty of an affray, and shall be fined not exceeding one hundred dollars, nor less than ten dollars.

### ROUT.

**Rout.** SEC. 79. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances towards it, they shall be deemed guilty of a rout, and, on conviction, shall be severally fined in a sum not exceeding seventy dollars, or imprisoned not exceeding six months.

**Punishment.**

### RIOT.

**Riot.** SEC. 80. If two or more persons actually do an unlawful act with force or violence against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent and tumultuous manner, every person so offending shall be deemed guilty of a riot, and, on conviction thereof, shall be fined not exceeding two hundred dollars, or imprisoned not exceeding six months, or both, at the discretion of the court.

**Punishment.**

### DUTY OF JUDGES, OFFICERS, &c.

**When persons meet to commit the offences specified, officers shall command them to disperse.** SEC. 81. Whenever two or more persons shall be assembled as aforesaid, and proceeding to commit any of the offences specified in the foregoing sections of the sixth division, it shall be the duty of all judges, justices of the peace, sheriffs, and all ministerial officers, immediately upon actual view, or as soon as may be upon information, to make proclamation in the hearing of such offenders, if silence can be obtained, commanding them, in the name of the United States, to disperse and depart to their several homes or lawful employment; and if upon such

proclamation, or when silence cannot be obtained, such persons so assembled shall not disperse and depart as aforesaid, it shall then be the duty of the judges, justices, sheriffs, and other ministerial officers, respectively, to call upon persons near, and of abilities, and throughout the county if necessary, to be aiding Aid if necessary. and assisting in dispersing and taking all persons assembled as aforesaid, and all military officers and others, called upon as aforesaid, are hereby required and directed to render assistance and full obedience in this behalf, upon the penalty of twenty dollars each, for every neglect or refusal when neglected as aforesaid, and commitment in case of the non-payment of such fine. If any of the persons unlawfully assembled shall be killed, maimed, or otherwise injured, in consequence of resisting the judges or others in dispersing and apprehending, or in attempting to disperse and apprehend them, the said judges, justices of the peace, sheriffs, ministerial officers, and others acting by their authority, or the authority of any of them, shall be holden If death or injury ensue officers to be held guiltless. guiltless.

## LIBEL.

SEC. 82. If any person shall attempt by malicious Malicious defamation. defamation, expressed either by printing, or by signs, pictures, or the like, to blacken the memory of one who is dead, or to publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt, or ridicule, every such person so offending, whether writer or publisher, upon conviction, shall be fined in any sum not exceeding Punishment. five hundred dollars, or imprisoned not exceeding two years, or both, at the discretion of the court.

## SEVENTH DIVISION.

### *Offences against public morality, health, &c.*

## BIGAMY.

SEC. 83. If any person or persons within this Bigamy. Territory, being married, or who shall hereafter marry, do at any time marry any person, the former husband or wife being alive, every such person so offending shall be deemed guilty of bigamy, and, upon conviction thereof, shall be fined in a sum of not more Punishment. than five hundred dollars, nor less than one hundred

Provises.

dollars, and be imprisoned at hard labor for a term not exceeding five years, and thereafter be rendered infamous, and be incapable of giving testimony, or holding any commission, civil or military, in this Territory. Nothing herein contained shall extend to any person whose husband or wife shall have been continually absent from such person for the space of five years together, prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also nothing herein contained shall extend to any person that is or shall be at the time of such second marriage divorced by lawful authority from the bands of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

### SINGLE PERSONS MARRYING, &c.

Single persons  
marrying hus-  
band or wife of  
another.

SEC. 84. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction thereof, be fined not exceeding five hundred dollars, and imprisoned not more than one year.

### ADULTERY AND FORNICATION.

Persons living  
in adultery or  
fornication.  
Punishment.

Proviso.

SEC. 85. Any man or woman who shall live together in an open state of adultery or fornication, or adultery and fornication, shall, on conviction thereof, be fined not exceeding three hundred dollars, and imprisoned not more than one year: *Provided*, however, That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution by their intermarriage, if such marriage can be legally solemnized, upon the payment of the costs of such prosecution.

### PERSONS GUILTY OF LEWDNESS, &c.

Open lewdness  
or other public  
indecenties.

SEC. 86. If any person shall be guilty of open lewdness, or other notorious act of public indecency tending to debauch the public morals, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common, ill-governed, and disorderly house for the encouragement of idleness, gaming, drinking, fornication, or other misbehavior, every such person shall, on conviction, be

fined not exceeding two hundred dollars, or imprisonment not exceeding one year, or both, at the discretion of the court. Punishment.

## PERSONS OBSTRUCTING PUBLIC ROADS, &c.

SEC. 87. If any person in this Territory shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any town, or any public bridge, or causeway, or public river, or stream declared navigable by law, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufactory, or business, or continue the same after it has been erected or established, or shall in anywise pollute any water course, lake, pond, marsh, or common sewer, or continue such pollution so as to render the same offensive or unwholesome to the county, town, village, or neighborhood thereabouts; every person so offending shall, upon conviction thereof, be fined not exceeding one hundred dollars, Obstructing or injuring highways, streets, bridges, &c. Fine. and every such nuisance may, by order of the district or proper court before whom the conviction may take place, be removed and abated by the sheriff of the proper county; and any inquest and judgment thereon, had under the provisions of any law authorizing a writ of *ad quod damnum*, shall be no bar to a prosecution under this act. Nuisance to be abated.

## PERSONS DISINTERRING THE DEAD.

SEC. 88. If any person shall open the grave or tomb where the body or bodies of any deceased person shall have been deposited (except such as have committed suicide), and shall remove the body or remains of any deceased person from the grave or place of sepulture, for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relatives of the deceased, or shall in any way aid, assist, counsel, or procure the same to be done, every such person so offending shall, on conviction, be fined not less than one hundred dollars, nor more than five hundred dollars: *Provided*, That this section shall not be so construed to prevent any person from removing the dead body of their deceased relations, or intimate friends, to any other place of sepulture that he or she may think proper. Disinterment of the dead. Fine Proviso.

## VOTING MORE THAN ONCE AT ELECTION.

for voting  
ore than once  
at an election.

SEC. 89. If any person, being an elector, shall vote more than once at any election which may be held by virtue of any law of this Territory, he shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars.

## REFUSING TO JOIN POSSE COMITATUS.

Fine for refus-  
ing to aid in  
*posse comita-*  
*tus*, &c.

SEC. 90. Every male person above the age of eighteen years who shall neglect or refuse to aid and assist, or join the *posse comitatus*, or power of the county, for the purpose of taking or arresting any person against whom there may have issued any civil or criminal process, or shall neglect and refuse to aid and assist in retaking any person who, after having been arrested or confined, may have escaped from such arrest or imprisonment, or shall neglect and refuse to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any sheriff, coroner, constable, judge, justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in a sum not less than twenty dollars, nor more than seventy-five dollars.

## DEFACING NOTICES.

Fine for oblit-  
erating or de-  
stroying adver-  
tisements, &c.

SEC. 91. If any person shall intentionally deface, obliterate, tear down, or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States, or of this Territory, or any proclamation, advertisement, or notification, set up at any place in this Territory, or by order of any court, such person, on conviction, shall be fined in a sum not less than ten dollars, nor more than seventy-five dollars, at the discretion of the court: *Provided*, That this section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, advertisement, or notification, after the time, for which the same was by law or order of the court to remain set up, shall have expired.

Proviso.



## EIGHTH DIVISION.

*Offences committed by Cheats, Swindlers, &c.*

## FRAUDULENT CONVEYANCES.

SEC. 92. All and every person who shall be a party to any fraudulent conveyance of lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract, or conveyance had, made, or contrived, with intent to deceive and defraud others of their just debts, damages, or demands, or who, being parties as aforesaid, at any time shall avow, maintain, justify, or defend the same or any of them as true, and done, had, or made in good faith, or upon good consideration, or shall sell, alien, or assign any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them, conveyed as aforesaid, or any part thereof, he, she, or they so offending shall, on conviction thereof, be fined in a sum not less than two hundred dollars, nor more than one thousand dollars, and shall moreover be imprisoned at hard labor for a term of not less than two years, nor more than five years, and all such conveyances, as aforesaid, shall be declared null and void, and the person making the same for the purpose aforesaid shall forfeit and pay double damages to the party injured.

Conveyance,  
bond, suit, &c.,  
with intent to  
defraud.

Punishment.

## SWINDLERS.

SEC. 93. If any person by false representation of his own respectability, wealth, or mercantile correspondence and connections, shall obtain a credit, and thereby defraud any person of money, goods, chattels, or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth, or mercantile character, and by thus imposing upon any person obtain credit, and thereby fraudulently get into possession of goods, wares, or merchandize, or any valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined in a sum not less than one hundred dollars, nor more than one thousand dollars, or imprisoned at hard labor not less than two years, nor more than five years, or both, at the discretion of the court.

Money, goods,  
&c., fraudulent-  
ly obtained.

Punishment.

## CHEATS.

**Cheats.** SEC. 94. If any person or persons shall knowingly and designedly, by any false pretence or pretences, obtain from any other person any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever, with intent to cheat or defraud any such person of the same, every person so offending shall be deemed a cheat, and, upon conviction, shall be fined in a sum not less than one hundred dollars, and imprisoned not less than six months, nor more than two years, and shall be sentenced to restore the property so fraudulently obtained, if it can be done.

**Punishment.**

## FRAUDULENTLY SELLING LANDS A SECOND TIME.

**Selling lands, claims, or lots, a second time with intent to defraud.** SEC. 95. Any person, after once selling, bartering, or disposing of any tract of land, claim, or town lot, or executing any bond or agreement for the sale of any lands, claims, or town lots, who shall again knowingly and fraudulently sell, barter, or dispose of the same tract or tracts of land, claim, or town lot or lots, or any part thereof, or shall knowingly and fraudulently execute any bond or agreement to sell, barter, or dispose of the same lands, claims, or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be fined not exceeding five hundred dollars, or imprisoned not exceeding three years, or both, at the discretion of the court.

**Punishment.**

## COMMON CHEATS.

**False weights or measures.** SEC. 96. If any person in this Territory shall knowingly sell by false weight or measures, or shall knowingly use false measures at any mill in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and, on conviction, shall be fined not less than one hundred dollars, nor more than five hundred dollars, and be imprisoned not exceeding two years.

**Punishment.**

## NINTH DIVISION.

*Fraudulent and malicious mischief.*

## DESTROYING HOUSES, &amp;c.

SEC. 97. If any person shall wilfully or maliciously destroy, or damage any bridge, embankment, or mill dam, or break or destroy the windows or doors of any dwelling house, or in anywise injure any house or houses, or shall set fire to, or burn, or destroy, or procure or cause to be burnt or destroyed, any barrack, cock, crib, rick, or stack of hay, corn, wheat, oats, barley, or other grain of any kind, or shall cut down, girdle, or destroy any fruit tree, or shade tree, or shall cut, pull down, burn, or destroy any gate post, railing, or fence, or shall pull down, burn, or destroy any pile of wood, boards, or plank, or other lumber, or shall overturn any cart, wagon, or other carriage, or shall run them into sloughs, holes, or other places, or shall cut loose or set adrift any canoe, ferry-flat, boat, or other vessel, for mischief, or shall unlawfully, wantonly, wilfully, or maliciously, kill, wound, disfigure, or destroy any horse, mare, filly, colt, or gelding, or any bull, ox, steer, bullock, cow, heifer, or calf or any sheep or lamb, or any hog, dog, or any other useful animal, being the property of another, every person so offending, on conviction, shall be fined not exceeding two hundred dollars, or imprisoned not exceeding four months, or both, at the discretion of the court.

Wilful or malicious destruction of bridges houses, &c.

Injuring or destroying useful animals.

Punishment.

## DESTROYING PUBLIC JAIL.

SEC. 98. If any person shall wilfully and intentionally break down, pull down, or otherwise destroy, or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of said jail or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act.

Fine for destroying or injuring public jail.

## PERSONS SETTING FIRE TO PRAIRIES, &amp;c.

SEC. 99. If any person shall at any time hereafter wilfully, intentionally, or negligently and carelessly, set fire to any woods, prairie, or other land, every person so offending, on conviction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding four months, or both, at the discretion of the court.

Fine for firing woods, prairies, &c.

**Proviso.** set on fire, or cause to be set on fire, any woods, prairies, or other grounds whatsoever in the inhabited parts of this Territory, persons so offending shall, on conviction, be fined in any sum not less than fifty, nor more than one hundred dollars: *Provided*, That this section shall not extend to any person who shall set on fire, or cause to be set on fire, any woods or prairies adjoining his or her farm, plantation, or enclosure, for the necessary preservation thereof from accident of fire, by giving to his or her neighbors two days' notice of such intention: *And provided, further*, That this section shall not be construed to take away any civil remedy, which any person may be entitled to, for any injury which may be done or received in consequence of such firing.

## TENTH DIVISION.

### *Construction of this act and mode of punishment.*

## PARTIES MAY MAINTAIN CIVIL ACTIONS

**Persons injured not barred from actions for damages.** SEC. 100. Nothing in this act shall be so construed as to prevent the party or parties injured from having and maintaining a civil action for all damages and losses that he, she, or they may have sustained in consequence of the commission of any criminal offences herein punished; and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any manner affected thereby:

**Proviso.** *Provided*, however, The record of conviction shall not be used as evidence in any civil action brought on any forged writing, or to recover the damages and losses sustained by the commission of any such criminal offence.

## THE PUNISHMENT OF DEATH.

**Manner in which it shall be inflicted.** SEC. 101. The manner of inflicting the punishment of death shall be by hanging the person convicted by the neck until dead, at such time as the court shall direct, which time shall not be less than fifteen, nor more than twenty-five days from the time sentence is pronounced, unless for good cause the court or Governor may prolong the time; and the court, at their discretion, may order such execution to take place in public, or private, if the latter, then the court shall appoint twelve respectable citizens

of the county to see that the sentence of the law is faithfully executed.

## THE BODY OF CRIMINAL FOR DISSECTION.

SEC. 102. The court may order on application of any respectable surgeon or surgeons, that the body of the convict shall, after death, be delivered to such surgeon or surgeons for dissection. Court may order the body for dissection.

## PUNISHMENT BY IMPRISONMENT.

SEC. 103. In all cases of imprisonment, for offences under this act, it shall and may be lawful for the sheriff or keeper of every prison to compel the prisoner to labor at some useful employment, within or without the prison, under such directions and regulations as may from time to time be given by the district courts within their respective counties; and if any such prisoners shall be ordered by the court aforesaid to labor upon any public works without the prison, it shall be lawful, and is made the duty of the sheriff or keeper of any such convicts, to secure them, without cruelty, by ball and chain, or block, and also to have a sufficient guard to prevent their escape. Prisoners may be compelled to labor.

## PUNISHMENT BY FINE.

SEC. 104. In all cases of conviction under this act, the party convicted shall remain in confinement until all the costs attending his prosecution are paid, and his sentence has been fully complied with. How long party convicted may be confined.

## PROPERTY OF OFFENDER BOUND.

SEC. 105. The property, real and personal, of every person charged under this act shall be bound from the time of his arrest, at least so far as will be sufficient to pay to the extent of his condemnation. From what time property of offender bound.

## EXECUTION TO ISSUE FOR FINES.

SEC. 106. It shall be the duty of the clerk of each court, at the end of each term, to issue an execution, and deliver the same to the sheriff of the county where the court is held, commanding him to collect each and every fine imposed during the term, as in case of execution on civil process; and it shall be Clerk to issue executions for fines.

the duty of the sheriff to make due return of all executions, and pay over all monies so collected, without delay, into the county treasury of the proper county, unless otherwise directed by this act.

### FINES APPROPRIATED.

Fines to pass  
into county  
treasury.

SEC. 107. All fines, not herein otherwise appropriated under this act, shall be for the use of the county in which the offence shall be tried, and shall be paid into the county treasury by the officer collecting the same.

### BENEFIT OF CLERGY ABOLISHED.

Benefit of clergy, &c., abolished.

SEC. 108. The benefit of clergy, appeals of felony, and trial by battle, shall be, and are hereby forever abolished.

### PERSONS WHEN DEEMED INFAMOUS.

Persons deemed infamous.

SEC. 109. Each and every person in this Territory who may hereafter be convicted of the crime of rape, kidnapping, wilful and corrupt perjury, arson, burglary, robbery, sodomy, or the crime against nature, larceny, forgery, counterfeiting, or bigamy, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust, or profit, of voting at any election, of serving as a juror, and of giving testimony in this Territory.

APPROVED, January 25, 1839.

---

### DEPOSITIONS.

AN ACT regulating the mode of taking Depositions, and to provide for the perpetuation of Testimony.

Depositions of  
non-resident  
witnesses.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That when the testimony of any non-resident witness or witnesses shall be necessary in any civil cause depending in any court of law or equity in this Territory, it shall be lawful for the party wishing to use the same, on giving to the adverse party or his Attorney ten days' previous notice in writing, together with a copy of the interrogatories intended to be put to such witness or witnesses, to sue out from the proper clerk's