

be a party, except in cases where complaint shall be made in the name of the Territory for the benefit of some third person.

SEC. 3. And the said prosecutor, before he enters on the duties of his office, shall take an oath, which oath shall be administered by the district judge of the district for which he may be appointed, faithfully to discharge the duties of his office, which oath it shall be the duty of the district judge to administer, and endorse on the back of the commission; and he shall moreover execute a bond, with security to be approved by the district judge aforesaid, in the penalty of five thousand dollars, payable to the United States, conditioned for the faithful discharge of his duty as prescribed by law, and for the prompt payment of all sums of money that may come to his hands, by virtue of said office, to the person or persons authorized to receive the same; which bond it shall be the duty of the said district judge to take and forward to the office of the Secretary of the Territory to be filed, and suit may be brought on the same for delinquency and defalcation as in case of other civil officers.

SEC. 4. That whenever a vacancy shall happen by the death, resignation, or removal from office, of the prosecutor in any district in this Territory, it shall be the duty of the Governor, upon being notified of the same, to appoint some fit person to fill such vacancy until the next meeting of the Legislative Assembly.

SEC. 5. That the said district attorneys shall give their advice to the civil officers of their respective districts, touching any matter in which the public have an interest; and the said district attorneys shall receive such compensation for their services, as the board of county commissioners of their respective counties shall from time to time deem proper, either as an annual salary, or by making payment on the bills for services rendered, as they shall judge best.

APPROVED, January 15, 1839.

DIVORCE.

AN ACT concerning Divorce.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That divorces from the bonds of matrimony shall be adjudged and

For what causes divorces may be decreed.

decreed for the following causes, to wit: 1. Impotency. 2. Adultery. And divorces *a mensa et thoro* shall be adjudged and decreed for the following causes, towit: 3. Extreme cruelty. 4. Wilful desertion of either party for one year: *Provided*, however, That divorce from the bonds of matrimony may be decreed for these latter causes at the discretion of the court.

Residence for one year to be proved by petitioner.

SEC. 2. That no divorce shall be granted, except in cases of adultery, unless the petitioner for such divorce shall prove his or her residence in this Territory for one year next preceding his or her application.

Collusion of the parties.

SEC. 3. That no divorce shall be adjudged and decreed where the complaint is founded on collusion of the parties, or where the party complaining is guilty of the crime set forth in his or her petition.

Adultery of the wife.

SEC. 4. That when the divorce shall be decreed for the adultery of the wife, the husband shall have the personal estate for ever, and the real estate of the wife during his life, in case they have issue born alive of her body during the coverture, otherwise during her natural life only, if he shall survive her: *Provided*, nevertheless, That the court may allow for her subsistence so much out of the personal or real estate as they shall judge necessary.

Adultery of the husband.

SEC. 5. That when the divorce shall be decreed for the adultery of the husband, the wife, if there be no issue living at the time of the decree, shall be restored to all her lands, tenements, and hereditaments, and be allowed, out of the personal and real estate, or both, of the husband, such alimony as the court shall think reasonable, not exceeding the use of one moiety of his real estate during the life of the wife, and the property of the one half of his personal estate, having regard to the personal property which came to the husband by the marriage, and his ability; but if there be issue living at the time of the decree, the court, with regard to ordering restitution or granting alimony as aforesaid, may do as they shall judge the circumstances of the case may require, and, upon the application of either party, may from time to time make such alteration therein as may be necessary.

Where applications for divorce to be made.

SEC. 6. That all applications for divorce shall be made to the district court of the county where the parties, or either of them, may reside. The petition shall state the names and age of the parties, and the

cause (being one of the preceding causes enumerated) on which the prayer of the petition is founded.

SEC. 7. That the courts aforesaid shall be and they are hereby authorized to hear witnesses in open court, on the stand, or to receive depositions taken, with notice to the adverse party, under the order of the court, or a judge at his chambers.

Witnesses may be heard in open court, or depositions received.

SEC. 8. That no want of form shall delay or obstruct the proceedings. Notice of the petition, and of the time of hearing the same, shall be published in a newspaper, printed within this Territory, eight weeks at least before a decree shall be made, or longer notice as the court may direct, and notice of taking depositions shall be given in all cases.

Proceedings not to be delayed for lack of form. Notice of the petition, &c., to be published.

SEC. 9. If either party shall claim a trial by jury of the facts set forth in the petition, the court shall thereupon make up an issue, and empanel a jury for the trial thereof, and render judgment upon the finding of such jury: *Provided*, That if the petition allege impotency as the cause of divorce, the courts shall hear and decide upon the same without the intervention of a jury.

Trial by jury may be claimed by either party.

Proviso.

APPROVED, December 29, 1838.

EDUCATION.

AN ACT providing for the establishment of Common Schools.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be established a common school, or schools, in each of the counties of this Territory, which shall be open and free for every class of white citizens between the ages of four and twenty-one years: *Provided*, That persons over the age of twenty-one years may be admitted into such schools on such terms as the trustees of such district may direct.

Common schools to be established in each county.

SEC. 2. The county board shall from time to time form such districts in their respective counties, whenever a petition may be presented for that purpose by a majority of the voters resident within such contemplated district.

School districts to be formed by county board on petition.

SEC. 3. The legal voters in each district, to be established as aforesaid, may have a meeting at any time thereafter, by giving ten days' previous notice, at four of the most public places within the township or district, of the time and place of the same,

Election of officers.