

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

office a *dedimus protestatem*, or commission under the seal of the court, and tested in the name of the judge or justices thereof, directed to any number of persons, not exceeding three, as commissioners, or to any judge, or justice of the peace, or clerk of any district or circuit court, or any notary public of the county or city in which such witness or witnesses may reside, authorizing and requiring him or them to cause such witness or witnesses to come before him or them, at such time and place as he or they may designate and appoint, and faithfully to take his, her, or their deposition or depositions, upon all such interrogatories as may be inclosed with, or attached to, said commission, both on the part of the plaintiff and defendant, and none other, and to certify the same when thus taken, together with the said commission and interrogatories, into the court in which such cause shall be depending, with the least possible delay.

SEC. 2. When the testimony of any resident witness shall be necessary in any suit in Chancery in the Territory, it shall be lawful for the party wishing to use the same to cause the deposition or depositions of such witness or witnesses to be taken before any judge, justice of the peace, clerk of the district or circuit court, county commissioner or notary public of the county wherein such witness or witnesses shall reside, without being required to sue out a commission or to file interrogatories for such purpose, on giving to the adverse party, or his attorney, reasonable notice of the time and place of taking the same. And it shall also be lawful, upon satisfactory affidavit being filed, to take the depositions of witnesses, residing in this Territory, to be read in suits at law in like manner as above provided, in all cases, when such witness or witnesses shall reside in a different county from that in which the court shall be held, is or are about to depart from the Territory, is or are confined in jail on legal process, or is or are unable to attend such court on account of advanced age, sickness, or other bodily infirmity: *Provided*, That such reasonable notice shall be intended to mean at least ten days, in all cases, and one day in addition thereto (Sundays inclusive), for every thirty miles travel, from the place of holding the court to the place where such deposition or depositions shall be taken.

Of resident
witnesses.

Oath of witnesses.

SEC. 3 Previous to the examination of any witness whose deposition is about to be taken as aforesaid, he or she shall be sworn or affirmed, by the person or persons authorized to take the same, to testify the truth in relation to the matter in controversy, so far as he or she may be interrogated; whereupon, the said commissioner or commissioners, judge, notary public, justice of the peace, or clerk (as the case may be), shall proceed to examine such witness upon all such interrogatories as may be enclosed with, or attached to, any such commission as aforesaid, and which are directed to be put to such witness, or, where no commission shall be necessary, upon all such interrogatories as may be directed to be put by either party litigant, and shall cause such interrogatories, together with the answer of the witness thereto, to be reduced to writing in the order in which they shall be proposed and answered by such witness. After which it shall be the duty of the person or persons taking such deposition to annex at the foot thereof a certificate subscribed by himself or themselves, stating that it was sworn to and signed by the deponent, and the time and place when and where the same was taken. And every such deposition, when thus taken and subscribed, and all exhibits produced to the said commissioner or commissioners, judge, notary public, justice of the peace, or clerk, as aforesaid, or which shall be proved or referred to by any witness, together with the commission and interrogatories, if any, shall be enclosed, sealed up and directed to the clerk of the court in which the action shall be pending, with the names of the parties litigant endorsed thereon: *Provided*, That when any deposition shall be taken as aforesaid by any judge, notary public, or justice of the peace, out of this Territory, such return shall be accompanied by a certificate of his official character, under the great seal of the state, or under the seal of some court of record of the county or city wherein such deposition shall be taken.

Certificate to be annexed to deposition.

How return to be made.

Proviso.

May be read in evidence.

SEC. 4. Every examination and deposition, which shall be taken and returned according to the provisions of this act, may be read as good and competent evidence in the cause in which it shall be taken, as if such witness had been present and examined by parol, in open court, on the hearing or trial thereof.

Authority to issue subpoenas

SEC. 5. Each and every commissioner or commissioner, justice of the peace, notary public, or clerk

of the district or circuit courts, who may be required to take depositions in any cause pending in any courts of law or equity in this Territory, or by virtue of any commission issued out of any court of record in any other State or Territory, shall have power and authority to issue subpoenas, if necessary, to compel the attendance of all such witnesses as shall be named in the commission, or by the parties litigant when no commission is necessary, in the same manner and under the same penalties as is prescribed in other causes where witnesses are directed to be subpoenaed.

SEC. 6. Every witness attending before any commissioner, justice of the peace, notary public, or clerk, as aforesaid, to be examined as aforesaid, shall be entitled to a compensation for his time and attendance, and travelling expenses, at the same rate, for the time being, as is or shall be allowed by law to witnesses attending courts of record in this Territory; and the party requiring such examination shall pay the expenses thereof in advance, if required by the witnesses, but may, if successful in the suit, be allowed for the same in the taxation of costs.

SEC. 7. The party, his attorney, or any person who shall in anywise be interested in the event of the suit, shall not be permitted to dictate, write, or draw up any deposition or depositions which may at any time be taken under this act; and every deposition so dictated, written, or drawn up, or that shall be returned to the court unsealed, or the seal of which be broken, shall be rejected by the court as informal and insufficient: *Provided*, Such seal shall have been broken previous to its reception by the clerk to whom it shall be directed.

SEC. 8. It shall not be lawful for any party litigant, or the clerk of the court into which any deposition may be returned as aforesaid, to break the seal of the same, either in term time or in vacation, unless by permission of the court. And if any such person, or clerk, presume to open any such deposition, when taken and returned as aforesaid, without such permission as aforesaid, he shall be considered guilty of a contempt of court, and may be punished accordingly: *Provided*, That it shall not be considered an offence for the clerk to break open any such deposition, as aforesaid, where it is doubtful from the endorsements made thereon whether the same be a deposition or not, but in such case it shall not be

proper for such clerk to permit any person to examine any deposition which may be thus opened by mistake, until permission shall have been first given by the court as aforesaid.

May be read
by either party.

SEC. 9. All depositions taken in pursuance of this act, when returned into court, may be read by either party, on the trial of the causes to which they relate.

Proceedings to
perpetuate tes-
timony.

SEC. 10. In all cases hereafter where any person or persons shall desire to perpetuate the remembrance of any fact, matter, or thing, which may relate to the boundaries or improvements of land, name or former name of water courses, the name or former name of any portion or district of country, regarding the ancient customs, laws, or usages of the inhabitants of this country, as far as the same may relate to the future settlement of the land claims, or touching the marriage or pedigree of any person or persons, or any other matter or thing necessary to the security of any estate, real, personal, or mixed, or any private right whatever, it shall be lawful for such person or persons, upon filing a petition, supported by affidavit, in the district or circuit court of the proper county, setting forth particularly the fact or facts intended to be established, to sue out of such court a *dedimus protestatem*, or commission, directed to any two justices of the peace, or to any clerk of the district, circuit, or county commissioners' court of the county wherein such testimony is to be taken, and may thereupon proceed to take such deposition or depositions as shall be prayed for in said petition.

Notice to be
given in such
cases.

SEC. 11. It shall be the duty of the person or persons suing out such *dedimus* as aforesaid, before proceeding to take such deposition as aforesaid, to give at least four weeks previous notice of the time and place when and where the same is to be taken, together with a copy of the petition annexed thereto, to each and every person who may be known to be interested in the subject matter of such deposition, or to his, her, or their attorney, or, in case the person be FEME COVERT, to her husband, or, if a minor or minors, to his, her, or their guardian or guardians, if such guardian or guardians should be interested, to such guardian or guardians as shall be appointed by the court to defend the interests of such infant or infants; or in lieu of such written notice, as aforesaid, such petitioner or petitioners shall cause a notice in form as aforesaid, with a copy of the petition thereto annexed as aforesaid, addresssd to such persons

as may be known to be interested as aforesaid, as well as to all others whom it may concern, to be published for four weeks successively in some public newspaper printed in this Territory, at least eight weeks previous to the day of taking such deposition or depositions.

SEC. 12. The said commissioner or commissioners, Persons interested may attend and cross examine. judge, justice of the peace, notary public, or clerk of the district or circuit court, shall attend at the time and place appointed, when each and every person who may think himself or herself interested in the deposition about to be taken may attend, by themselves, or attorneys, and may examine and cross examine such deponent or deponents, and all such questions as may be proposed, together with the answers thereto by the witness, shall be reduced to writing in the English language, or in the language of the witness (provided he or she shall not understand English), as near as possible in the exact words of such deponent, which said questions and answers, when reduced to writing as aforesaid, shall be distinctly read over to the witness, and, if found to be correct, shall be signed by him, or her, in the presence of the said commissioner or commissioners, or judge (as the case may be), who shall thereupon administer an oath or affirmation to such witness, as to the truth of the deposition so taken as aforesaid, and shall annex at the foot thereof a certificate, Certificate. subscribed by himself or themselves, stating that it was sworn to and signed by the deponent, and the time and place when and where the same was taken; and all such depositions, when thus taken, shall be carefully sealed up and transmitted to the clerk of the Return to be made. district or circuit court of the county, from which such *dedimus* shall have been issued, within thirty days from the taking of the same, who shall thereupon enter the same at large upon the records in his office, and shall certify on the back of such deposition that the same has been duly recorded, and return it to the person or persons for whose benefit it shall have been taken.

SEC. 13. All depositions taken in manner and form Such testimony may be read in case of death &c., of deponent. as is provided in the two foregoing sections, or a duly certified copy of the record of any such deposition, in the case of the death of any such deponent, or in case of inability to give testimony in consequence of his, her, or their insanity, or imbecility of mind or body, or where such witness or witnesses

Proviso. shall be rendered incompetent by judgment of law, or in the event of his, her, or their removal, so that their testimony cannot be obtained in the ordinary way on trial, may be used as evidence: *Provided*, That nothing herein contained shall be so construed as to prevent any legal exception being made and allowed to the reading of any such deposition, in any trial at law or in equity, in which the same may be introduced as evidence.

Acts repealed. SEC. 14. The act, entitled "An act concerning depositions," approved, April 12th, 1837, as well as all other acts, and parts of acts, which shall come within the purview of, or be repugnant to, this act, be, and the same are hereby, repealed: *Provided*,

Proviso, touching depositions taken under existing laws. That nothing in this act contained shall be so construed as to affect any deposition heretofore taken in conformity with the existing laws, or to affect any deposition or depositions which may be hereafter taken upon interrogatories now filed, or which may be filed before this act shall take effect, or which shall or may be approved by any court in this Territory, so long as the existing laws shall remain in force.

This act to take effect on the first day of April next.

APPROVED, December 19, 1838.

DISTRICT PROSECUTORS.

AN ACT providing for the appointment of District Prosecutors, and defining their duties.

District prosecutor in each judicial district. SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be a district prosecutor appointed by the Governor, by and with the advice and consent of the Council, in each judicial district in this Territory, who shall hold his office for two years, unless sooner removed, from and after his appointment.

Their duties. SEC. 2. It shall be the duty of the district prosecutor, in each judicial district, to prosecute all pleas, complaints, indictments, and presentments, and prosecute all suits against delinquent sheriffs and collectors of the Territory, and county revenue, and all other persons who now are or may hereafter be indebted to the Territory, or any of the counties in their respective districts, where the Territory or county may