

trict attorney, shall have all witnesses, on the part of the prosecution, recognized to appear at the court on the first day thereof, when the trial is to be had.

SEC. 11. That, in all cases when a change of venue shall be ordered, in a criminal case, if the defendant shall be convicted, and imprisonment be a part of the judgment, the sheriff of the county where such conviction shall be had, shall immediately take such prisoner and convey him to the county where the defendant shall have been committed, and deliver him to the sheriff thereof, and take his receipt therefor, who shall retain him in custody according to the judgment of said court, and all costs and charges incurred in removing any prisoner, as aforesaid, shall be allowed and paid out of the county treasury, where the crime shall have been committed, if the defendant be unable to pay the same.

Where def't is to be imprisoned.

Costs, in removing, by whom paid.

APPROVED, January 18, 1839.

WASTE.

AN ACT to allow and regulate the action of waste.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any person having the possession, or control, of lands, or tenements, and holding the same by any other than a fee simple title, in severalty, who shall commit any waste thereof, or any thing thereunto appertaining, shall be subject to an action of waste, at the suit of any party thereby injured.

By, and against whom, this action may be brought.

SEC. 2. Any such person, who shall not have used due care and exertions to prevent waste, shall be deemed to have committed it.

Prevention of waste.

SEC. 3. Any one seized of an estate in remainder, or reversion, may maintain this action for injuries done to the inheritance, notwithstanding any intervening estate for life, or years.

Estates, in reversion, or remainder.

SEC. 4. An heir, whether he be within or of full age, may maintain his action for waste in the time of his ancestor, as well as in his own time.

Heirs and ancestors.

SEC. 5. No action, however, shall be brought for waste committed more than six years prior to the time of commencing such action.

Limitation, six years.

SEC. 6. The first process, in an action of waste, shall be a summons, which may be substantially in the following form:

Original process.

- “ ——— county, ss.
- Form of summons.** The United States of America, to the sheriff of said county, you are hereby commanded to summon C. D. if he be found in your county, to appear before the district court of said county, on the first day of the next term thereof, to answer A. B. in an action of waste, to his damage ——— dollars, and have you, then and there, this writ: Witness,” &c.
- Writ, how served.** SEC. 7. Every such summons shall be served personally, or by publication, in like manner as is provided in actions for the partition of real property.
- Declaration, and description of the premises, &c.** SEC. 8. The declaration must describe the premises wasted, and the interests of the parties therein, with the same precision as is required in an action of partition aforesaid.
- Proceedings, and analogies herein.** SEC. 9. Except as herein otherwise provided, the proceedings, authorized by this act, shall be assimilated, as far as practicable, to those adopted in personal actions.
- Judgment and damages.** SEC. 10. If, upon the default of the defendant, or upon issue joined, the jury find that waste has been committed by such defendant, as stated in the declaration, the judgment thereupon shall be, that said plaintiff recover three times the amount of the damages found by the jury.
- Specifications in the verdict.** SEC. 11. The jury, in such cases, shall also declare, in their verdict, whether such waste has been wilfully committed, or if it has been the result of gross negligence,
- When the premises wasted shall be recovered.** SEC. 12. Should either of such circumstances be found true, then, if the action were brought by any other than a joint tenant, or a tenant in common, the judgment of the court, in addition to the treble damages, aforesaid, shall be that the plaintiff recover the place, thus wasted.
- When purchasers may maintain this action.** SEC. 13. Whenever lands, or tenements, shall be sold, by virtue of an execution issued upon any judgment, or decree, the purchaser of such property, at said sale, may maintain an action of waste against the person in possession thereof, after such sale, for any waste, thereafter, by him committed.
- Right of possession, and incidents thereto.** SEC. 14. But the person entitled to the possession of lands, so sold, may, until such right of possession shall have expired, use and enjoy such premises, in like manner, and for like purposes, as they were used and enjoyed, prior to such sale, doing no permanent injury to the freehold.

SEC. 15. He may make the necessary repairs to buildings, but shall make no alteration in the form, or structure thereof. Repairs to buildings.

SEC. 16. He may use and improve the lands, in the ordinary course of husbandry, and shall be entitled to the crops growing thereon at the expiration of his said right of possession. Use of lands, and right to crops.

SEC. 17. He may apply any wood, or timber, on such lands, to the necessary repair of fences, and, if said premises be actually occupied by him, he may take the necessary fire wood for the use of his family. Timber, fences and fire wood.

SEC. 18. If, however, in either of the cases mentioned, in the three last sections, he should employ timber, of a quality vastly superior to that required by the occasion, he shall be deemed to have committed waste. Quality of timber, and its application.

APPROVED, January 21, 1839.

WATER CRAFTS, LOST GOODS, AND ESTRAYS.

AN ACT concerning water crafts found adrift, lost goods, and estray animals.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That if any person, or persons, shall hereafter stop, or take up, any keel, or flat boat, ferry flat, batteau, pierogue, canoe, or other vessel, or water craft, found adrift, on any water course within the limits, or upon the borders of this Territory, and the same shall be of the value of five dollars, or upwards, including her cargo, tackle, rigging, and other appendages, it shall be the duty of such person, or persons, within five days thereafter, (provided the same shall not have been previously proven and restored to the owner), to go before some justice of the peace, of the proper county, and make affidavit, in writing, setting forth the exact description of such vessel, or water craft, where, and when the same was found, whether any, and if so, what cargo, tackle, rigging, or other appendages, was found on board, or attached thereto, and that the same has not been altered, or defaced, either in the whole, or in part, since the taking up, either by him, her, or them, or by any other person, or persons, to his, her, or their knowledge, and the

Drifting water craft, where taken up

Value \$5 00.

Affidavit, before whom made, and what shall be set forth therein.